

## **REQUEST FOR PROPOSALS**

### **SOLICITATION INFORMATION AND SELECTION SCHEDULE**

Solicitation Number:	<b>NFS 19-035</b>
Solicitation Title:	<b>Redevelopment of Vacant Lots</b>
Release Date:	<b>May 29, 2019</b>
<b>NON-MANDATORY</b> Pre-Submittal Conference:	<b>June 11, 2019</b> <b>9:00. a.m.</b> (local time, Phoenix, Arizona) Avondale City Hall 11465 West Civic Center Drive Avondale, Arizona 85323
Final Date for Inquiries:	<b>June 14, 2019</b>
Proposal Due Date and Time:	<b>June 26, 2019</b> <b>5:00 p.m.</b> (local time, Phoenix, Arizona)
Shortlist Announced for Oral Interviews:	<b>July 15, 2019</b>
Oral Interviews (if necessary):	<b>Week of July 22, 2019</b>
Target City Council Award Date:	<b>August 12, 2019</b>
Anticipated Agreement Start Date:	<b>August 12, 2019</b>
RFP Administrator:	<b>Marsha Chavez,</b> <a href="mailto:mchavez@avondaleaz.gov">mchavez@avondaleaz.gov</a> <b>Senior Buyer</b> <b>623-333-2033</b>

- \* In the event that a Vendor cannot be selected based solely on Proposals submitted, Oral Interviews may be conducted at the City's sole discretion.
- \*\* The City of Avondale reserves the right to amend the solicitation schedule as necessary.

**SECTION A**

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TABLE OF CONTENTS

<u>Section A</u>	<u>Page</u>
I. RFP Process, Award of Agreement	A-1
II. Proposal Format; Scoring	A-7
III. Oral Interviews; Scoring	A-10
IV. Vendor Information Form	A-11
 <u>Section B</u>	
Sample Subrecipient Agreement	B-1

**SECTION A**

**PART I. RFP PROCESS; AWARD OF AGREEMENT**

1.1 Purpose; Scope of Work. The City of Avondale (the “City”) is issuing this Request For Proposals (this “RFP”) seeking proposals (“Proposals”) from qualified, licensed firms (“Vendors”) to develop diverse, energy efficient (green) homes for maximum community impact. This RFP seeks one or more Vendors that can deliver economies of scale for reasonable pricing and has the capacity to build out the available lots (based on the projected production schedule to be provided in the Vendor’s submittal package). A Vendor that is capable of executing a marketing approach that maximizes exposure and can support improved confidence in the area with an emphasis in community engagement is highly desirable. This project will involve the sale and development of two property packages, inclusive of two vacant lots in the historic Avondale area (the “Services”), as more particularly described in the Scope of Work attached to the sample Subrecipient Agreement as Exhibit B, and incorporated herein by reference. In accordance with the City’s Procurement Code, the City will accept sealed Proposals for the Services specified in the Scope of Work.

1.2 Preparation/Submission of Proposal. Vendors are invited to participate in the competitive selection process for the Services outlined in this RFP. Responding parties shall review their Proposal submissions to ensure the following requirements are met.

A. Irregular or Non-responsive Proposals. The City may consider as “irregular” or “non-responsive” and reject any Proposal not prepared and submitted in accordance with this RFP, or any Proposal lacking sufficient information to enable the City to make a reasonable determination of compliance to the minimum qualifications. Unauthorized conditions, limitations, or provisions may be cause for rejection. Proposals may be deemed non-responsive at any time during the evaluation process if, in the sole opinion of the City Manager or authorized designee, any of the following are true:

- (1) Vendor does not meet the minimum required skill, experience or requirements to perform or provide the Services.
- (2) Vendor has a past record of failing to fully perform or fulfill contractual obligations.
- (3) Vendor cannot demonstrate financial stability.
- (4) Vendor’s Proposal contains false, inaccurate or misleading statements that, in the opinion of the City Manager or authorized designee, are intended to mislead the City in its evaluation of the Proposal.

B. Submittal Quantities. Interested Vendors must submit one hardcopy original and one PDF copy of the Proposal on a CD-ROM or similar electronic storage device. The PDF file must be in one file. Failure to adhere to the submittal quantity criteria shall result in the Proposal being determined non-responsive.

**SECTION A**

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C. **Required Submittal.** The Proposal shall be a maximum of 15 pages to address the Proposal criteria (excluding cover letter, resumes and the Vendor Information Form, but including the materials necessary to address project understanding, general information, organizational chart, photos, tables, graphs, and diagrams). Each page side (maximum 8 1/2" x 11") with criteria information shall be counted. However, one page may be substituted with an 11" x 17" sheet of paper, folded to 8 1/2" x 11", showing a proposed project schedule or organizational chart and only having information on one side. Cover, back, table of contents and tabs may be used and shall not be included in the page count, unless they include additional project-specific information or Proposal criteria responses. Vendors are encouraged to utilize recyclable materials and endeavor to be considerate of the environment in preparation of proposals. The minimum allowable font for the Proposal is 11 pt, Arial or Times New Roman. Failure to adhere to the page limit, size and font criteria shall result in the Proposal being determined non-responsive. Each Proposal shall be submitted with the documents necessary to meet all of the requirements of this solicitation, including the information required in Part II and the following:

(1) Cover letter with an original ink signature by a person authorized to bind the Vendor. Proposals submitted without a cover letter with an original ink signature by a person authorized to bind the Vendor may be determined non-responsive.

(2) Vendor Information Form, with original ink signature.

(3) References.

(4) Project Schedule, if required.

(5) Resumes, Licenses and Certifications (if required).

(6) Fee Proposal, with an original ink signature, and the same number of copies as described in Part I, Subsection 1.2(B) (Submittal Quantities) in a separate, sealed envelope enclosed with the Vendor's Proposal. Pricing shall be inclusive of all of the Services in the Scope of Work as described in the Professional Services Agreement in Exhibit B. A sample Fee Proposal is attached to the Professional Services Agreement as Exhibit C.

(7) Acknowledgment page, with an original ink signature, for any Addendum received.

D. **Vendor Responsibilities.** All Vendors shall (1) examine the entire RFP, (2) seek clarification of any item or requirement that may not be clear, (3) check all responses for accuracy before submitting a Proposal and (4) submit the entire Proposal by the Proposal Due Date and Time. Late Proposals will not be accepted. A Vendor submitting a late Proposal shall be so notified. Negligence in preparing a Proposal shall not be good cause for withdrawal after the Proposal Due Date and Time.

E. **Sealed Submittals.** All Proposals shall be sealed and clearly marked with the RFP number and title, "NFS 19-035 – Redevelopment of Vacant Lots" on the lower left hand corner of the mailing envelope. A return address must also appear on the outside of the sealed

**SECTION A**

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Proposal. The City is not responsible for the pre-opening of, post-opening of, or the failure to open, any Proposals not properly addressed or identified.

F. Address. All Proposals shall be directed to the following address: City Clerk, 11465 West Civic Center Drive, Suite 200, Avondale, Arizona 85323, Attention: Marsha Chavez, RFP Administrator. Proposals must be received in the City Clerk's office by the Proposal Due Date and Time indicated on the cover page of this RFP. Telegraphic (facsimile), electronic (e-mail) or mailgram Proposals will not be considered.

G. Pricing Errors. If price is a consideration and in case of error in the extension of prices in the Proposal, the unit price shall govern. Periods of time, stated as number of days, shall be calendar days.

H. Proposal Irrevocable. In order to allow for an adequate evaluation, the City requires the Proposal to be valid and irrevocable for **120** days after the Proposal Due Date and Time indicated on the cover of this RFP.

I. Amendment/Withdrawal of Proposal. At any time prior to the specified Proposal Due Date and Time, a Vendor (or designated representative) may amend or withdraw its Proposal. Any erasures, interlineations, or other modifications in the Proposal shall be initialed in **original ink** by the authorized person signing the Proposal. Facsimile, electronic (e-mail) or mailgram Proposal amendments or withdrawals will not be considered. No Proposal shall be altered, amended or withdrawn after the specified Proposal Due Date and Time.

1.3 Cost of Proposal Preparation. The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Proposals submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Vendor is responsible for all costs incurred in responding to this RFP. All materials and documents submitted in response to this RFP become the property of the City and will not be returned.

1.4 Inquiries.

A. Written Inquiries. Any question related to the RFP, including any part of the Scope of Work, shall be directed only to the RFP Administrator whose name appears on the cover page of this RFP. Questions shall be submitted in writing, via e-mail or hard copy by the date indicated on the cover page of this RFP. Any correspondence related to the RFP shall refer to the title and number, page and paragraph. However, the Vendor shall not place the RFP number and title on the outside of any envelope containing questions, because such an envelope may be identified as a sealed Proposal and may not be opened until the Proposal Due Date and Time. Any Vendor found to be communicating with any member of City staff about this solicitation shall be prohibited from submitting a proposal, or if a proposal is received, such proposal shall be deemed non-responsive.

B. Inquiries Answered. All inquiries must be directed to the RFP Administrator. Verbal or telephone inquiries will not be answered and Vendors attempting to do

**SECTION A**

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so will be directed to submit written inquiries. The RFP Administrator shall provide a compilation of all questions received in writing with official answers that will be made available on the City's website at <https://www.avondaleaz.gov/procurement>. The RFP Administrator shall endeavor to post the compilation not later than five days after the inquiry deadline.

C. Pre-Submittal Conference. A Pre-Submittal Conference may be held. If scheduled, the date and time of this conference will be indicated on the cover page of this RFP. If the Pre-Submittal Conference is designated as mandatory, failure to attend shall render that Vendor's Proposal non-responsive. Vendors are strongly encouraged to attend those Pre-Submittal Conferences designated as non-mandatory. The purpose of this conference will be to clarify the contents of this RFP in order to prevent any misunderstanding of the City's requirements. Any doubt as to the requirements of this RFP or any apparent omission or discrepancy should be presented to the City at this conference. The City may issue a written amendment or addendum to this RFP. Oral statements or instructions are provided for informational purposes only and do not become a part of this RFP. Any change to the RFP shall be made in the form of an addendum.

1.5 Addenda. Any addendum issued as a result of any change in this RFP shall become part of the RFP and must be acknowledged in the Proposal submittal. Failure to indicate receipt of the addendum may result in the Proposal being rejected as non-responsive. It shall be the Vendor's responsibility to check for addenda issued to this RFP. Any addendum issued by the City with respect to this RFP will be posted on the City's procurement website at [www.avondaleaz.gov/procurement](https://www.avondaleaz.gov/procurement).

1.6 Payment Requirements; Payment Discounts. Any Proposal that requires payment in less than 30 calendar days shall not be considered. Payment discounts of 30 calendar days or less will not be deducted from the Proposal Price in determining the low Proposal. The City shall be entitled to take advantage of any payment discount offered, provided payment is made within the discount period. Payment discounts shall be indicated on Price Sheet.

1.7 Federal Excise Tax; Transaction Privilege Tax. The City is exempt from Federal Excise Tax, including the Federal Transportation Tax. Transaction privilege tax, sales tax, or use tax, if any, shall be included in the unit price for each line item. It shall not be considered a lump sum payment item.

1.8 Public Record. All Proposals shall become the property of the City and shall become a matter of public record available for review, subsequent to the award notification, in accordance with the City's Procurement Code.

1.9 Confidential Information. If a Vendor believes that a Proposal or protest contains information that should be withheld from the public record, a statement advising the RFP Administrator of this fact shall accompany the submission and the information shall be clearly identified. The information identified by the Vendor as confidential shall not be disclosed until the City Manager, or authorized designee, makes a written determination. The City Manager, or authorized designee shall review the statement and information with the City Attorney and shall determine in writing whether the information shall be withheld. If the City Attorney determines

**SECTION A**

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that it is proper to disclose the information, the RFP Administrator shall inform the Vendor in writing of such determination.

1.10 Vendor Licensing and Registration. Prior to the award of the Agreement, the successful Vendor shall (A) be registered with the Arizona Corporation Commission and authorized to do business in Arizona and (B) have a completed Vendor Registration Packet on file with the City Finance and Budget Department. The Vendor shall provide licensure information with the Proposal. Corporations and limited liability companies shall be able to provide a Certificate of Good Standing from the Arizona Corporation Commission.

1.11 Certification. By submitting a Proposal, the Vendor certifies:

A. No Collusion. The submission of the Proposal did not involve collusion or other anti-competitive practices.

B. No Discrimination. It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246.

C. No Gratuity. It has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor or service to a City employee, officer or agent in connection with the submitted Proposal. It (including the Vendor's employees, representatives, agents, lobbyists, attorneys, and subcontractors) has refrained, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the Selection Committee, elected officials, the City Manager, Assistant City Managers, Department Heads, and other City staff. All inquiries must be addressed to the City's RFP Administrator. Any attempt to influence the selection process by any means shall void the submitted Proposal and any resulting Agreement.

D. Financial Stability. It is financially stable, solvent and has adequate cash reserves to meet all financial obligations including any potential costs resulting from an award of the Agreement.

E. No Signature/False or Misleading Statement. The signature on the cover letter of the Proposal and the Vendor Information Form is genuine and the person signing has the authority to bind the Vendor. Failure to sign the cover letter and the Vendor Information Form, or signing either with a false or misleading statement, shall void the submitted Proposal and any resulting Agreement.

F. Subrecipient Agreement. In addition to reviewing and understanding the submittal requirements, it has reviewed the attached sample Subrecipient Agreement including the Scope of Work and other Exhibits.

**SECTION A**

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1.12 Award of Agreement.

A. Selection. A Selection Committee composed of representatives from the City will conduct the selection process according to the schedule listed on the cover page of this RFP. Proposals shall be opened at the time and place designated on the cover page of this RFP. The name of each Vendor and the identity of the RFP for which the Proposal was submitted shall be publicly read and recorded in the presence of witnesses. PRICES SHALL NOT BE READ. The Selection Committee shall award the agreement to the responsible and responsive Vendor whose Proposal is determined, in writing, to be the most advantageous to the City and best meets the overall needs of the City taking into consideration the evaluation criteria set forth in this RFP. The amount of applicable transaction privilege or use tax of the City shall not be a factor in determining the most advantageous Proposal. After the City has entered into an Agreement with the successful Vendor, the successful Proposal and the scoring documentation shall be open for public inspection.

B. Line Item Option. Unless the Proposal states otherwise, or unless otherwise provided within this RFP, the City reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City.

C. Multiple Award. The City, at its sole discretion, may elect to enter into Agreements with multiple Vendors who are qualified to provide the Services. The final terms and conditions of the proposed Agreement will be negotiated by the City with the successful offerors.

D. Form of Agreement. The selected Vendor will be required to execute the City's standard Subrecipient Agreement in a form acceptable to the City Attorney. A sample of the standard agreement is included with this RFP. If the City is unsuccessful in negotiating an Agreement with the highest-scoring Vendor, the City may then negotiate with the second, and then third, highest-scoring Vendor until an Agreement is executed. City Council approval may be required. The City reserves the right to terminate the selection process at any time.

E. Waiver; Rejection; Reissuance. Notwithstanding any other provision of this RFP, the City expressly reserves the right to: (1) waive any immaterial defect or informality, (2) reject any or all Proposals or portions thereof and (3) cancel or reissue an RFP.

F. Protests. Any Vendor may protest this RFP, the proposed award of an Agreement, or the actual award of an Agreement. All protests will be considered in accordance with the City Procurement Code.

1.13 Offer. A Proposal is an offer to contract with the City based upon the terms, conditions and specifications contained in this RFP and the Vendor's responsive Proposal, unless any of the terms, conditions, or specifications are modified by a written addendum or agreement amendment. Provided, however, that no contractual relationship shall be established until the Vendor has signed, and the City has approved, a Subrecipient Agreement between the City and the Vendor in the form acceptable to the City Attorney. A sample Subrecipient Agreement is included herein.



SECTION A

PART II. PROPOSAL FORMAT; SCORING

2.1 Evaluation Process. Each submittal will be reviewed for compliance with the Proposal requirements by the Selection Committee. If necessary, the Selection Committee may conduct oral interviews with up to three of the highest ranked Vendors based upon the Proposal submittal scoring.

2.2 Proposal Format and Scoring. Proposals shall be organized and submitted in the format as outlined below. Failure to conform to the designated format, standards and minimum requirements shall result in a determination that the Proposal is non-responsive. Additionally, the Selection Committee will evaluate and award points to each Proposal based upon the evaluation criteria as outlined in this document. Points listed below are the maximum number of points possible for each criterion; there is no minimum number that the Selection Committee must award.

**Proposers shall incorporate any elements and information required in the Scope of Work.**

A. General Information - 10 pts.

(1) One-page cover letter as described in Part I, Subsection 1.2(C) (Required Submittal).

(2) Provide Vendor identification information. Explain the Vendor's legal organization including the legal name, address, identification number and legal form of the Vendor (e.g., partnership, corporation, joint venture, limited liability company, sole proprietorship). If a joint venture, identify the members of the joint venture and provide all of the information required under this section for each member. If a limited liability company, provide the name of the member or members authorized to act on the company's behalf. If the Vendor is a wholly-owned subsidiary of another company, identify the parent company. If the corporation is a nonprofit corporation, provide nonprofit documentation. Provide the name, address and telephone number of the person to contact concerning the Proposal.

(3) Identify the location of the Vendor's principal office and the local work office, if different. Include any documentation that supports the Vendor's authority to provide services in Arizona.

(4) Provide a general description of the Vendor's organization, including years in business.

(5) Identify any contract or subcontract held by the Vendor or officers of the Vendor that have been terminated within the last five years. Briefly describe the circumstances and the outcome.

(6) Identify any claims arising from a contract which resulted in litigation or arbitration within the last five years. Briefly describe the circumstances and the outcome.

SECTION A

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(7) Vendor Information Form, with **original ink signature** (may be attached as separate appendix).

B. Experience and Qualifications of the Vendor - 20 pts.

(1) Provide a detailed description of the Vendor's experience in providing similar services to municipalities or other entities of a similar size to the City, specifically relating experience with respect to the development of vacant lots, compliance with federal funding and related project elements as laid out in the scope of work for this project.

(2) Vendor must demonstrate successful completion of at least three similar projects within the past 60 months. For current projects, please provide enough detail to establish successful completion to date. For the purpose of this Solicitation, "successful completion" means completion of a project within the established schedule and budget and "similar projects" resemble this project in size, nature and scope. Provide a list of at least three organizations for which you successfully completed a similar project. This list shall include, at a minimum, the following information:

- (ii) (a) Name of company or organization.
- (b) Contact name.
- (c) Contact address, telephone number and e-mail address.
- (d) Type of services provided.
- (e) Dates of contract initiation and expiration.

*These references will be checked*, and it is Vendor's responsibility to ensure that all information is accurate and current. Vendor authorizes the RFP Administrator to verify all information from these references and releases all those concerned from any liability in connection with the information they provide. Inability of the City to verify references may result in the Proposal being considered non-responsive.

(3) The RFP Administrator may conduct any investigation deemed necessary to determine the Vendor's ability to perform the project. Vendors may be requested to submit additional documentation within 72 hours (or as specified) to assist the City in its evaluation.

C. Key Positions - 20 pts.

(1) Identify each key personnel member that will render services to the City including title and relevant experience required, including the proposed project manager and project staff.

(2) Indicate the roles and responsibilities of each key position, including the developer, financing, architectural/engineering, general contractor, project manager, and real estate marketing agent, if known. Provide a narrative description of previous

**SECTION A**

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collaboration among some or all members of a Proposer's team. Disclose any Identity of Interest relationships within the Proposer's team. Identity of interest means any relationship (generally based on family ties or financial interests) between the Proposer, general contractor, subcontractor, material supplier or equipment lessor, or any other services related to this project, known or unknown, which would reasonably give rise to a presumption that the parties to the transaction may operate in collusion in establishing a cost/price of the property, the construction, or the terms of the financing. Include senior members of the Vendor only from the perspective of what their roles will be in providing services to the City.

(3) If a subcontractor will be used for work of a certain type, include information on this subcontractor. A detailed plan for providing supervision must be included.

(4) Attach a résumé and evidence of certification, if any, for each key personnel member and/or subcontractor to be involved in this project. Résumés should be attached together as a single appendix at the end of the Proposal and will not count toward the Proposal page limit. However, each resume shall not exceed two pages in length.

**D. Project Approach - 30 pts.**

(1) Describe the Vendor's approach to performing the required Services in the Scope of Work described in the Subrecipient Agreement in Exhibit B, and its approach to contract management, including its perspective and experience on partnering, customer service, quality control, scheduling and staff.

(2) The City will take an active and ongoing role in the design process. Vendor shall include narrative describing what this coordination will look like.

(3) Describe any alternate approach that would best suit the needs of the City. Include rationale for any alternate approach, and indicate how the Vendor will ensure that all efforts are coordinated with the City's representatives.

**E. Project Schedule - 20 pts.**

Provide a project schedule showing key project milestones and deliverables. The schedule shall demonstrate Vendor's ability to meet the designated milestones as listed below. All Services of the successful Vendor must be fully completed within 365 days after the Notice to Proceed has been issued by City. Assumptions used in developing the schedule shall be identified and at a minimum, the proposed schedule shall include the following dates:

- (1) Contract Award Date
- (2) Notice to Proceed Date
- (3) Proposed Kick-Off Meeting
- (4) Securing Financing
- (5) Design

**SECTION A**

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- (6) Neighborhood Meetings for Project Review
- (7) Strategic replatting of select lots
- (8) Plan Review and Permitting
- (9) Construction
  - i. Start of Site Work
  - ii. Unit Construction
  - iii. Total Build-Out Time
- (10) Marketing Programs and Sales Projections
- (11) Project Completion Date

**F. Overall Project Budget - 20 Points**

All Proposers shall include an (estimated) detailed description of any actions or commitments to be requested of the City to accomplish the project. Indicate the amount of buyer's subsidy necessary or anticipated. Whether the requested assistance is financial, technical, or in any other form, the intended purpose and estimated cost to the City must be clearly stated in the proposal. Provide a cost per square foot, which shall align with the proposed budget, along with Exhibit C.

**G. Project Financing and Proposer Financial Capacity - 30 Points**

Provide evidence of the financial commitments from investors and lending institutions and a description of the financing proposed (terms and conditions) for the project including conveyance, construction and holding costs. In addition, provide information on equity investments and investors as a source for project financing. In a sealed envelope, provide information regarding the financial capability of the Proposer, or non-profit organization to successfully undertake the proposed project. Such information must include:

1. Audited financial statements of the Proposer (personal and/or business as appropriate), all subsidiary units, and parent organizations for the last three years. Assets shall be stated at book value, or if stated at market value, shall be supported by recent appraisals to the financial statements.
2. Annual reports, financial rating periods, and other supportive information indicating the financial condition of the Proposer, all subsidiary units and the parent organization.
3. Listing of banks, financial and lending institutions and individuals whom have provided financial products to the Proposer or who have participated financially in any of the Proposer's major projects during the last five years. Provide contact name(s) and telephone number(s).
4. Properly certified statements by the appropriate officer or other individual attesting to the accuracy of and credibility of all financial information submitted.

**Total Possible Points for Proposal:**

**150**

**SECTION A**

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**PART III. ORAL INTERVIEWS; SCORING**

In the event that a Vendor cannot be selected based solely on the Proposals submitted, up to three Vendors may be selected for oral interviews. The selected Vendors will be invited to participate in discussions with the Selection Committee on the date indicated on the cover page of this RFP and awarded points based upon the criteria as outlined below. Vendors may be given additional information for these oral interviews.

**Oral Interview**

20	Experience and Qualifications of the Vendor
40	Key Positions
<u>40</u>	Project Approach
<b>100</b>	<b>Total Possible Points for Oral Interview</b>

**Total Points Possible for this RFP:** **250**

**SECTION A**

**PART IV. VENDOR INFORMATION FORM**

By submitting a Proposal, the submitting Vendor certifies that it has reviewed the administrative information and draft of the Subrecipient Agreement's terms and conditions and, if awarded the Agreement, agrees to be bound thereto.

\_\_\_\_\_  
VENDOR SUBMITTING PROPOSAL

\_\_\_\_\_  
FEDERAL TAX ID NUMBER

\_\_\_\_\_  
PRINTED NAME AND TITLE

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
TELEPHONE

\_\_\_\_\_  
FAX #

\_\_\_\_\_  
CITY            STATE            ZIP

\_\_\_\_\_  
DATE

WEB SITE: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

ARIZONA CORPORATION COMMISSION FILE NO. \_\_\_\_\_

ARIZONA REGISTER OF CONTRACTORS LICENSE NO. \_\_\_\_\_

DUNS NO.: \_\_\_\_\_

**SMALL, MINORITY, DISADVANTAGED AND WOMEN-OWNED BUSINESS ENTERPRISES (check appropriate item(s):**

- \_\_\_\_\_ Small Business Enterprise (SBE)
- \_\_\_\_\_ Minority Business Enterprise (MBE)
- \_\_\_\_\_ Disadvantaged Business Enterprise (DBE)
- \_\_\_\_\_ Women-Owned Business Enterprise (WBE)

Has the Vendor been certified by any jurisdiction in Arizona as a minority or woman-owned business enterprise?

If yes, please provide details and documentation of the certification.

**SECTION B**

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**SUBRECIPIENT AGREEMENT BETWEEN  
THE CITY OF AVONDALE AND**

\_\_\_\_\_

THIS SUBRECIPIENT AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 2019, between the City of Avondale, an Arizona municipal corporation (the "City") and \_\_\_\_\_, a(n) \_\_\_\_\_ (the "Subrecipient").

**RECITALS**

A. The City has received HOME investment partnership funds ("HOME Funds") under Title II of the Cranston-Gonzales National Affordable Housing Act of 1990, Public Law 101-625.

B. The City issued a Request for Proposals, NFS 19-035 "Redevelopment of Vacant Lots" (the "RFP"), a copy of which is on file in the City's Finance Office and incorporated herein by reference, seeking proposals from Vendors to implement a first-time homebuyer assistance program with federal HOME funds (the "Services").

C. The Subrecipient responded to the RFP by submitting a proposal (the "Proposal"), attached hereto as Exhibit A and incorporated herein by reference, and the City desires to enter into an Agreement with the Subrecipient for the Services.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Subrecipient hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until \_\_\_\_\_, 2020 (the "Initial Term"), unless terminated as otherwise provided in this Agreement. After the expiration of the Initial Term, this Agreement may be renewed for up to two successive one-year terms to coincide with the construction of the homes(each, a "Renewal Term") if (i) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) at least 30 days prior to the end of the then-current term of this Agreement, the Subrecipient requests, in writing, to extend this Agreement for an additional one-year term and (iii) the City approves the additional one-year term in writing (including any price adjustments approved as part of this Agreement), as evidenced by the City Manager's signature thereon, which approval may be withheld by the City

**CITY OF AVONDALE  
NEIGHBORHOOD AND FAMILY  
SERVICES DEPARTMENT  
NFS 19-035**

**SECTION B**

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for any reason. The Subrecipient's failure to seek a renewal of this Agreement shall cause this Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the City may, at its discretion and with the agreement of the Subrecipient, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

2. Scope of Work. The Subrecipient shall provide the Services as set forth in the Scope of Work, attached hereto as Exhibit B and incorporated herein by reference.

3. Compensation. The City shall pay Subrecipient an amount not to exceed \$ \_\_\_\_\_ .00 for the Services at the rates set forth in the Fee Proposal, attached hereto as Exhibit C and incorporated herein by reference.

4. Payments. The City shall pay the Subrecipient pursuant to Subsection 14.3(c) below. Payments shall be contingent upon certification of the Subrecipient's financial management system in accordance with acceptable standards specified in 24 CFR 84.21.

5. Documents. All documents, including any intellectual property rights thereto, prepared and submitted to the City pursuant to this Agreement shall be the property of the City.

6. Subrecipient Personnel. Subrecipient shall provide adequate, experienced personnel, capable of and devoted to the successful performance of the Services under this Agreement. Subrecipient agrees to assign specific individuals to key positions. Subrecipient agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not be removed or replaced without prior written notice to the City. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Subrecipient shall immediately notify the City of same and shall, subject to the concurrence of the City, replace such personnel with personnel of equal ability and qualifications.

7. Inspection; Acceptance. All work shall be subject to inspection and acceptance by the City at reasonable times during Subrecipient's performance. The Subrecipient shall provide and maintain a self-inspection system that is acceptable to the City.

8. Licenses; Materials. Subrecipient shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Subrecipient. The City has no obligation to provide Subrecipient, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement. The City has no obligation to provide tools, equipment or material to Subrecipient.



**SECTION B**

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9. Performance Warranty. Subrecipient warrants that the Services rendered will conform to the requirements of this Agreement and to the highest professional standards in the field.

10. Indemnification. To the fullest extent permitted by law, the Subrecipient shall indemnify and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an “Indemnified Party”), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys’ fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (“Claims”) to the extent that such Claims (or actions in respect thereof) are caused by the negligent acts, recklessness or intentional misconduct of the Subrecipient, its officers, employees, agents, or any tier of subcontractor in connection with Subrecipient’s work or services in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

11. Insurance.

11.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Subrecipient, Subrecipient shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City’s option.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect Subrecipient. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Subrecipient from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage, except Workers’ Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

**SECTION B**

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D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

E. Primary Insurance. Subrecipient's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

F. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

G. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Subrecipient. Subrecipient shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Subrecipient shall be solely responsible for any such deductible or self-insured retention amount.

I. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Subrecipient shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and the Subrecipient. Subrecipient shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

J. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Subrecipient will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Subrecipient's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect.

**SECTION B**

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Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Subrecipient's responsibility to forward renewal certificates and declaration page(s) to the City 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the RFP number and title or this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate RFP number and title or a reference to this Agreement, as applicable. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFP number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

- (1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:
    - (a) Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.
    - (b) Auto Liability - Under ISO Form CA 20 48 or equivalent.
    - (c) Excess Liability - Follow form to underlying insurance.
  - (2) Subrecipient's insurance shall be primary insurance with respect to performance of this Agreement.
  - (3) All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Subrecipient under this Agreement.
  - (4) ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.
- K. Endorsements. Consultant shall provide the City with the necessary endorsements to ensure City is provided the insurance coverage set forth in this Section.

**SECTION B**

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L. Bonding and Insurance. The Subrecipient shall comply with the insurance requirement of 41 CFR 105-72.401.

M. Grantor Recognition. The Subrecipient shall ensure recognition of the role of the grantor agency in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include reference to the support provided herein in all publications made possible with funds available under this Agreement.

11.2 Required Insurance Coverage.

A. Commercial General Liability. Subrecipient shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products- completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Subrecipient shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Subrecipient’s owned, hired and non-owned vehicles assigned to or used in the performance of the Subrecipient’s work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

C. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Subrecipient engages in any professional service or work adjunct or residual to performing the work under this Agreement, the Subrecipient shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Subrecipient, or anyone employed by the Subrecipient, or anyone for whose negligent acts, mistakes, errors and omissions the Subrecipient is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

**SECTION B**

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D. Workers' Compensation Insurance. Subrecipient shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Subrecipient's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

11.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without 30 days' prior written notice to the City.

12. Termination; Cancellation.

12.1 For City's Convenience. This Agreement is for the convenience of the City and, as such, may be terminated without cause after receipt by Subrecipient of written notice by the City and pursuant to 41 CFR 105-71.144. Upon termination for convenience, Subrecipient shall be paid for all undisputed services performed to the termination date.

12.2 For Cause. If either party fails to perform any obligation pursuant to this Agreement and such party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (A) provides written notice to the non-defaulting party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 days. In the event of such termination for cause, payment shall be made by the City to the Subrecipient for the undisputed portion of its fee due as of the termination date. Pursuant to 41 CFR 105-71.143, this Agreement may also be suspended or terminated if the Subrecipient materially fails to comply with any term of this agreement.

12.3 Due to Work Stoppage. This Agreement may be terminated by the City upon 30 days' written notice to Subrecipient in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, payment shall be made by the City to the Subrecipient for the undisputed portion of its fee due as of the termination date.

**SECTION B**

12.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The City may cancel this Agreement without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee of any other party to this Agreement in any capacity or a Subrecipient to any other party of this Agreement with respect to the subject matter of this Agreement.

12.5 Gratuities. The City may, by written notice to the Subrecipient, cancel this Agreement if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Subrecipient or any agent or representative of the Subrecipient to any officer, agent or employee of the City for the purpose of securing this Agreement. In the event this Agreement is cancelled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Subrecipient an amount equal to 150% of the gratuity.

12.6 Agreement Subject to Appropriation. The City is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the City's then current fiscal year. The City's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the City concerning budgeted purposes and appropriation of funds. Should the City elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the City shall be relieved of any subsequent obligation under this Agreement. The parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment of the City's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The City shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The City shall keep Subrecipient informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the City. Subrecipient hereby waives any and all rights to bring any claim against the City from or relating in any way to the City's termination of this Agreement pursuant to this section.

13. Miscellaneous.

13.1 Independent Contractor. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Subrecipient acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the City. Subrecipient, its employees and Subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of Subrecipient, its employees or subcontractors. The Subrecipient, and not the City, shall determine the time of its performance of the services provided under this Agreement so long as Subrecipient meets the requirements of its agreed Scope of Work

**CITY OF AVONDALE  
NEIGHBORHOOD AND FAMILY  
SERVICES DEPARTMENT  
NFS 19-035**

**SECTION B**

as set forth in Section 2 above and Exhibit B. Subrecipient is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Subrecipient do not intend to nor will they combine business operations under this Agreement.

13.2 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

13.3 Laws and Regulations. The Subrecipient shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Subrecipient is responsible remains in compliance with all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to the following: (i) existing and future City and County ordinances and regulations, (ii) existing and future state and federal laws, (iii) existing and future Occupational Safety and Health Administration (“OSHA”) standards, (iv) the provisions of 24 CFR Part 570, Community Development Block Grants (“CDBG”), as revised, (v) the provisions of 24 CFR Part 92, HOME, as revised, and (vi) the provisions contained in the City of Avondale Consolidated Plan. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

13.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Subrecipient.

13.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement will promptly be physically amended to make such insertion or correction.

13.6 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.

13.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other

**SECTION B**

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contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

13.8 Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by Subrecipient without prior, written permission of the City, signed by the City Manager. Any attempted assignment or delegation by Subrecipient in violation of this provision shall be a breach of this Agreement by Subrecipient.

13.9 Subcontracts. No subcontract shall be entered into by the Subrecipient with any other party to furnish any of the material or services specified herein without the prior written approval of the City. The Subrecipient is responsible for performance under this Agreement whether or not subcontractors are used. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by Subrecipient.

13.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the Subrecipient from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

13.11 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

13.12 Liens. All materials or services shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

13.13 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Subrecipient any amounts Subrecipient owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.



## SECTION B

B-11

**CITY OF AVONDALE  
NEIGHBORHOOD AND FAMILY  
SERVICES DEPARTMENT  
NFS 19-035**

**SECTION B**

required to perform Subrecipient's duties under this Agreement. Persons requesting such information should be referred to the City. Subrecipient also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Subrecipient as needed for the performance of duties under this Agreement.

13.16 Records and Audit Rights. To ensure that the Subrecipient and its subcontractors are complying with the warranty under subsection 13.17 below, Subrecipient's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Subrecipient and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Subrecipient's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Subrecipient's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 13.17 below. To the extent necessary for the City to audit Records as set forth in this subsection, Subrecipient and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Subrecipient pursuant to this Agreement. Subrecipient and its subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this subsection. The City shall give Subrecipient or its subcontractors reasonable advance notice of intended audits. Subrecipient shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

13.17 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Subrecipient and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Subrecipient's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

13.18 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the Scope of Work, any City-approved Purchase Order, the Fee Proposal, the RFP and the Subrecipient's Proposal, the documents shall govern in the order listed herein.

14. Administrative Requirements.

14.1 Financial Management. The Subrecipient must have a financial management system that complies with 41 CFR 105-72.301(b)(1)-(7).

**SECTION B**

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14.2 Documentation and Record-Keeping.

A. Records to be maintained. The Subrecipient shall maintain all records required by the federal regulations specified in 24 CFR 92.508, which are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- (1) Program records as set forth in 24 CFR 92.508(a)(2).
- (2) Project records as set forth in 24 CFR 92.508(a)(3).
- (3) Community Housing Development Organizations (CDHOs) records as set forth in 24 CFR 92.508(a)(4).
- (4) Financial records as set forth in 24 CFR 92.508(a)(5). 92.508(a)(6).
- (5) Program administration records as set forth in 24 CFR.
- (6) Records concerning compliance with other federal requirements as set forth in 24 CFR 92.508(a)(7).
- (7) Records documenting compliance with environmental review regulations as required by 24 CFR Part 58.

B. Retention. The Subrecipient shall retain all written and electronic records pertinent to expenditures incurred under this Agreement for a period of six years after the termination of all activities funded under this Agreement. Records for non-expendable property acquired with funds under this Agreement shall be retained for five years after final disposition of such property. Records for any displaced person must be kept for five years after he/she has received final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

C. Client Data. The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to the City monitors or their designees for review upon request.

D. Disclosure. The Subrecipient understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City's or Subrecipient's responsibilities with respect to services provided under this Agreement, is prohibited unless consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

E. Close-Outs. The Subrecipient's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), submitting final close-out reports to the City and determining the custodianship of records.

F. Audits and Inspections. All Subrecipient records with respect to any matters

**CITY OF AVONDALE  
NEIGHBORHOOD AND FAMILY  
SERVICES DEPARTMENT  
NFS 19-035**

**SECTION B**

covered by this Agreement shall be made available to the City, its designees or the federal government, at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with City policy concerning Subrecipient audits and, as applicable to 29 CFR Part 99.

**14.3 Reporting and Payment Procedures.**

A. Program Income and Recaptured Funds. Program income means gross income received by the City, or a Subrecipient directly generated from the use of HOME funds or matching contributions. When program income is generated by housing that is only partially assisted with HOME funds or matching funds, the income shall be prorated to reflect the percentage of HOME funds used. Program income includes, but is not limited to, the following:

- (1) Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated, or constructed with HOME funds or matching contributions;
- (2) Gross income from the use or rental of real property, owned by the City, or a Subrecipient, that was acquired, rehabilitated, or constructed, with HOME funds or matching contributions, less costs incidental to generation of the income (Program income does not include gross income from the use, rental or sale of real property received by the project owner, developer, or sponsor, unless the funds are paid by the project owner, developer, or sponsor to the participating jurisdiction, Subrecipient or State recipient);
- (3) Payments of principal and interest on loans made using HOME funds or matching contributions;
- (4) Proceeds from the sale of loans made with HOME funds or matching contributions;
- (5) Proceeds from the sale of obligations secured by loans made with HOME funds or matching contributions;
- (6) Interest earned on program income pending its disposition;
- (7) Any other interest or return on the investment permitted under §92.205(b) of HOME funds or matching contributions.

B. Nature of Proceeds. Program income and recaptured funds received as a result of program activities shall be returned to the City as lien beneficiary. These funds may be made available for additional homebuyer activities as determined by the City. In the case where a HOME-assisted unit is sold, the City shall be entitled to the net proceeds of the sale. Net proceeds shall be calculated as follows: sales price minus first mortgage payoff minus closing costs minus seller investment. Should the net proceeds of the sale be less than the value of the City's lien, the City will consider the lien to be paid in full and HOME restrictions will be released.

**SECTION B**

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C. Payment Procedures. The City will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with an approved budget and City policy concerning payments. Payments will be made for eligible expenses actually paid by the Subrecipient (reimbursement). Payments will be adjusted by the City in accordance with program income balances available in Subrecipient accounts. In addition, the City reserves the right to liquidate funds available under this Agreement for costs incurred by the City on behalf of the Subrecipient.

D. Progress Report. The Subrecipient shall submit bi-monthly Progress Reports to the City in the form, content and frequency as required by the City. The Progress Reports are due no later than August 15th, October 15th, December 15th, February 15th, April 15th and June 15th of each year. The Subrecipient will submit other reports regarding contract activities and the demographics of the populations served upon the request of the City.

14.4 Procurement.

A. Compliance. The Subrecipient shall comply with City policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the City upon termination of this Agreement.

B. OMB Standards. The Subrecipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR Part 105-72, and Procurement Standards set forth in 24 CFR 92.505 and 24 CFR 84.40-84.46.

B. Travel. The Subrecipient shall obtain written approval from the City for any travel outside the metropolitan area with funds provided under this Agreement.

15. Relocation, Real Property Acquisition and One-For-One Housing Replacement.

Use of HOME funds subjects the City and the Subrecipient to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24.

15.1 Reasonable Actions. The City must ensure that it has taken all reasonable steps to minimize the displacement of persons as a result of a project assisted with HOME funds. For down payment and closing cost programs, the City must inform the seller of property, in writing, that the prospective homebuyer does not have the power of eminent domain and, therefore, will not acquire the property if negotiations fail to result in an amicable agreement. The seller must also be informed, in writing by the Agency, of the estimate of the fair market value of the property.

15.2 Relocation Assistance. If the property being considered by the prospective homebuyer is tenant-occupied, the tenant must be provided relocation assistance. That assistance includes advisory services, certain notices, moving expenses, and replacement housing assistance. Replacement housing assistance consists of either rental assistance or down payment assistance

**SECTION B**

if the tenant wishes to become a homeowner. (24 CFR 92.353, 49 CFR 24.101)

15.3 Risk of Displacement. In order to reduce the risk of displacement from the City's program, the Subrecipient agrees to require that assisted units be vacant at least 30-days prior from the date of contract. The Subrecipient further agrees that it will obtain written notification from the seller that the property has been vacant for 30 days prior to the execution of the purchase contract, and that the seller is entering into a voluntary sale agreement.

16. Personnel and Participant Conditions.

16.1 Civil Rights

A. Compliance. The Subrecipient 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 (the Fair Housing Act), Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063 as amended by Executive Order 12259, Executive Order 11246 as amended by Executive Order 11375, 11478 and 12086 and, if applicable, Section 104(b) and Section 109 of Title I of Housing and Community Development Act of 1974 as amended.

B. Nondiscrimination. The Subrecipient will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, nation origin, sex, disability or other handicap, age, or marital/familial status. The Subrecipient will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include, but are not limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

C. Land Covenants. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 and 24 CFR 92.350 and 24 CFR 92.351. In regard to sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, and providing that the City and the United States are beneficiaries of the deed or lease entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

D. Section 504. The Subrecipient agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1974, which prohibits discrimination against the handicapped in any federally assisted program. The City shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

**SECTION B**

**16.2 Affirmative Action**

A. Plan. The Subrecipient agrees that it shall be committed to carry out an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965.

B. Women and Minority Owned Business Enterprises. The Subrecipient shall use its best efforts to afford minority and women owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement and will document these efforts to the City. As used in this Agreement, the term "minority and women owned business enterprise" means a business at least 51 percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representation by businesses regarding their status as minority and women owned business enterprises in lieu of an independent investigation.

C. Access to Records. The Subrecipient shall furnish and cause each of its own contractors or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

D. Notifications. The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understandings, a notice, to be provided by the agency's contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. EEO/AA Statement. The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

F. Subcontracting Provisions. The Subrecipient will include the provisions of subsections 16.1, Civil Rights and 16.2, Affirmative Action, in every subcontract or purchase orders, specifically or by reference, so that such provisions will be binding upon each of its Subrecipients or subcontracts.

**16.3 Employment Restrictions**

A. Prohibited Activity. The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities, sectarian or religious activities, lobbying, political patronage, and nepotism activities.

B. Labor Standards. The Subrecipient agrees to comply with the applicable requirements of the Secretary of Labor in accordance with the Davis-Bacon Act, the Copeland "Anti-Kickback" Act, the Contract Work Hours and Safety Standards Act and all applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the

**CITY OF AVONDALE  
NEIGHBORHOOD AND FAMILY  
SERVICES DEPARTMENT  
NFS 19-035**

**SECTION B**

performance of this Agreement. The Services may be subject to the Davis-Bacon Act, the Copeland "Anti-Kickback" Act and the Contract Work Hours and Safety Standards Act. Davis-Bacon wages may apply to the new construction of eight or more units, in which case the Subrecipient may be required to pay its contractors Davis- Bacon wages. Likewise, the Contract Work Hours and Safety Standards Act may apply to residential new construction. It is anticipated, but not guaranteed, that federal prevailing wage rates, including the Copeland "Anti-Kickback" Act, will not be required for the Services. If necessitated by the requirements of the Services, the current wage rates will be provided in the Quotation packages and the Subrecipient agrees to comply with Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided, that if wage rates higher than those required under the regulations are imposed by state or local laws, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. If applicable, the Subrecipient shall maintain documentation, which demonstrates compliance with this subsection. The Subrecipient will cause or require to be inserted in full, in all contracts subject to such regulations, provisions meeting the requirements of this subsection.

C. "Section 3" Clause.

(1) Compliance. Compliance with the provisions of Section 3 of the Housing and Community Development Act of 1968, as amended, 12 U.S.C. 1701, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the federal financial assistance provided under this Agreement and binding upon the City, the Subrecipient and any of the Subrecipient's Subrecipients and subcontractors. Failure to fulfill these requirements shall subject the City, the Subrecipient and any of the Subrecipient's Subrecipients and subcontractors, their successors and assigns, to those sanctions specified by this Agreement through which federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exist which would prevent compliance with these requirements. The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Community Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to low and very low-income residents of the project area and contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low and very low-income persons residing in the metropolitan area in which the project is located."

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation, housing construction, or other public construction project are given to low and very low- income persons residing within the metropolitan area in which the CDBG funded project is located; where feasible, priority should be given to low and very low-income persons within the service area of the project or neighborhood in which the project is



**SECTION B**

located, and to low and very low-income participants in other HUD programs, and award contracts for work undertaken in connection to housing rehabilitation, housing construction, or other public construction projects are given to business concerns that provide economic opportunities for low and very low-income persons residing within the metropolitan area in which CDBG funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low and very low-income residents within the service area or neighborhood in which the project is located, and to low and very low-income participants in other HUD programs. The Subrecipient certifies and agrees that no contractual or other legal incapacity exists which would prevent compliance with these requirements.

(2) Notifications. The Subrecipient agrees to send to each labor organization or representative of worker with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this "Section 3" Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

(3) Subcontracts. The Subrecipient will include the "Section 3" Clause set forth above in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not enter any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

16.4 Conduct.

A. Subcontracts. In addition to the requirements of subsection 13.9, the following provisions shall apply:

(1) Monitoring. The Subrecipient will monitor all subcontracted services on a regular basis to ensure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions to correct areas of noncompliance.

(2) Content. The Subrecipient shall cause all the provisions of this Agreement in its entirety to be incorporated into and made a part of any subcontract executed in the performance of this Agreement.

(3) Selection Process. The Subrecipient shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the City along with documentation concerning the selection process.

B. Hatch Act. The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of the Title V United States Code.

**CITY OF AVONDALE  
NEIGHBORHOOD AND FAMILY  
SERVICES DEPARTMENT**

**SECTION B**

**NFS 19-035**

C. Conflict of Interest. The Subrecipient agrees to abide by the provisions of 24 CFR 92.356 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Subrecipient further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the Subrecipient hereunder. These conflicts of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the City, or any designated public agencies or Subrecipients, which are receiving funds under the HOME Program.

D. Lobbying. The Subrecipient hereby certifies that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) It will require that the entire language of subsection 18.4(d)(4), Lobby Certification, be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly.

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

E. Copyright. If this Agreement results in any copyrightable materials or inventions, the 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 or materials for government purposes.

F. Religious Organization. The Subrecipient agrees that funds provided under this Agreement will not be utilized for religious activities, to promote religious interest, or for the benefit of a religious organization in accordance with the federal regulations specified in 24 CFR 92.257.

**SECTION B**

17. Environmental Conditions.

17.1 Air and Water. The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement: (A) Clean Air Act, 42 U.S.C., 7401, et seq., (B) Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder, (C) Executive Order 11738, providing for the Administration of the Clean Air Act and the federal Water Pollution Control Act and (D) Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R., Part 50, as amended.

17.2 Flood Disaster Protection. In accordance with the requirements of the Flood Disaster Protection Act of 1973, the Subrecipient shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

17.3 Lead-Based Paint. The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to the Lead-Based Paint Poisoning Prevention Act, the Residential Lead-Based Paint Hazard Reduction Act of 1992, and HUD Lead-Based Paint Regulations at 24 CFR 570.608, 24 CFR Part 35 and 29 CFR Part 1926, as amended. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. Subrecipient shall comply with any state and local laws or regulations governing environmental hazards and their remediation. Obligations under these regulations include, but are not limited to, the following:

A. Lead Content. Subrecipient shall not use or subcontract to a contractor who uses lead-based paint having more than 6/100 of 1% lead content by weight in the performance of this Agreement.

B. Protection of Workers. Subrecipient shall protect its workers disturbing lead painted surfaces, including, but not limited to the following:

(1) Contact the Inspector. Subrecipient shall contact the inspector for the Owner and City before disturbing any surfaces painted with lead paint to document the content of lead on all painted surfaces to be disturbed.

(2) Air Quality Monitoring. Subrecipient shall conduct air quality monitoring when appropriate for the type of activity to determine the level of worker protection required by OSHA. If air quality monitoring results exceed 30 ug/cu. For an eight-hour period, then worker blood

**SECTION B**

testing and monitoring requirements provided in OSHA shall apply.

(3) Protective Equipment. Subrecipient shall provide personal protective equipment, including a respirator program, as is appropriate to the type of job as required by OSHA.

(4) Containment. Subrecipient shall provide proper containment of the work site and clean the work site not less than daily to contain lead dust.

(5) Facilities. Subrecipient shall make proper facilities available for worker hygiene when entering or exiting a work area.

(6) Signage. Subrecipient shall provide for appropriate signage indicating the presence of a lead hazard when conducting work activities.

(7) Cleaning. Subrecipient shall ensure that specialized cleaning of containment areas is complete before reoccupancy by the occupant of the house. For activities that remove identified lead hazards, the Subrecipient shall ensure that specialized cleaning is adequate to meet clearance standards adopted by HUD and local or state Departments of Health.

C. Removal of Paint. Subrecipient shall not use the following methods to remove paint that is, or may be, lead-based paint.

- (1) Open flame burning or torching.
- (2) Machine sanding or grinding without a high-efficiency particulate air (HEPA) local exhaust control.
- (3) Abrasive blasting or sandblasting without HEPA local exhaust control.
- (4) Heat guns operating above 1100 degrees Fahrenheit or charring the paint.
- (5) Dry sanding or dry scraping, except dry scraping in conjunction with heat guns or within 1.0 ft. of electric outlets, or when treating defective paint spots totaling no more than 2 sq. ft. in one interior room or space, or totaling no more than 20 sq. ft. on exterior surfaces.
- (6) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with the regulations of the Consumer Product Safety Commission at 16 CFR 1500.3 and/or other hazardous chemical in accordance with OSHA regulations at 29 CFR 1910.1200 or 1926.59, as applicable to the work.

17.4 Asbestos. The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to OSHA regulations at 29 CFR Part 1926, as amended, and EPA regulations. Subrecipient shall comply with any state and local laws or regulations governing environmental hazards and their remediation. Obligations under these regulations include, but are not limited to, the following:

**SECTION B**

A. Abatement. If asbestos are identified during the initial inspection, Subrecipient shall not begin the Services until all abatement has occurred. Abatement contractors must be certified.

B. Asbestos Free Materials. The project is to be constructed by the Subrecipient with asbestos free materials. The Subrecipient shall agree that if materials containing asbestos are subsequently discovered at any future time to have been included in the construction done by the Subrecipient or any of its subcontractors or agents, the Subrecipient shall be liable for all costs related to the abatement of such asbestos and damages or claims against the City notwithstanding any statute of limitations or other legal bar to any claim by the City.

17.5 Historic Preservation. The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended, and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on the Federal, state or local historic property list.

[SIGNATURES ON FOLLOWING PAGES]

**SECTION B**

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

“City”

CITY OF AVONDALE,  
an Arizona municipal corporation

\_\_\_\_\_  
Charles A. Montoya, City Manager

ATTEST:

\_\_\_\_\_  
Marcella Carrillo, City Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
                                      ) ss.  
COUNTY OF MARICOPA    )

On \_\_\_\_\_, 2019, before me personally appeared Charles A. Montoya, the City Manager of the CITY OF AVONDALE, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the City of Avondale.

\_\_\_\_\_  
Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

\_\_\_\_\_ ,  
a(n) \_\_\_\_\_

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

Title:

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2019, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a(n) \_\_\_\_\_, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the \_\_\_\_\_.

Notary Public

(Affix notary seal here)

EXHIBIT A  
TO  
SUBRECIPIENT AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND

---

[Consultant's Proposal]

See following pages.



EXHIBIT B  
TO  
SUBRECIPIENT AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND

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[Scope of Work]

See following page(s).

## SCOPE OF WORK

### Sale and Redevelopment of Vacant Lots NFS 19-035

#### **I. Background**

The City of Avondale owns a  $\pm 0.5$  acre tract of land at 305-309 E. Hill Drive in Historic Avondale (see property section below), acquiring this land in 2014 through the Neighborhood Stabilization Program (“NSP”). Each lot contained one single-family home, both of which were demolished in 2015. Acquisition of this site is part of a larger redevelopment effort in the neighborhood that began in 2009 with the City’s first round of NSP funding. At that time, the neighborhood was experiencing significant criminal activity centered around several triplexes located just east of this project site. This part of Hill Drive was a cul-de-sac at the time; the criminal activity was amplified, as there was no through-traffic in the area to deter crime.

With NSP funds, the City acquired and demolished the triplexes and extended Hill Drive to 5<sup>th</sup> Street, thus eliminating the criminal element and blight, and staging the area for redevelopment. The first two phases of the redevelopment are completed, and included: acquisition and clearance of all property and construction of six single-family homes on the former triplex sites. These homes are designed in a southwest modern style with vibrant colors, metal surface treatments and flat roofs.

#### **II. Property & Neighborhood Description**

The subject property is currently divided into two parcels. 305 E. Hill Drive (APN #500-17-081) is to the west and is the larger of the two at  $\pm 14,560$  square feet, or 0.33 acres. 309 E. Hill Drive (APN #500-17-083) is the smaller parcel on the eastern edge of the plot with  $\pm 7,430$  square feet or 0.17 acres. *Note that these measurements are estimates provided through the Maricopa County Assessor’s Office, and subject to verification.* Both parcels are bound by E. Hill Drive to the north, and an alleyway abutting several built up Western Avenue commercial parcels to the south. 305 E. Hill Drive is bound to the west by N. 3<sup>rd</sup> Street, and 309 E. Hill Drive bound to the east by N 3<sup>rd</sup> Drive. Combined, the parcels are  $\pm 0.5$  acres comprising a rectangular 130’ by 167’ area.

Current zoning for both parcels is the Historic Avondale Infill Overlay (HAIO), which was established to promote and facilitate the development and redevelopment of vacant, underutilized, or abandoned properties within the City’s Historic Avondale Revitalization Area. Per the City’s zoning ordinance, the intent of the HAIO district is to:

- A. Accommodate growth by encouraging and facilitating new development on vacant and underutilized land in areas that already have infrastructure, utilities, and public facilities.

- B. Encourage the use of innovative approaches to development that utilize sustainable development practices and incorporate environmental performance standards.
- C. Provide flexibility in development standards to facilitate infill development and redevelopment.
- D. Promote a positive artistic environment within the district.

### ***Development standards in the HAI0***

<b>Development Component (per parcel)</b>	<b>Required Standard</b>
Maximum units allowed	1
Minimum lot width	35'
Minimum lot depth	65'
Maximum height	45'
Maximum building coverage	None
Minimum setbacks: front yard	10'
Side Yard	5'
Interior side yard	0'
Rear yard	7'
Street side	5'

The subject parcels are in a transition area between older, primarily one-story, single-family homes to the north, and the Western Avenue Business Corridor to the south. The homes in this area are among the oldest in the City, with many dating to the 1940s and 1950s. Most are transitional ranch style homes of block construction with low-slope, single or dual intersecting gabled roofs, and many still have original features such as metal casement windows, carports and exposed block exteriors. Lot sizes are 6,000 square feet to 8,000 square feet on average.

To the south, the Western Avenue Business Corridor contains an eclectic variety of single-story retail, restaurant and service-related businesses, as well as a handful of multi-story public buildings, including the Boys and Girls Club, the Sam Garcia Library and the City Jail. There are also two neighborhood parks in the area: Deconcini Park adjacent to the Boys and Girls Club, and Sernas Plaza Park between the library and jail facilities. While these public facilities are newer, many of the single-story commercial buildings date to the 1930s through the 1950s, and are representative of a variety of architectural styles, including: Territorial, Pueblo Revival, Spanish Revival, and Art Moderne. Connectivity between Western Avenue and the surrounding residential neighborhoods is a priority in the City's redevelopment efforts.

### **III. Existing Planning & Design Efforts**

- A. Avondale 2030 General Plan – the City's blueprint for development through 2030 which includes the City's overall goals related to land use, economy, neighborhoods, environmental sustainability, open space and recreation, transportation and mobility, and overall quality of life.
- B. Historic Avondale Design and Development Guidelines – an exploration of the historic significance and architectural styles of the project's neighborhood, specifically the Creative Arts District along and adjacent to Western Avenue. The Guidelines identify the subject neighborhood as the Creative Arts District within Historic Avondale, which is a pedestrian-

oriented area that contains the City's most historic commercial and residential buildings. The area is prime for adaptive reuse and infill redevelopment that provides artist live-work space, galleries, shops and other uses that promote the area as an arts district.

- C. Old Town Revitalization Plan – examines the physical, demographic and economic conditions in the subject area, and provides several core recommendations relevant to this project, including: encouragement of homeownership opportunities, strengthen and enhance existing buildings and neighborhoods, and refine and attract niche or specialty retail businesses and developments.
- D. Artspace Needs Analysis – is a comprehensive review of the current demand for artist live/work, spatial needs, and affordability considerations. Overall, the study notes that the area can support 22 live/work artist spaces.
- E. Avondale Public Art Master Plan – this document provides the City's overall vision for art in the community, including type, size & scale, locations and process for selection. Copies of each of these documents can be found at:

[www.avondaleaz.gov/government/departments/development-engineering-services/brochures-publications](http://www.avondaleaz.gov/government/departments/development-engineering-services/brochures-publications)

#### **IV. Requested Services**

The overall project includes redevelopment of the 305-309 E. Hill Drive property from pre-development through sale to qualified buyers. The remainder of this scope describes the specific services requested and standards that the City will use to select a proposal and award a contract. Any information listed in this section as a requirement shall be submitted in the proposal as generally outlined in Section A(2.2).

##### **A. Pre-Development (Architectural, Engineering, Surveying & Replatting)**

Proposals must acknowledge ability to provide and develop residential plans that fit the range of building lots and dimensions applicable to the site based on current zoning. Proposers shall submit a design sample of information and exhibit(s) suitable for public presentation and study, which shall include at a minimum: typical lot plan showing fence, walls, landscaping, major site improvements, driveways, alley, sidewalks, curb cuts and other infrastructure, as well as a minimum of two or more elevation renderings showing overall design concept and aesthetic.

Proposals shall include a breakdown of the anticipated number of units by type and unit square footage, and indicate construction applications and materials to be used. It is highly desired that Proposers incorporate accessibility features and live/work features into the house plans. Point out best efforts for the plans to address these two issues. Include a breakdown of these features such as no-step entry, 36"-wide halls on a path to common areas (not bedrooms), 32" clear width interior doors, etc.

Describe the standards for interior design, amenities, and finishes that match the market expectations for the proposed project(s) and which provide for a diversity of plans and elevations through the use of integrated design. The typical front yard may include low maintenance (xeriscape) landscaping plan. Proposals to reconfigure/replat to create smaller building lots must provide a conceptual site design and a diversity of elevations to demonstrate an appealing street frontage that is well integrated with the surrounding neighborhood appearance. All house plans to show or describe accessibility and live/work space features. Alley loading in this neighborhood is not allowable.

A major component in the City's selection process will be respondents' demonstration of the innovativeness and creativity of their design proposal, including the overall site plan, aesthetic, use of color and materials, compatibility with the surrounding architecture, artistic expression, as well as ingenuity in the use of construction materials and methods that provide the greatest value at the most reasonable cost. The City will take an active and ongoing role in the design process. The City does not have a specific design, set of plans or specifications for this project at this time, and requests that respondents provide sketches, conceptual drawings or other appropriate medium to demonstrate a suggested style and aesthetic for the site.

*B. Construction & Construction Management*

Proposers shall demonstrate successful experience in providing construction and construction management services in similarly scaled projects, preferably those that received federal funding. Respondents must show that they or a subcontractor have overseen and completed new residential construction activities, including, but not limited to: site grading, utility hookups, irrigation and landscaping, foundation installation, framing, roofing, HVAC, plumbing, electrical, drywall and window installation, stucco and texturing, painting and any other trade that may be required per the proposal.

Proposers shall demonstrate successful timing and coordination of all trade work at the project site (construction management) to ensure the efficient completion of all construction activities. Contractors and subcontractors shall submit valid licenses prior to Contract Award issued by the Arizona Registrar of Contractors that are appropriate for the work performed, and maintain these licenses for the duration of the project.

Further, the City will verify that selected contractors and subcontractors do not have an active exclusion through the System for Award Management (sam.gov). A DUNS number and registration through [www.sam.gov](http://www.sam.gov) will be required for the selected respondent. All contractors and subcontractors will be required to be in good standing with the Arizona Corporation Commission. The project will be subject to Section 3 of the Housing & Community Development Act, which provides for economic opportunities to low and moderate income residents of areas where there is federally-funded construction, and will require outreach efforts to low and moderate income

residents in new construction-related hiring. Finally, proposals with eight or more units may be required to pay prevailing wages according to the Davis-Bacon and related Acts.

C. Marketing, Outreach & Community Engagement

In accordance with NSP regulations and acceptable real estate standards, complete the following activities to ensure that proposed units are marketed to target buyers.

1. Market Study

HUD regulations require the City to demonstrate need for the project through a market study. A formal market study is not required until the site plan is approved. Proposers shall describe how the market study will be accomplished to demonstrate the need for their proposal in the community. Elements should include, but are not limited to descriptions and/or outlines of:

- a. Target market, including buyer profile(s).
- b. Number of model homes (if any) proposed to build and maintain. If no model homes proposed, describe how you propose to market and sell homes.
- c. Marketing efforts, including parties to be responsible for providing real estate, marketing (including use of model homes), and/or property management services.
- d. Marketing programs and related materials to be provided to interested parties, including the immediate neighborhood to keep them engaged in the project progress, schedule, and availability of homes.
- e. Efforts to provide marketing materials and assistance in Spanish.
- f. Compliance with Fair Housing/Equal opportunity/Fair Lending laws.
- g. Interface with the housing counseling agency in referring and tracking referrals for pre-purchase counseling and for closing cost/down payment assistance, etc.

2. Community Engagement

Demonstrate experience and knowledge of the Historic Avondale neighborhood and/or working with other diverse neighborhoods. Outline how you propose to work with this community to engage new and existing residents. Proposer should include information relevant in establishing the merit of a particular submittal, i.e. affordability, special house features, specific benefits to the neighborhood, etc. Established and ongoing relationships with neighborhood organizations, when accompanied by capacity and successful track record, are considered in the evaluation of proposals and shall be included in the provided references.

*D. Homebuyer Qualification and Resale*

1. The Subrecipient will implement all aspects of the Program, including, but not limited to the following:
  - Prepare written administrative procedures to ensure effective, consistent implementation of the Program.
  - Process applications, including reviewing and screening applications with respect to NSP regulatory compliance and create a waiting list of compliant, qualified applicants.
  - Provide a formal, in-person HUD-approved homebuyer education curriculum.
  - Provide homebuyer counseling to assist new homebuyer with all aspects of the homebuyer process, including obtaining a mortgage lender and title company
  - Prepare and submit reports, inspection records, lien releases and warranties, as required by the City
  - Prepare, maintain and submit data and records for semi-annual Contractor and Subcontractor Activity Report as required by HUD.
  - Service homebuyer loans for the life of the loan.
2. Eligible Purchasers. Eligible beneficiaries of Program assistance are first-time homebuyers with a projected annual household gross income that does not exceed 120% of the HUD Area Median Income adjusted by household size at the time the commitment is made to the prospective homeowner. Further, assistance must be rendered to Program participants within six months of written income eligibility determination and notification to the applicant. The City will consider assistance to be rendered at close of escrow. Income must be determined and verified according to Section 8 Part 5 guidelines. Homebuyers must have sufficient credit and income to obtain a sufficient first mortgage to participate in the Program. Buyer must contribute a minimum of \$1,000, or 1% of the purchase price of their own funds, whichever is greater. A first-time homebuyer is an individual or family who has not owned a home during the three-year period prior to purchase of a home. Divorced or separated single parents and spouses who are have been out of the work force for the purpose of caring for a household are not bound by the three-year restriction.
3. Maximum Home Price. The purchased homes may not exceed 95% of median purchase price for Maricopa County as established by HUD and will be provided by the City as these figures are updated by HUD. As of the issuance of this RFP, the maximum home value is set at \$271,000, which is subject to change.
4. Terms of Assistance to Homebuyers. Subrecipient must comply with the following terms of assistance to Program homebuyers:

- a. All assistance provided to qualified and approved applicants must be offered in the form of a deferred loan (as opposed to a grant) due to federal affordability requirements. A purchased home must be owned and remain occupied by the assisted household as its primary residence for a Period of Affordability (“POF”) defined in 24 CFR 92.254(a)(4). The length of the POF varies based on the subsidy provided, and is shown in the following table:

<b>Loan Amount</b>	<b>Required Period of Affordability*</b>
Under \$15,000	5 years
\$15,000 to \$40,000	10 years
Over \$40,000	15 years

**\* The POF begins six months from the date of close of escrow.**

- b. All loans must be secured by a Promissory Note, Deed of Trust and Homebuyer Agreement recorded against the assisted property and shall have a term equal to the affordability period. If the home is sold, transferred to another owner, or no longer used as the assisted household’s primary residence prior to satisfaction of the POF, the full amount of assistance must be returned to the beneficiary. The City shall be listed as the beneficiary for all loans.
- c. The Subrecipient will provide non-amortizing, deferred payment loans that will be forgiven at the expiration of the term of the security instrument (at the termination of the POF). Loans will not be forgivable on a prorated basis, and will be due in full if the assisted property is sold, transferred or no longer in use as the household’s primary residence prior to the expiration of the POF.

*E. Financial Underwriting.* The Subrecipient will review all primary mortgages prior to providing the assistance to ensure the following:

- a. Mortgage loans are 30-year fixed interest rate loans.
- b. Mortgage loans are not sub-prime loans.
- c. Mortgage loans have reasonable interest in line with current prevailing interest rates consistent with the borrower’s credit rating.
- d. Closing costs and lender fees are not excessive and within prime industry standards.
- e. Mortgage lender underwriting is using debt ratios not to exceed 33% for the housing payment and 41% for maximum total debt (33/41).
- f. The amount of assistance provided to buyers does not exceed the amount necessary to complete the sale



- g. Subrecipient may originate loans provided that they are registered through the Nationwide Multistate Licensing System (NMLS) and are state or federally chartered to originate mortgage loans in Arizona.

The Subrecipient must provide its loan policies and underwriting standards to the City for review and approval.

- F. Loan Servicing: The City requests that the Subrecipient service all loans provided by the program, to include: maintaining files through the period of affordability; providing payoff statements, subordination requests and recorded lien releases as requested by title companies, lenders, and/or borrowers; notifying the City as to the execution of these actions; and providing copies of executed documents to the City.
- G. Eligible Soft Costs. Eligible soft costs include the fees and incidental costs for credit reports, title reports, appraisals, recording fees, environmental reviews, property inspection fees, housing counseling fees, Subrecipient services, lead testing services, environmental services, affirmative marketing and building permits.
- H. Subordination of Loan to Primary Mortgage Lender. The City's loan shall be second and subordinate in lien position to the Primary Mortgage issued to the homebuyer. The City will not permit its loan to be subordinated beyond second lien position. No Subrecipient shall subordinate its loan position for the purpose of refinancing a primary mortgage if refinancing results in "cash-out" to the homeowner or an increase from the original monthly housing payment.
- I. Subrecipient Homebuyer Assistance Policies and Procedures. Subrecipient shall conduct homebuyer assistance activities in compliance with the Homebuyer Assistance Policies and Procedures submitted with their Proposal, as approved and/or modified by the City.

## V. Project Budget

Submit a detailed breakdown of project costs, financing and revenue in the form of a pro forma or in another revenue and expenditure project model and include in the proposal packet. At minimum, the categories listed below need to be addressed. Break out hard construction costs by trade, and provide a description of work to be performed.

- Land costs (Proposers should indicate purchase price using market comparables)
- Site development (per unit), i.e. off-site infrastructure, utilities
- Site preparation
- Design and other planning costs
- Hard construction
- Sewer taps
- Construction management
- On-site security services
- Permits/fees
- Taxes, insurance

- Overhead
- Profit/management fee
- Marketing and real estate sales cost
- Operating reserves or holding costs
- Financing cost
- Cash flow (based on absorption rate)
- Any other cost of completing the project
- All anticipated sources of funds

Proposers should include a narrative to discuss all anticipated project costs, as well as complete the budget table in Exhibit C as part of their proposals.

## V. Photos & Maps



**Figure 1 – 300 Block of East Hill Drive circa 2008 – prior to any redevelopment.** The subject property at 305-309 E Hill Drive is shaded blue. The properties in red were acquired and demolished in 2009.



*Figure 2 – 300 Block of East Hill Drive circa 2011 – post demolition. Note the creation of N 3<sup>rd</sup> Drive and N 4<sup>th</sup> Drive and extension of E Hill Drive to 5<sup>th</sup> Street.*



*Figure 3 – 300 Block of East Hill Drive circa 2015 – mid-construction of the Legacy Avondale project (in green). Note demolition of the subject property homes (blue).*

EXHIBIT C  
TO  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND

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[Development Budget]

See following page(s).

## DEVELOPMENT BUDGET

Sale and Redevelopment of Vacant Lots  
NFS 19-035

Description	Cost
<b>ACQUISITION</b>	
Land Acquisition	\$
Acquisition fees	\$
<b>UNIT CONSTRUCTION</b> (include unit landscaping in this section)	
# of units:                                      construction cost/ft <sup>2</sup>	\$
<b>OTHER CONSTRUCTION</b>	
Landscaping (common areas only)	\$
Permits	\$
Clearance and Demolition	\$
Utility Connection & Tap Fees	\$
Contingency	\$
<b>INFRASTRUCTURE</b>	
Streets and Sidewalks	\$
Water, Sewer & Gas	\$
Stormwater & Drainage	\$
Impact Fees	\$
<b>PROFESSIONAL FEES</b>	
Site Planning	\$
Architecture & Engineering	\$
Real Estate Attorney	\$
Construction Management	\$
Onsite security	\$
Other Consultant(s) [identify]:	\$
Survey	\$
Market Study	\$
Environmental	\$
Organizational Expense	\$
<b>FINANCE COSTS</b>	
Construction Loan Interest	\$
Construction Origination	\$
Appraisal	\$
Construction Insurance	\$
Property Carrying Taxes	\$
<b>SOFT COSTS</b>	
Marketing	\$
Resale costs	\$
<b>DEVELOPER FEE</b>	\$
<b>TOTAL DEVELOPMENT COST</b>	\$