

**INTERLOCAL AGREEMENT BETWEEN RENO HOUSING AUTHORITY AND THE
CITY OF RENO FOR THE DEVELOPMENT OF AN AFFORDABLE HOUSING
PROJECT
(NSP3 Program)**

THIS INTERLOCAL AGREEMENT (“AGREEMENT”) is entered into as of the _____ day of October, 2017, by and among Reno Housing Authority, a Nevada public body corporate and politic and a municipal corporation (“RHA”), and the City of Reno (“City”) to own and develop an affordable housing project on property located at 1035 East Eighth Street (APN 008-164-20)(the “Property”).

WHEREAS, NRS 277.050 authorizes the sale or exchange of real property between public agencies without advertising for public bids; and

WHEREAS, NRS 277.053 authorizes a governing body of a political subdivision to convey real property to the State, any agency of the State, another political subdivision or an Indian tribe without charge if the property is to be used for a public purpose; and

WHEREAS, City acquired the Property with funds from the U.S. Department of Housing and Urban Development (HUD) under the Neighborhood Stabilization Program (NSP3) to rehabilitate it as an affordable housing project in accordance with the City’s NSP3 Action Plan, however it became necessary to demolish the structure due to its condition, and the Property is vacant as it stands now; and

WHEREAS, pursuant to the Action Plan, City has established its NSP3 Program (the “Program”), as outlined in the NSP3 Program Manual, to convert vacant and foreclosed properties to rental housing that will be affordable to households not exceeding 40 percent of the area median income for an extended period; and

WHEREAS, RHA is a public body corporate and politic and a municipal corporation created by resolution under the Housing Authorities Act of 1947 (NRS Chapter 315) and as such is authorized to construct, prepare, carry out and operate housing projects; and

WHEREAS RHA has access to funding and desires to construct an affordable housing project on the Property; and

WHEREAS City is authorized under NRS 268.05

NOW, THEREFORE, be it agreed by RHA and City as follows:

Art. 1 DEFINITIONS

- A. "Project" shall mean any and all activities associated with operation of the identified properties.

- B. "Property" means all the real property described in Exhibit A hereto, located generally at 1035 East 8th Street, Reno, Nevada, APN 008-164-20.
- C. "Area Median Income" shall mean the income limits for the Reno Metropolitan Statistical Area issued annually by HUD and adjusted for family size.
- D. "Income" shall mean the definition of income set forth pursuant to the 24 CFR Part 5.

Art. 2 DONATION OF PROPERTY TO RHA

A. City shall donate convey the Property without consideration to RHA as follows:

1. HUD Approval. This donation is conditioned upon and subject to approval by the U.S. Department of Housing and Urban Development, and is subject to HUD regulations for the NSP3 Program.
2. Due Diligence. City shall order a preliminary title report on the Property and shall deliver all inspection reports, environmental assessments, appraisals and other information it has on the Property. RHA will have 30 days to conduct due diligence on the Property, and is hereby given a license to go on the Property to conduct any inspections it desires.
3. Review and Lease. As provided in Paragraph B.1 below, upon review of project information, City will lease the Property to RHA for construction to occur.
4. Deed. Upon completion of construction, City will prepare and deliver a grant bargain and sale deed for the Property to RHA who shall record it and pay all costs of the transfer. City warrants that it shall deliver good and marketable title free of all liens and encumbrances created by the City, except as specified in the deed.
5. Declaration of Value The parties shall estimate the fair market value of the Property and jointly execute a Declaration of Value. If a real property transfer tax is due on the transfer, RHA shall pay it.
6. AS IS City transfers the Property to RHA AS IS, with all its faults and without any warranty or representation as to its condition.
7. Costs: RHA shall pay all costs of the transfer and ownership of the Property, including all special assessments, utilities due, transfer taxes, if any, and title insurance.

Art. 3 DEVELOPMENT OF PROPERTY BY RHA AS AN AFFORDABLE HOUSING PROJECT.

A. Review and Lease.

1. RHA shall at its own expense within 24 months from the date of this agreement prepare the submit the following for review by the City Manager or her designee solely to determine compliance with this agreement and NSP requirements.

(a) Plans and specifications for the complex;

(b) A sources and uses of funds for project, together with financing commitments; and

(c) A statement regarding target tenants, rent restrictions and operation of the affordable housing project and operating pro formas.

2. Upon review of the material submitted, if the City Manager or designee determines that the project, as submitted complies with this agreement and NSP requirements, the City Manager shall execute and deliver to RHA a ground lease demising the real property for eighteen months for the sum of \$1.00 The lease will provide that improvements shall belong to RHA and that upon completion of construction, the City will convey the property by grant, bargain and sale deed as provided in Article 2.A above.

B. Construction. RHA at its own expense shall within the lease period complete construction of the affordable housing project.

C. Affordability. For 20 years from the date of the first rental (the “Affordability Period”), RHA shall rent all of the units as follows only to qualified renters. “Qualified renters” means a person or persons (1) constituting a household who have a combined annual income that does not exceed forty percent (40%) of Area Median Income (AMI) as determined by HUD and adjusted for family size at the time of the lease of the unit; (2) who otherwise meet the requirements for eligibility set forth in the agreement, specifically the identification of eligible tenants. The following household members shall not be considered part of the household for purposes of determining annual income: foster children, live-in aides, children of live-in aides, unborn children, and children being pursued for legal custody or adoption who are not currently living with the household. A child who is subject to a shared-custody agreement in which the child resides with the household at least 50% of the time shall be considered part of the household for purposes of determining annual income.

D. Standards of operation and maintenance.

1. RHA shall keep the Project in a clean, well maintained condition, reasonable wear and tear excepted. Landscaping shall be watered and groomed, and free of debris. Sidewalks shall be kept free of snow and clutter. Buildings shall be kept painted and roofs shall be maintained. Trash shall be kept in appropriate enclosures.

2. RHA shall obtain and keep current all permits and licenses to construct, repair, operate and maintain the Project and shall comply in all material respects with all federal, state, and local laws and regulations.

3. RHA shall provide and reasonably enforce regulations to assure that tenants have a safe, secure and quiet environment in which to live.

4. None of the dwelling units in the Project shall be used at any time on a transient basis (i.e. less than 30 days) or will ever be used as a hotel, motel, dormitory, rooming house, nursing home, hospital, sanitarium, or rest home.

5. RHA agrees to maintain and keep the Property in good condition and habitable as defined in NRS 118A.290 and to follow all the provisions of NRS Chapter 118B relating to landlord-tenant relations.

E. Compliance.

1. RHA shall obtain any and all federal, state, and local permits and licenses required through the period of affordability.

2. RHA agrees to comply with all NSP3 requirements, including those found in the NSP3 Grant Agreement, NSP3 Program Manual, the Housing and Economic Recovery Act of 2008, the American Reinvestment and Recovery Act of 2009, and the requirements applicable to entitlement communities under CDBG regulations. RHA also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The RHA further acknowledges its responsibility for adherence to all applicable terms and conditions of this Agreement.

3. RHA shall comply with the following laws and directives as they relate to this specific project:

- i. The Hatch Act as set forth in Title 5, Chapter 15, of the United States Code; and
- ii. The National Environmental Policy Act of 1969 as set forth in P.L. 91-190 and the implementing regulations in 24 CFR, Parts 51 and 58; and
- iii. Title VIII of the Civil Rights Act of 1968, P.L. 90-284; and
- iv. Section 109 of the Housing and Community Development Act of 1974; and
- v. Title VI of the Civil Rights Act of 1964, P.L. 88-352, and the regulations of HUD with respect thereto, including 24 CFR, Parts 1 and 2; and
- vi. The Fair Housing Act, as amended; and
- vii. Section 3 of the Housing and Urban Development Act of 1968, as amended, and the regulations of HUD with respect thereto, including 24 CFR, Part 135; and
- viii. Executive Order II 063, as amended; and
- ix. The Age Discrimination Act of 1975; and
- x. Section 504 of the Rehabilitation Act of 1973; and
- xi. Executive Order II 246, as amended, and the regulations which are issued pursuant thereto; and
- xii. The Fair Labor Standards Act; and

- xiii. Section 202(a) of the Flood Disaster Protection Act of 1973; and
- xiv. Sections 302 and 401 (b) of the Lead-Based Paint Poisoning Prevention Act and implementing regulations in 24 CFR, Part 35; and
- xv. 45 CFR, Part 76, Subpart F of the Drug-Free Workplace Act of 1988; and
- xvi. Section 319 of Public Law 101-121, of the Department of the Interior Appropriations Act, which prohibits Developer from using appropriated Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan, and requires that no Federal appropriated funds have been paid or will be paid, by or on behalf of Developer to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement; and
- xvii. Title I of the Housing and Community Development Act of 1974, as amended, which requires that the WCHC or any subgrantee shall:
 - (a) not discriminate against any employee or applicant foremployment on the basis of religion and not limit employment or give preference in employment to persons on the basis of religion; and
 - (b) not discriminate against any person applying for such public services on the basis of religion and not limit such services or give preference to persons on the basis of religion; and
 - (c) provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing and exert no other religious influence in the provision of such public services.

F. Reporting and Records

1. By March 1 of each year during the period of affordability, RHA will provide City with annual client usage and accounting reports for the Project to include, at a minimum, the following data, where applicable:

- i. Total clients served,
- ii. Client/household's name and unit number,
- iii. Client/household's income,
- iv. If household headed by female,
- v. Number of handicapped clients served,
- vi. Number of senior citizens served,
- vii. Number of persons in each household served; and
- viii. Any other information requested by the City to determine compliance with this Agreement.

2. RHA shall allow duly authorized City representatives to conduct such occasional reviews, audits and on-site monitoring as it deems appropriate in order to determine:

- i. Whether the financial operations, as they pertain to this Agreement, are being conducted properly; and
 - ii. Whether periodic reports contain accurate and reliable information;
 - iii. Whether all of the activities are being conducted in compliance with the provisions of Federal and State laws and regulations and this Agreement.
3. All records requested by the City from RHA shall be made available at no cost or expense to the City.
4. At any time during normal business hours, RHA Project records with respect to NSP shall be made available to the City, the Attorney General's Office, contracted independent auditors, HUD, the Comptroller General of the United States, or any combination thereof. Visits to RHA shall be announced in advance and shall occur during normal operating hours. Reno staff may also inspect property and units during visits and monitoring.
5. Record retention: All records pertaining to each fiscal year must be retained for five years after expiration of this Agreement or five years after the affordability period terminates, whichever is later.

G. Financial Management

RHA agrees to comply with the requirements of the United States Office of Management and Budget (OMB) Circular No. A-87 "Cost Principles for State, Local, and Indian Tribal Governments"; OMB Circular A-128, "Audits of State and Local Governments" (implemented at 24 CFR part 44) and with 24 CFR part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" or the related CDBG provision.

H. Indemnification and Liability Insurance.

1. To the fullest extent provided by law, RHA shall indemnify, hold harmless and defend City and its related parties from and against all claims and liability arising out of and to the extent caused by the acts errors or omissions of RHA and its related parties arising out of the administration of this Agreement to the extent caused by an act, error or omission of the Owner or a related party. "**Arising out of the administration of this Agreement**" means the performance of any task, responsibility or the pursuit of any right with respect to the construction, rehabilitation, maintenance and operation of the Project. "**Act, error or omission**" includes acts, failure to act, errors, or omissions that constitute negligence, willful tortious conduct, or for which strict or imputed liability may be imposed as determined by a court of competent jurisdiction under applicable law, and further includes breaches of this agreement and/or violations of law. "**Claims and liability**" means all third party claims, actions, damages, losses, judgments, injuries, costs and expenses, (including those paid to settle the case) including but not limited to reasonable attorneys' fees and costs, including those related to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (including the loss of use resulting therefrom) and other economic damages but excluding any consequential losses, damages or claims. "**Defend**" includes the obligation to defend litigation at the indemnifying party's sole expense using counsel that is reasonably acceptable to the indemnified party. Each indemnified party shall be permitted to participate, if it chooses, in the defense of any action claiming liability, even if the indemnified party is indemnified hereunder, provided that no settlement with respect to any claim under any such action shall be permitted without RHA's consent (to be given or withheld in RHA's sole and absolute discretion). "**Related Party**" is as defined in the "Definitions" above but also includes volunteers of RHA.

- 2, Unless otherwise agreed, at all times during the Period of Affordability, RHA shall

procure and maintain, at its sole expense, the following commercial general liability insurance coverage:

a. At least as broad as Insurance Services Office Commercial General Liability Coverage "occurrence" form CG 00 01 04/13 or an equivalent form. The Comprehensive General Liability Coverage shall include, but is not limited to, liability coverage arising from premises, operations, independent contractors, products and completed operations, personal and advertising, injury, blanket contractual liability and broad form property damage.

b. The following coverage shall not be limited, by endorsement or otherwise: (a) Contractual liability coverage, including the definition of "Insured Contract" and the contractual liability exception to the employer's liability exclusion; (b) Completed operations coverage, including the subcontractor exception to the "damage to 'your work'" exclusion; (c) the provisions of Subparts (5) and (6) of the "damage to property" exclusion pertaining to "that particular part..." in ISO form CG 00 01 04/13.

c. If any underground work will be performed, the policy shall be endorsed to include electronic data liability coverage form CG 04 37 (or equivalent) unless WCHC waives this requirement in writing. In addition, Explosion, Collapse, Pollution and Underground coverage must be reflected in the insurance certificates unless WCHC waives this requirement in writing.

d. Owner shall maintain limits of no less than **\$1,000,000** per occurrence, **\$2,000,000** general aggregate products-completed operations aggregate, or the amounts customarily carried by the Owner, whichever are greater. The general aggregate limit shall apply on a per project or location basis.

e. The policy shall include the City of Reno, including its elected officials, officers, employees, agents and volunteers as an additional insureds with respect to liability arising out of the activities performed by or on behalf of RHA including the insured's general supervision of the Owner, products and completed operations of the Owner and for premises owned, occupied or used by the Owner. The coverage shall contain no special limitations on the scope of protection afforded to the additional insureds.

f. The Additional Insured Endorsements for General Liability shall be at least as broad as the unmodified ISO CG 20 10 04 13 and ISO CG 20 37 04 13 endorsements, or equivalent, including additional insured coverage for the Contractor's premises, operations products and completed operations exposures. The certificate shall confirm Excess Liability is following form.

g. RHA shall obtain and maintain Completed Operations Liability Insurance through the statute of repose after completion of the Project. The limit of Completed Operations Liability Insurance coverage shall be the same as the limit for General Liability.

h. RHA's insurance coverage shall be considered primary insurance. Any insurance or self-insurance maintained by WCHC shall be excess of the Contractor's insurance and shall not contribute in any way.

i. RHA's insurance shall apply separately to each insured against whom claim

is made or suit is brought, except with respect to the limits of the insurer's liability.

j. Any failure by the RHA to comply with reporting provisions of the policies shall not affect its obligations to the additional insureds.

k. RHA shall furnish City a policy or certificate of liability insurance issued by an authorized representative of the insurance carrier including policy forms and endorsements confirming the required coverage. The contract number and name of contract for this project shall be included on the certificate.

H. COVENANT RUNNING WITH LAND; TRANSFER OF PROJECT.

For the duration of the Affordability Period, this Agreement constitutes a covenant running with the land and City may record a notice indicating so. City may restrict assignment of rights and obligations under this Agreement to a transferee that has substantial experience developing and operating multi-family housing projects and the financial capacity to acquire, develop and operate the Project and Property.

Art. 4 DEFAULT AND REMEDIES

A. Default & Notice to cure.

1. A default under this Agreement occurs if there is a breach of this Agreement which is not cured within the time period specified.

2. If City believes that a breach under this Agreement has occurred, it shall give RHA notice in writing, and the RHA shall have thirty (30) business days to cure the default. If RHA has commenced and is diligently pursuing a cure for the default, such cure period shall be extended as reasonably necessary to complete such cure.

B. If a default occurs without excuse or discharge and remains uncured after written notice is provided to Owner thereof and the cure period specified above, City may exercise any one or combination of the following remedies, and the rights and remedies herein are cumulative so that the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other right or remedy for the same default or any other default:

1. Seek injunctive relief for specific performance of rent restrictions or other obligations under this Agreement; and/or

2. Seek the appointment of City, its designee, or a receiver to take possession of the Property and all security deposits and reserves and rent units out to Qualified Renters, and manage the Project as an affordable housing project under the terms of this Agreement; and/or

3. If the default is related to the condition of the property or the treatment of tenants, City may expend funds to correct the default which shall constitute a lien on the Property under the provisions of NRS 108.221 through 108.246; and/or

4. Bring an action for damages; and
5. Any other remedy provided for in law or equity.

C. Waivers. Failure or delay in giving notice of breach or default shall not constitute a waiver of default. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default, or of any such rights or remedies, or deprive any such party of its right to institute and maintain any actions or pursue any remedies. Waivers are binding on a party only if expressed in writing signed by an authorized officer of the waiving party.

D. Attorney's Fees and Costs. If either party brings any action or proceeding to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs as determined to be just under the circumstances by the Court.

Art. 5 GENERAL TERMS

A. Independent entities

RHA and City are independent entities and nothing contained in this Agreement shall be construed or be deemed to create a relationship of employer or principal and agent or any relationship other than that of independent parties among them, contracting with each other solely for the purpose of carrying out the provisions of this Agreement on a severable basis.

B. Notices

All notices, requests, demands and other communication which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon delivery by registered or certified mail, return receipt requested, postage prepaid thereon, as follows:

CITY:
Community Development

RHA:
Executive Director

City of Reno
PO Box 1900
Reno, NV 89505

Reno Housing Authority
1525 E 9th St
Reno, NV 89512

F. Modification or revocation of Agreement

1. This Agreement may not be modified or amended and no waivers are effective unless expressed in writing and duly signed by the party to be bound by the modification, amendment or waiver.

2. The City Manager of the City of Reno or his/her designee shall have the authority to act as an Authorized Representative. Each Authorized Representative, acting alone, shall have the authority to execute all deeds, escrow instructions, settlement statements, title insurance instructions, agreements, notices

and other instruments necessary to effectuate the purposes of this Declaration, and each Authorized Representative may accept all performances, and waive or negotiate remedies for defaults and implement this Agreement *provided, however that* any such action that materially or substantially changes the uses or development permitted on the Property, reduces the amount owed or adds to the cost incurred by a party shall require the consideration of and written consent of the governing body of the party. For example, and subject to the foregoing limitation, each Authorized Representative, acting alone, shall have the authority to (i) issue interpretations, grant waivers, and/or enter into certain amendments to this Declaration on behalf of his/her principal ; (ii) agree to contract assignments or substitution of parties; (iii) waive or modify any insurance requirements set forth herein; (iv) extend times of performance under this Agreement; and (v) initiate and settle any litigation to enforce the provisions of this Declaration.

G. Severability. In the event that any word, clause, or provision herein is declared by a court of competent jurisdiction to be invalid, unenforceable, or contrary to public policy, then such offending provision shall be deemed, from the very beginning, to have been modified to the extent to bring it within the limits of validity or enforceability. If, however, such offending provision cannot be so modified, then it shall be severed from this Agreement. In either event (modification or severance), all remaining words, phrases, clauses and provisions herein remain fully enforceable.

H. Governing Law. The interpretation and enforcement of this agreement shall be governed by the laws of Nevada. Actions to enforce this Agreement shall be brought in the Second Judicial District Court in and for Washoe County, Nevada.

I. Warranties of Authority Each party who signs this Agreement represents and warrants that he/she has obtained all necessary approvals and has actual authority to execute this Agreement with the effect of binding his/her principal.

IN WITNESS WHEREOF, RHA and CITY have caused this Agreement to be executed by their duly authorized representatives,

Reno Housing Authority

City of Reno

By: _____
Amy Jones, Executive Director

By: _____
Hillary Schieve, Mayor

Approved as to form:

Deputy City Attorney

