

# DEVELOPMENT AGREEMENT

## BETWEEN THE CITY OF LEMOORE AND AFFORDABLE HOMES, INCORPORATED FOR CDBG FUNDED REHABILITATION OF BROOKFAIR MANOR APARTMENTS

THIS AGREEMENT is entered into this 4<sup>th</sup> day of April, 2012 by and between the City of Lemoore (herein called the "Grantee") and Affordable Homes, Incorporated (herein called the "Developer").

WHEREAS, the Grantee has applied for funds from the State of California, Department of Housing and Community Development ("the Department"), State Community Development Block Grant (CDBG) Program originating from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and

WHEREAS, the Grantee wishes to engage the Developer to assist the Grantee in utilizing such funds, if awarded;

NOW, THEREFORE, it is agreed between the parties hereto that;

### **I. SCOPE OF SERVICE**

#### **A. Activities**

The Developer will be responsible for administering a CDBG Grant funded project in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Such project will include the following activities eligible under the Community Development Block Grant program:

#### **Project**

Rehabilitation of 72 rental units commonly referred to as "Brookfair Manor Apartments" located at 515 Beech Lane, Lemoore, California. Rehabilitation shall include replacement of 52 evaporative coolers with HVAC units; replacement of roofs for 22 buildings; exterior painting of all 72 units; new and/or improved carports; replacement of asphalt parking areas with concrete; fencing to screen refuse receptacles and other tenant items from the public view; and improved landscaping.

#### **B. National Objectives**

All activities funded with CDGB funds must meet one of the CDBG program's National Objectives: benefit low and moderate income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208.

The Developer certifies that the activity(ies) carried out under this Agreement will meet the National Objective of benefiting low and moderate income persons, direct benefit, by rehabilitation of those units occupied by low and moderate income tenants. Developer shall collect and maintain and provide to Grantee income information substantiating income of all tenants occupying units where rehabilitation will take place.

C. Levels of Accomplishment – Goals and Performance Measures

The Developer agrees to provide the following levels of project services:

1. Clearance of Special Conditions within 90 days of Standard Agreement Execution Date.
2. Construction oversight, including assistance with prevailing wage monitoring.
3. Completion of the rehabilitation of 72 units per agreed upon specifications within one year of this Agreement.

D. Staffing

Developer shall assign Robert Ekema, or his designee, to undertake the responsibilities associated with this Agreement. Any changes in the Key Personnel assigned or their general responsibilities under this project are subject to the prior approval of the Grantee.

E. Performance Monitoring

The Grantee will monitor the performance of the Developer against goals and performance standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Developer within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures will be initiated.

**II. TIME OF PERFORMANCE**

Services of the Developer shall start upon notification by the Grantee of an award by the Department and upon close-out of the grant awarded. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Developer is using CDBG funds.

**III. BUDGET**

<u>Line Item</u>	<u>Amount</u>
Project Rehabilitation	\$840,400
Construction Oversight	<u>50,000</u>
<b>TOTAL</b>	<b>\$890,400</b>

Any indirect costs charged must be consistent with the conditions of Paragraph VIII (C)(2) of this Agreement. In addition, the Grantee may require a more detailed

budget breakdown than the one contained herein, and the Developer shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Developer.

**IV. PAYMENT**

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed \$890,400. Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III herein and in accordance with performance. Expenses for general administration shall only be incurred by the Grantee.

**V. NOTICES**

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

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

<u>Grantee</u>	<u>Developer</u>
<u>City of Lemoore, Attn: City Manager</u>	<u>Affordable Homes, Inc.</u>
<u>119 Fox Street</u>	<u>515 W. Noble Avenue</u>
<u>Lemoore, CA 93245</u>	<u>Visalia, CA 93277</u>
<u>559-924-6700</u>	<u>559-625-5770</u>

**VI. LOAN TERMS**

Grantee agrees to provide a loan to Developer for the rehabilitation of units as described in Section 1A in the amount of \$840,400. Said loan shall be in the form of a zero percent (0%) deferred payment loan which shall be forgiven after fifteen (15) years from the date of this Agreement provided that the units shall remain occupied by and affordable to persons and households with incomes at or below eighty percent (80%) of median income.

**VII. GENERAL CONDITIONS**

A. General Compliance

The Developer agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban

Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Developer does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Developer does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Developer also agrees to comply with all other applicable Federal, State and local laws, regulations, and policies governing the funds provided under this contract. The Developer further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. "Independent Contractor"

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

C. Hold Harmless

The Developer shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Developer's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

The Developer shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. Insurance & Bonding

The Developer shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee.

The Developer shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.

F. Grantee Recognition

The Developer shall insure recognition of the role of the Grantee in providing services through this Agreement.

G. Amendments

The Grantee or Developer may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Developer from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Developer.

H. Suspension or Termination

In accordance with 24 CFR 85.43, the Grantee may suspend or terminate this Agreement if the Developer materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Developer to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Developer to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Developer, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

**VIII. ADMINISTRATIVE REQUIREMENTS**

A. Financial Management

1. Cost Principles

The Developer shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations." These

principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record Keeping

1. Records to be Maintained

The Developer shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a) Records providing a full description of each activity undertaken;
- b) Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c) Records required to determine the eligibility of activities;
- d) Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- e) Financial records as required by 24 CFR 570.502, and 24 CFR 84.21–28; and
- f) Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. Retention

The Developer shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report to HCD in which the activities assisted under the Agreement are reported on for the final time. 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 four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. Client Data

The Developer 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. Such information shall be made available to Grantee monitors or their designees for review upon request.

4. Disclosure

The Developer understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or

Developer's responsibilities with respect to services provided under this contract, is prohibited by law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Closeouts

The Developer's obligation to the Grantee 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 and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Developer utilizes CDBG funds.

6. Audits & Inspections

All Developer records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed 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 Developer within 30 days after receipt by the Developer. Failure of the Developer to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Developer hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning Developer audits and OMB Circular A-133.

C. Reporting and Payment Procedures

1. Payment Procedures

The Grantee will pay to the Developer, or directly to Developer's Contractor based on invoices submitted, funds available under this Agreement based upon information submitted by the Developer and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Developer, and not to exceed actual cash requirements.

2. Progress Reports

The Developer shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee.

D. Procurement

1. OMB Standards

Unless specified otherwise within this agreement, the Developer shall procure all services in accordance with the requirements of 24 CFR 84.40-48.

## **IX. RELOCATION**

The Developer agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. [The Grantee may preempt the optional policies.] The Developer shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. The Developer also agrees to comply with applicable Grantee ordinances, resolutions and policies concerning the displacement of persons from their residences. However, there is no relocation anticipated for this project.

## **X. PERSONNEL & PARTICIPANT CONDITIONS**

### **A. Civil Rights**

#### **1. Compliance**

The Developer agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

#### **2. Nondiscrimination**

The Developer agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

#### **3. Section 504**

The Developer agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Developer with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Approved Plan

The Developer agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Developer to assist in the formulation of such program.

2. Women- and Minority-Owned Businesses (W/MBE)

The Developer will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Developer may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Developer 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 Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

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

5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that it is an Equal Opportunity or Affirmative Action employer. Additional State of

California Requirements regarding the State Equal Opportunity provisions are contained in Attachment A.

6. Subcontract Provisions

The Developer will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own contractors or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Developer is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

The Developer agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Developer agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Developer shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Developer agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee 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 law, nothing hereunder is intended to relieve the Developer of its obligation, if any, to require payment of the higher wage. The Developer shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. “Section 3” Clause

- a) Compliance: Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Developer and any of the Developer’s Developers and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the Developer and any of the Developer’s Developers and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Developer certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Developer 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 Urban 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 that 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 Developer further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), 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 the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for 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 business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Developer certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

- b) Notifications: The Developer agrees to send to each labor organization or representative of workers 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.
- c) Subcontracts: The Developer will include this Section 3 clause 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 Developer 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 Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

#### D. Conduct

##### 1. Assignability

The Developer shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Developer from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

##### 2. Subcontracts

- a) Approvals: The Developer shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.
- b) Monitoring: The Developer will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and

supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

- c) Content: The Developer shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.
- d) Selection Process: The Developer shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Developer 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 Title V of the U.S.C.

4. Conflict of Interest

The Developer agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

- a) The Developer shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- b) No employee, officer or agent of the Developer shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c) No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Developer, or any designated public agency.

5. Lobbying

The Developer hereby certifies that:

- a) 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 of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b) 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; and
- c) It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Developers shall certify and disclose accordingly:
- d) Lobbying 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.C. 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.

6. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency 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 governmental purposes.

7. Religious Activities

The Developer agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

**XI. ENVIRONMENTAL CONDITIONS**

A. Air and Water

The Developer agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

1. Clean Air Act, 42 U.S.C. , 7401, *et seq.*;
2. 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;
3. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Developer shall assure that for activities located in an area identified by the Federal Emergency Management Agency (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).

C. Lead-Based Paint

The Developer agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-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. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

D. Historic Preservation

The Developer agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) 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 a Federal, state, or local historic property list.

**XII. SEVERABILITY**

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

**XIII. SECTION HEADINGS AND SUBHEADINGS**

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

**XIV. WAIVER**

The Grantee's failure to act with respect to a breach by the Developer does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

**XV. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Grantee and the Developer for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Developer with respect to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

"Grantee"  
City of Lemoore

"Developer"  
Affordable Homes, Inc.

By \_\_\_\_\_  
Jeff Briltz, City Manager

By \_\_\_\_\_

Attest \_\_\_\_\_  
Nanci C. O. Lima, MMC, City Clerk