COUNCIL BILL NO. 2012-127 **ORDINANCE NO.** 2012-067

AN ORDINANCE approving and Agreement between the City of Joplin, Missouri, and the Harry S. Truman Community Development Corporation (HSTCDC) generally pertaining to HOME funds for the new construction of housing; authorizing the City Manager to execute same on behalf of the City, and containing an emergency clause.

WHEREAS, the City of Joplin and Harry S. Truman Community Development Corporation (HSTCDC), are desirous of entering into an agreement whereby HSTCDC will construct a new home for a low/moderate income family through the Home Partnership Investment Program (HOME).

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JOPLIN, MISSOURI, AS FOLLOWS:

Section 1. That the Agreement between the City of Joplin, Missouri, and the Harry S. Truman Community Development Corporation, generally pertaining to HOME funds for new construction of housing, a copy of same, or copy in substantially similar form, attached hereto and incorporated herein, be and the same is hereby approved

Section 2. That the City Manager of the City of Joplin, Missouri, is hereby authorized and directed, upon recommendation and approval of the City Attorney, to execute said Agreement, or Agreement in substantially similar form, by and on behalf of the City of Joplin, Missouri.

Section 3. This Ordinance is an emergency within the meaning of Section 2.12 (1) of the Home Rule Charter of the City of Joplin, Missouri, in that said ordinance is for the preservation of public property and safety, and as such is considered in an emergency and shall take effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this 16th day of April, 2012, by a vote 9-0.

Melodee E. Colbert-Kean, Mayor

ATTEST:

Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

Brian W. Head, City Attorney

JOPLIN CONSORTIUM

2011 LMI Homebuyer New Construction Program

BETWEEN
THE CITY OF JOPLIN, MISSOURI
AND
HARRY S. TRUMAN COMMUNITY DEVELOPMENT CORPORATION

THIS AGREEMENT MADE this 8 day of May, 2012, by and between the City of Joplin, Missouri, hereinafter referred to as the "CITY", and Harry S. Truman Community Development Corporation, a nonprofit corporation hereinafter referred to as the "DEVELOPER" and which is located at: 800 Pennell, Carl Junction, Missouri 64834.

WITNESSETH

WHEREAS, the CITY is the recipient of HOME Investment Partnerships Program Funds from the U.S. Department of Housing and Urban Development (HUD), including funds that are reserved for the use of Community Housing Development Organizations (CHDOs); and

WHEREAS, the AWARDEE has been certified with the CITY as a CHDO, and has submitted a proposal for use of CHDO funds for a CHDO-eligible project under HOME regulations;

NOW, THEREFORE in consideration of the mutual covenants and obligations herein contained, including the Attachments, and subject to the terms and conditions hereinafter stated, the parties hereto understand and agree as follows:

Section I – Definitions

A. **AGENCY** – is hereby defined as the Planning/Community Development Division, the HOME Program administering agency of the City of Joplin and members of the Joplin Consortium, as shown in Attachment A. For the purpose of this Agreement and all administration of HOME funds, the AGENCY shall act on behalf of the CITY in the execution and fiscal and programmatic control of this agreement. The term "Approval by the CITY" or like term used this Agreement shall in no way relieve the DEVELOPER from any duties or responsibilities under the terms of this Agreement, or obligation State or local law or regulation.

B. **DIRECTOR** – is hereby defined as the Planning/Community Development Manager of the CITY.

C. **FEE** – is hereby defined as the amount of money the CITY agrees to pay and the DEVELOPER agrees to accept as payment in full for all the professional, technical and construction services rendered pursuant to this Agreement to complete the WORK as further defined in Section III SCOPE OF WORK, hereof.

D. **WORK** – is hereby defined as all the professional, technical and construction services to be rendered or provided by the DEVELOPER as described hereof.

E. **PROJECT** – is hereby defined as the construction of individual houses for low to moderate income families to support the PROGRAM.

F. **PROGRAM-** is hereby defined as the overall process which includes each PROJECT developed in accordance with this Agreement.

G. **HOME** – is hereby defined as the HOME Investment Partnerships Program as described in 24 CFR Part 92, under the authority of 42 U.S.C. 3535 (d) and 12701 - 12839.

Section II – Term

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

Home #1 Project Time Schedule

Milestone	***Deadline***
Site plan development/environmental review and acquisition of lot	Summer 2012
Quarterly progress report	July 1st, 2012
Procurement of construction contractor and notice to proceed	Fall 2012
Quarterly progress report	October 1st, 2012
Construction completion	Winter 2012-13
Quarterly progress report	January 1st, 2012

In addition, this project is subject to ongoing compliance requirements of HOME for five years from the date project completion date; Except, for documents imposing Recapture/Resale restrictions which must be retained for five years after the affordability period terminates [92.508 (c)(2)]. During this compliance period, the DEVELOPER will assure continued compliance with HOME requirements. Ongoing compliance requirements include monitoring units for principal residency and recapture of funds at time of resale.

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

Since it is mutually agreed that time is of the essence as regards this agreement, the DEVELOPER shall cause appropriate provisions to be inserted in all contracts or subcontracts relative to the work tasks required by this agreement, in order to ensure that the PROJECT will be completed according

the timetable set forth.

In the event the DEVELOPER is unable to meet the above schedule or complete the above services because of delays resulting from ongoing compliance requirements, Acts of God, untimely review and approval by the CITY and other governmental authorities having jurisdiction over the PROJECT, or other delays that are not caused by the DEVELOPER, the CITY shall grant a reasonable extension of time for completion of the WORK. It shall be the responsibility of the DEVELOPER to notify the CITY in writing whenever a delay is anticipated or experienced, and to inform the CITY of all facts and details related to the delay.

Section III – Scope of Work

The DEVELOPER, in close coordination with the CITY, shall perform all services (the "WORK") necessary to assist in the redevelopment of the at least **one (1) PROJECT** as discussed in ATTACHMENT B: PROPOSAL FOR: 2011 JOPLIN CONSORTIUM; CHDO Redevelopment Homebuyer Program; in full compliance with the terms of this Agreement.

It is understood that the DEVELOPER will provide architectural plans, a working budget and realistic timetable for each PROJECT as it relates to: construction materials and specialty labor prior to any fund usage. Said budget shall identify all sources and uses of funds, and allocate HOME and non-HOME funds to activities or line items. The PROJECT will be considered approved when a site-specific Construction Contract is signed between the CITY and the DEVELOPER.

The aforementioned Work tasks will be performed in essentially the manner proposed in the DEVELOPER's proposal. The aforementioned document will be considered to be a part and portion of this agreement for reference.

Section IV – Reimbursement of Expenses

A. Project expenses shall be paid based on vouchers for actual expenses incurred or paid. Requests for payment must be submitted by the DEVELOPER on an invoice containing the organization logo or letterhead, contain an itemized list of items to be reimbursed, total dollar amount requested, along with adequate and proper documentation of all eligible costs incurred in compliance with the actual cost of construction (92.206). All such expenses shall be in conformance to the approved project budget. Budget revision and approval shall be required prior to payment of any expenses not conforming to the approved project budget.

B. The CITY shall pay the AWARDEE, as maximum compensation or FEE for the developer services required pursuant to the Scope of Work thereof, NINE THOUSAND DOLLARS **($9,000.00)** of HOME Funds, an amount included in Section IV A. Progress payments of FEES will not exceed the following cumulative maximum percentages of total developer fee at the following stages of each project completion:

Milestone	*Max. Cumulative Developer Fee %*
Acquisition closing	25%
Construction closing / start of construction or rehab	40%
50% construction completion	60%
Construction completion (certificate of occupancy)	75%
Sustaining occupancy (or sale) & completion report	100%

C. The CITY reserves the right to inspect records and project sites to determine that reimbursement and compensation requests are reasonable. The CITY also reserves the right to hold payment until adequate documentation has been provided and reviewed.

D. The DEVELOPER may submit a final invoice upon completion. Final payment shall be made after the CITY has determined that all services have been rendered, files and documentation delivered, and units have been placed in service in full compliance with HOME regulations, including submission of a completion report and documentation of eligible occupancy, property standards and long-term use restrictions.

E. The CITY shall have the right to review and audit all records of the DEVELOPER pertaining to any payment by the CITY. Said records shall be maintained for a period of five years after the project completion date. Except, for documents imposing Resale/Recapture restrictions which must be retained for Five years after the affordability period terminates [92.508 (c)(2)].
The HOME-assisted housing must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion.[92.254 (a)(4)].

HOME amount per-unit	**Minimum period of affordability in years**
Under $15,000	5
$15,000 to $40,000	10
Over $40,000	15

Section V – Project Requirements

The DEVELOPER agrees to comply with all requirements of the HOME Program as stated in 24 CFR Part 92, including but not limited to the following.

A. No HOME project funds will be advanced, and no costs can be incurred, until the City has conducted an **Environmental Review** of the proposed project site as required under 24 CFR Part 58. The environmental review may result in a decision to proceed with, modify or cancel the project.

Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of Environmental Review and receipt by the CITY of a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part §58.

Further, the DEVELOPER will not undertake or commit any funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction, prior to the environmental clearance, and must indicate that the violation of this provision may result in the denial of any funds under the agreement.

B. The DEVELOPER will ensure that any expenditure of HOME funds will be in compliance with the requirements at 92.206, and acknowledges that HOME funds will only be provided as reimbursement for eligible costs incurred, including actual expenditures or invoices for work completed.

C. The DEVELOPER will ensure that all HOME assisted units will be in compliance with 24 CFR 92.254, including documenting that the property is Single Family Housing and Modest Housing (housing that does not exceed 95% of the median purchase price for the area) 92.254(a) (2) (i), and will be the principle residence of the income eligible family throughout the affordability period.

D. The designated HOME-assisted units of this PROJECT will meet the affordability requirements as found in 92.254 (owner-occupied). The DEVELOPER shall collect and maintain Project beneficiary information pertaining to household size, income levels, racial characteristics, and presence of female headed households in order to determine low and moderate-income benefit in cumulative and individual manner. Income documentation shall be in a form consistent with HOME requirements as stated in the HUD ***Technical Guide for Determining Income and Allowances Under the HOME Program.***

E. In the selection of occupants for PROJECT units, the DEVELOPER shall comply with all nondiscrimination requirements of 24 CFR 92.350.

F. The DEVELOPER shall assure compliance with 24 CFR 92.251 as relates to Property Standards and Housing Quality Standards (HQS), Accessibility Standards under 24 CFR 92.251(a)(3) as applicable, and Lead Based Paint Requirements as found in 24 CFR 92.355 and 24 CFR Part 35.

G. The DEVELOPER shall assure that any NOTES and MORTGAGES recorded for homebuyers shall be in compliance with 24 CFR 92.254 and that the DEVELOPER will monitor each unit for principal residency (under 92.254(a)(3)) and resale/recapture (under 92.254 (a)(4) – (5)).

H. The DEVELOPER will provide any documentation required by the AGENCY regarding match as may be required to document match for purposes of the HOME program.

I. If any project under this agreement involves the construction or rehabilitation of 12 or more HOME-assisted units, the DEVELOPER shall comply with the provisions of the Davis-Bacon Act (40 U.S.C. 276 a to a - 7) as supplemented by AGENCY of Labor regulations (29 CFR, Part 5), as amended.

J. If the property is sold through a lease-purchase agreement, the AWARDEE will ensure compliance with 92.254(a)(7), as modified by the 1999 Appropriations Act, Section 599B.

K. The DEVELOPER will be monitored by the AGENCY for compliance with the regulations of 24 CFR 92 for the compliance period specified above. The DEVELOPER will provide reports and access to project files as requested by the AGENCY during the PROJECT and for Five (5) years after completion and closeout of the AGREEMENT.

Section VI – Repayment of Loan

A. All HOME funds are subject to repayment in the event the PROJECT does not meet the PROGRAM requirements as outlined above.

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

C. If the PROJECT is rental, funds will remain a deferred loan for the period of 15 years, at which time the loan may be forgiven or extended in the sole discretion of the CITY for another term. Sale of the property to another party may occur only with the approval of the CITY, and the purchaser shall assume all obligations of the DEVELOPER under this agreement, the note and mortgage, and the deed covenants. Provisions in those documents will provide for the extinguishment of the requirements only in the event of a third-party foreclosure or deed in lieu of foreclosure.

D. If the PROJECT is for owner-occupancy, the DEVELOPER shall lend the HOME funds to the individual buyers in an amount sufficient to make the purchase affordable. Any HOME funds that reduce the price of the property below the fair market value of the property shall be secured by a HOME note and mortgage as required in 92.254(a)(5)(ii), using the note and mortgage prescribed or approved by the AGENCY (and consistent with the method of recapture identified in the CITY's Consolidated Plan.")

1) All net sales proceeds from the sale of units are considered to be CHDO proceeds that may be retained by the DEVELOPER and used in conformance with 24 CFR 92.300(a)(2), or as specified in ATTACHMENT B, "PROPOSAL FOR: 2011 JOPLIN CONSORTIUM; CHDO Redevelopment Homebuyer Program".

2) Prior to each closing, the DEVELOPER will provide to the AGENCY the estimated settlement statement, along with a reconciliation statement and the draft note and mortgage. The reconciliation statement shall account for the pro-ration of HOME project funds to the individual unit, and identify those funds that are to be lent to the buyer as "Buyer subsidies" secured by the HOME note and mortgage, the pro-rated HOME development funds that are to be forgiven as "Development subsidies", and the amount of developer fee or CHDO sales proceeds to be retained from settlement funds.

3) All resale proceeds that are received from buyers as they resell the properties during the compliance period to other buyers shall be considered "Recaptured Funds" under 24 CFR 92.254(a)(5)(ii)A)(5) and must be repaid to the CITY for use in eligible HOME projects as required by 24 CFR 92.503. The DEVELOPER shall promptly notify the AGENCY of such

transactions and will promptly convey any Recaptured Funds to the AGENCY.

Section VII – CHDO Provisions

It is understood that the AWARDEE has certified that it is and will maintain CHDO (Community Housing Development Organization) status for the term of the PROJECT/AGREEMENT in accordance with 24 CFR 92. AWARDEE agrees to provide information as may be requested by the AGENCY to document its continued compliance, including but not limited to an annual board rooster and certification of continued compliance.

Any funds advanced as CHDO pre-development funds must be in compliance with 92.301, and are forgivable only under the terms in 92.301.

Any funds advanced to the CHDO as CHDO Operating Expenses must be expended in compliance with 24 CFR 92.208.

Any funds that the CHDO is permitted to retain as CHDO proceeds from this project shall be used in compliance with 24 CFR 92.300(a)(2) and as specified in this Agreement.

If the project is rental, the AWARDEE will create and follow a tenant participation plan as required in 24 CFR 92.303.

Section VIII – Procurement Standards

The DEVELOPER shall establish procurement procedures to ensure that materials and services are obtained in a cost-effective manner. When procuring for services to be provided under this agreement, the DEVELOPER shall comply at a minimum with the nonprofit procurement standards at 24 CFR 84.40 – 24 CFR 84.48.

In addition, the following requirements are imposed on any procurement under this PROJECT:

1) Under $1,000 – determined by DEVELOPER;

2) $1,000 - $15,000 – at least three (3) written estimates are required;

3) Over $15,000 – at least three (3) competitively sealed bids from contractors/ suppliers.

It is not acceptable to divide or split quantities to be purchased with the intent of evading or circumventing the bidding requirements.

In addition, it is understood that any DEVELOPER that can be considered to be a religious organization shall abide by all portions of 24 CFR 92.257 for Faith-based activities.

Section IX – Conflict of Interest Provisions

The DEVELOPER warrants and covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which could conflict in any manner or degree with the performance of

its services hereunder. The DEVELOPER further warrants and covenants that in the performance of this contract, no person having such interest shall be employed.

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

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

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

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

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

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

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

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

Section X – City Responsibilities

The CITY shall furnish the DEVELOPER with the following services and information from existing CITY records and CITY files:

A. The CITY shall provide to the DEVELOPER information regarding its requirements for the PROJECT.

B. The CITY will provide the DEVELOPER with any changes in HOME regulations or program limits that affect the project, including but not limited to income limits, property value limits and

rent limits.

C. The CITY will conduct progress inspections of work completed to protect its interests as lender and regulatory authority for the project, and will provide information to the DEVELOPER regarding any progress inspections or monitoring to assist it in ensuring compliance.

The CITY's review and approval of the WORK will relate only to overall compliance with the general requirements of this Agreement and HOME regulations, and all CITY regulations and ordinances.
Nothing contained herein shall relieve the DEVELOPER of any responsibility as provided under this Agreement.

Section XI – Equal Employment Opportunity

During the performance of this contract, the DEVELOPER agrees as follows:

A. The DEVELOPER will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin(s). The DEVELOPER will take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin(s). Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The DEVELOPER agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer of the CITY setting forth the provisions of this nondiscrimination clause.

B. The DEVELOPER will, in all solicitations or advertisements for employees placed by or on behalf of the DEVELOPER, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

C. The DEVELOPER will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the CITY's contracting officer, advising the labor union or worker's representative of the DEVELOPER's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. The DEVELOPER will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

E. The DEVELOPER will furnish all information and reports required by Executive Order 11246 September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the AGENCY and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and order.

F. In the event the DEVELOPER is found to be in noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be

canceled, terminated or suspended in whole or in part and the DEVELOPER may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulations, or order of the Secretary of Labor or as otherwise provided by law.

G. The DEVELOPER will include the provisions of paragraphs (a) through (g) of this section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The DEVELOPER will take such action with respect to any subcontract or purchase order as the AGENCY may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the DEVELOPER becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the AGENCY, the DEVELOPER may request the United States to enter into such litigation to protect the interest of the United States.

Section XII – Labor, Training & Business Opportunity

The DEVELOPER agrees to comply with the federal regulations governing training, employment and business opportunities as follows:

A. It is agreed that the WORK to be performed under this agreement is on a project assisted under a program providing direct Federal financial assistance from the US Department of Housing and Urban Development 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 u, as well as any and all applicable amendments thereto. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given low and moderate income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the project area.

B. The DEVELOPER shall comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 Code of Federal Regulations and all applicable rules and orders of the AGENCY of Housing and Urban Development issued thereunder as well as any and all applicable amendments thereto prior to the execution of this contract as well as during the term of this contract. The DEVELOPER certifies and agrees that it is under no contractual or other disability, which would prevent it from complying with these requirements as well as any and all applicable amendments thereto.

C. The DEVELOPER will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the CITY, take appropriate action pursuant to the subcontractor upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, in 24 Code of Federal Regulations.

The DEVELOPER will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 code of Federal Regulations will not let any subcontract unless the subcontractor has first provided it with a preliminary

statement of ability to comply with these requirements as well as with any and all applicable amendments thereto.

D. Compliance with the provisions of Section 3, the regulations set forth in 24 Code of Federal Regulations and all applicable rules and orders of the AGENCY of Housing and Urban Development issued thereunder prior to the execution of the contract shall be a condition precedent to federal financial assistance being provided to the PROJECT as well as a continuing condition, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the DEVELOPER or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by 24 Code of Federal Regulations as well as with any and all applicable amendments thereto.

Section XIII – Compliance with Federal, State & Local Laws

The DEVELOPER covenants and warrants that it will comply with all applicable laws, ordinances, codes, rules and regulations of the state local and federal governments, and all amendments thereto, including, but not limited to; Title 8 of the Civil Rights Act of 1968 PL.90-284; Executive Order 11063 on Equal Opportunity and Housing Section 3 of the Housing and Urban Development Act of 968; Housing and Community Development Act of 1974, as well as all requirements set forth in 24 CFR 92 of the HOME INVESTMENT PARTNERSHIP PROGRAM. The DEVELOPER covenants and warrants that it will indemnify and hold the City forever free and harmless with respect to any and all damages whether directly or indirectly arising out of the provisions and maintenance of this contract.

The DEVELOPER agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

The DEVELOPER further warrants and agrees to include or cause to be included the criteria and requirements of this section in every non-exempt subcontract in excess of $100,000.

The DEVELOPER also agrees to take such action as the federal, state or local government may direct to enforce aforesaid provisions.

Section XIV – Suspension & Termination

In accordance with 24 CFR 85.43, suspension or termination may occur if the DEVELOPER materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

If, through any cause, the DEVELOPER shall fail to fulfill in timely and proper manner its under this contract, or if the DEVELOPER shall violate any of the covenants, agreements, or stipulations of this contract, the CITY shall thereupon have the right to terminate this contract by giving written notice to the DEVELOPER of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, the DEVELOPER shall be entitled to receive just and equitable compensation for any work

completed hereunder to the date of said termination. Notwithstanding the above, the DEVELOPER shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of the contract by the DEVELOPER and the CITY may withhold any payments to the DEVELOPER for the purpose of setoff until such time as the exact amount of damages due the from the DEVELOPER is determined whether by court of competent jurisdiction or otherwise.

Section XV – Termination for Convenience of the CITY

The CITY may terminate for its convenience this contract at any time by giving at least thirty (30) days notice in writing to the DEVELOPER. If the contract is terminated by the CITY, as provided herein, the City will reimburse for any actual and approved expenses incurred, including those costs involved in terminating the contracts and shutting down the work as of the date of notice, and the DEVELOPER will be paid as a FEE an amount which bears the same ratio to the total compensation as the services actually performed bear to the total service of the DEVELOPER covered by this contract, less payments of compensation previously made. Claims and disputes between the parties will be submitted to the American Arbitration Association for resolution. Award or judgment may be entered in any court having jurisdiction thereof.

Section XVI – Default-Loss of Grant Funds

If the DEVELOPER fails in any manner to fully perform and carry out any of the terms, covenants, and conditions of the agreement, and more particularly if the DEVELOPER refuses or fails to proceed with the work with such diligence as will insure its completion within the time fixed by the schedule set forth in ATTACHMENT C of this agreement, the DEVELOPER shall be in default and notice in writing shall be given to the DEVELOPER of such default by the AGENCY or an agent of the AGENCY. If the DEVELOPER fails to cure such default within such time as may be required by such notice, the CITY, acting by and through the AGENCY, may at its option terminate and cancel the contract.

In the event of such termination, all grant funds awarded to the DEVELOPER pursuant to this agreement shall be immediately revoked and any approvals related to the PROJECT shall immediately be deemed revoked and canceled. In such event, the DEVELOPER will no longer be entitled to receive any compensation for work undertaken after the date of the termination of this agreement, as the grant funds will no longer be available for this project.

Such termination shall not effect or terminate any of the rights of the CITY as against the DEVELOPER then existing, or which may thereafter accrue because of such default, and the foregoing provision shall be in addition to all other rights and remedies available to the CITY under the law and the note and mortgage (if in effect), including but not limited to compelling the DEVELOPER to complete the project in accordance with the terms of this agreement, in a court of equity.

The waiver of a breach of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

Section XVII – Reporting Responsibilities

The DEVELOPER agrees to submit any and all quarterly reports required by HUD or the CITY to

the AGENCY on the following due dates: October 1, January 1, April 1, and July 1, next following date of this agreement.

The AGENCY will send the DEVELOPER one reminder notice if the quarterly report has not been received fourteen (14) days after the due date. If the DEVELOPER has not submitted a report fourteen (14) days after the date on the reminder notice, the CITY will have the option to terminate the contract as described in this agreement. In addition, the DEVELOPER agrees to provide the AGENCY information as required to determine program eligibility, in meeting national objectives, and financial records pertinent to the project. Additional reporting requirements may be created by the AGENCY and effective when submitted to the DEVELOPER in writing.

Section XVIII – Inspection, Monitoring & Access to Records

The CITY reserves the right to inspect, monitors, and observe work and services performed by the DEVELOPER at any and all reasonable times.

The CITY reserves the right to audit the records of the DEVELOPER any time during the performance of this Agreement and for a period of five years after final payment and project closeout is made under this Agreement.

If required, the DEVELOPER will provide the AGENCY with a certified audit of the DEVELOPER's records representing the Fiscal Year during which the PROJECT is implemented, whenever the DEVELOPER expends $500,000 or more in a year, in Federal awards, pursuant to the requirements of OMB Circular A-133.

Access shall be immediately granted to the CITY, HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the DEVELOPER or its contractors which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

Section XIX – General Conditions

A. All notices or other communication which shall or may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service, or by registered mail addressed to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served; or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

City address --- 602 S. Main Street; Joplin, Missouri 64801

DEVELOPER address --- 800 Pennell, Carl Junction, Missouri 64834

B. Title and paragraph headings are for convenient reference and are not a part of this Agreement.

C. In the event of conflict between the terms of this Agreement and any terms or conditions contained in any attached documents, the terms in this Agreement shall rule.

D. No waiver or breach of any provision of this Agreement shall constitute a waiver of a subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

E. The parties hereto agree that this Agreement shall be construed and enforced according to the laws of the State of Missouri.

F. Should any provisions, paragraphs, sentences, words or phrases contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Missouri or the City of Joplin, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.

G. The DEVELOPER shall comply with the provisions of the Copeland Anti-Kick-Back Act (18 U.S.C. 874) as supplemented in the AGENCY of Labor Regulations (29 CFR Part 3), as amended.

H. The DEVELOPER shall comply with the provisions of sections 103 and 107 of the Contract Hours and Safety Standard Act (40 U.S.C. 327-330) as supplemented by AGENCY of Labor regulations (29 CFR, Part 5), as amended.

I. The DEVELOPER further warrants and agrees to include or cause to be included the criteria and requirements of paragraphs (G) through (H) of this section in every nonexempt subcontract. The DEVELOPER also agrees to take such action as the federal, state or local government may direct to enforce aforesaid provisions.

J. The obligations undertaken by DEVELOPER pursuant to this Agreement shall not be delegated or assigned to any other person or agency unless CITY shall first consent to the performance or assignment of such service or any part thereof by another person or agency.

K. The Agreement shall be binding upon the parties hereto, their heirs, executors, legal representative, successors and assigns.

L. DEVELOPER shall indemnify and save CITY harmless from and against any negligent claims, liabilities, losses and causes of action which may arise out of DEVELOPER 's activities under this Agreement, including all other acts or omissions to act on the part of DEVELOPER , including any person acting for or on its behalf, and, from and against any orders, judgments, or decrees which may be entered, and from and against all costs, attorneys fees, expenses and liabilities incurred in the defense of any such claims, or in the investigation thereof.

M. DEVELOPER and its employees and agents shall be deemed to be independent contractors, and not agents or employees of the CITY, and shall not attain any rights or benefits under the civil service or pension ordinances of the CITY, or any rights generally afforded classified or unclassified employee; further they shall not be deemed entitled to compensation benefits as an employee of the CITY.

N. Funding for this Agreement is contingent on the availability of funds and continued authorization for program activities and is subject to amendment or termination due to lack of funds, or authorization, reduction of funds, and/or change in regulations.

O. DEVELOPER shall follow the legal protocol for the Federal Work Authorization Program ("FWAP") as found in Attachment D.

IN WITNESS WHEREOF,

The City of Joplin and the DEVELOPER have caused their signatures to be hereunto affixed and duly attested.

FOR DEVELOPER

Harry S. Truman Community Development Corporation: a Missouri Nonprofit Organization

By: _____ Date: May 8, 2012

Harry Rogers
Executive Director

Attest: _____

Luann Peterson

FOR CITY

City of Joplin; a political subdivision of the State of Missouri

By: _____ Date: May 17, 2012

R. Mark Rohr
City Manager

Attest: _____

Barbara Hogelin
City Clerk

Approved as to form:

_____

Brian Head
City Attorney

Attachment A

The Joplin HOME Consortium is organized by written Memorandums of Understandings with the City of Joplin and consists of the following 10 members:

1) City of Joplin, and
2) City of Carthage, and
3) City of Webb City, and
4) City of Carl Junction, and
5) City of Carterville, and
6) City of Sarcoxie, and
7) City of Oronogo, and
8) Village of Airport Drive, and
9) City of Neck City, and
10) All unincorporated areas of Jasper County.

Attachment B

PROPOSAL FOR:

2011 JOPLIN CONSORTIUM

CHDO REDEVELOPMENT HOMEBUYER PROGRAM

The Harry S Truman Community Development Corporation (HSTCDC) presents the following proposal intended to meet the purposes of the Community Housing Development Organization (CHDO) set-aside funds. These funds were budgeted for in the 2011 City of Joplin Action Plan, and approved by the Department of Housing and Urban Development (HUD).

SUMMARY

The HSTCDC proposes to use the $90,000 budgeted in the 2011 Action Plan to acquire and redevelop one (1) single family lot and build one (1) home. The program will be fully financed by these grant funds. The home built under this program will be located in a community that is a member of the Joplin Consortium. The home will also benefit Low-Moderate Income (LMI) families. The purposes of the project will be to improve neighborhood conditions by stabilizing housing stock and to promote homeownership. Other prevailing market conditions, including other government assistance (such as the CDBG Neighborhood Stabilization Program), will also influence the selection of each lot location and home design on a case by case basis.

It is the intent of the HSTCDC to develop the project in a way that the program grows and becomes more self sustaining with time. As homes are sold, the remaining funds, including any potential profits, will be reused in the program. As funds become free of federal regulations, a portion of the proceeds will be donated to another organization for a planned HOME eligible activity, allowing for the eventual shift of future HOME funds from other program activities to an increase in CHDO funding for this program.

The program will be flexible in that if a home does not sell and starts to become a liability to the organization there will be other options available. These options will include the use of a lease-purchase agreement and/or the eventual conversion of the house into an affordable rental unit owned and managed by the HSTCDC.

ACQUISITION

A search for vacant lots will begin in neighborhoods of eligible communities where new home construction will be beneficial to the neighborhood, but the area is still attractive and marketable to prospective homebuyers. Each lot acquired is anticipated to cost between $6,000 and $12,000.

When a potential lot is located, an environmental review will be completed and offer made as soon as clearance is receive from the City of Joplin. A negotiated earnest payment will be made on the property to secure site control until closing.

CONSTRUCTION

The homes will be built in conformance with local applicable building code standards. The HSTCDC will either sub-contract out or hire a general contractor to perform the construction of each home. The HSTCDC would like to reserve the right to work with a volunteer group if given the opportunity.

The HSTCDC will annually solicit, in the Joplin Globe and other area newspapers, sub-contractor and general contractors who are interested and qualified to participate in the program. The pre-qualified list of contractors will be directly solicited for each project within 30 days of closing on the lot. The lowest, most responsive and responsible bidder will be awarded each contract. The contractor's ability to complete each activity in a timely manner will also be considered during the selection process. The contractor will have a pre-negotiated start and end date for the project. They will also be required to obtain all applicable licenses and permits where required. The HSTCDC will oversee and inspect the construction of each home, including the approval of pay requests. Payments to the contractor will be made upon each approved inspection.

SALE TO HOMEBUYER

Since the intent and purpose of the CHDO program is to assist LMI homebuyers, a concerted effort will be made to sell each project to those LMI families for the purpose of homeownership.

The HSTCDC will prepare "For Sale" flyers and have them available in yard signs at each property and distribute them to all area realtor offices on a routine basis. Advertisements will also be placed in local newspapers, especially the Joplin Globe, at least once a month. These costs will be accounted for in the budgeting phase. When a written offer is made, either by the individual homebuyer or their representative (realtor), the decision to accept, decline, or make a counter offer will be made by the HSTCDC. When an acceptable price is agreed upon by both parties, a title company will be selected by the buyer's representative or procured for by the HSTCDC, if necessary. A standard closing process will be completed by the title company. The HSTCDC will receive all (CHDO) proceeds at the closing of the property.

OTHER OPTIONS

In the event a particular project does not sell within six (6) months of its construction completion, the HSTCDC reserves the right to exercise other options including a lease-purchase agreement and/or the conversion of the project to an affordable housing rental unit. A separate agreement will be developed between the HSTCDC and City of Joplin for this purpose if and when it is necessary.

CHDO PROCEEDS

When homes are sold, the funds that are repaid to the HSTCDC will be considered CHDO Proceeds and placed into a reserve account. When a sufficient amount of funds are available in the account, the CHDO Proceeds will be used to develop new homes.

When the homes that are developed with CHDO proceeds are sold, the funds that are repaid to the HSTCDC will no longer be restricted to federal regulations and will be considered "cash proceeds". The HSTCDC proposes to use those funds as owner equity in future activities and as cash donations to other organizations for planned HOME eligible activities in exchange for a reasonable increase in Joplin Consortium HOME funding.

PROGRAM BUDGET

The following budget represents our anticipated costs per home:

	Acquisition	Construction	Developer Fee	Totals
Home #1	$ 8,000	$ 73,000	$ 9,000	$ 90,000

Home #1 Project Time Schedule

Milestone	***Deadline***
Site plan development/environmental review and acquisition of lot	Summer 2012
Quarterly progress report	July 1st, 2012
Procurement of construction contractor and notice to proceed	Fall 2012
Quarterly progress report	October 1st, 2012
Construction completion	Winter 2012-13
Quarterly progress report	January 1st, 2012

Attachment D

Federal Work Authorization Program

Contractor represents and agrees that it is enrolled and participating a Federal Work Authorization Program ("FWAP") that ensures that all of its employees or agents or subcontractors have the legal right to work in the United States, as defined in 8 U.S.C. 1324a(h)(3) and RSMo § 285.525-285.555, and that it will maintain this compliance for the entire duration of its contract with the City of Joplin. Contractor agrees that it does not knowingly employee any unauthorized alien in connection with the contracted services with the City. Contractor agrees to provide an Affidavit of Compliance stating that they are in enrolled and participating in a FWAP, and that Contractor does not knowingly employee any unauthorized aliens in connection with the contracted services, upon execution of this Agreement. All Subcontractors shall state, in writing, in their contracts with Contractor, that they are not in violation of RSMo § 285.530.1 and shall not thereafter be in violation, or subcontractor may submit a sworn affidavit to this effect. Contractor agrees to hold harmless and indemnify the City for any liability due to Contractor's failure to maintain compliance with FWAP or for violations of the Missouri Unauthorized Alien Workers Act.

STATE OF Missouri)
) ss.
COUNTY OF Jasper)

AFFIDAVIT OF COMPLIANCE
(Missouri Unauthorized Alien Workers Act)

My name is Harry Rogers (Name) and I am the Director (Title) of Harry S. Truman Community Dev. Assn. (Company Name). I hereby represent, affirm and certify to the City of Joplin that my company does not knowingly employ any person who is an unauthorized alien in connection with contracted services with the City. I further affirm that my company is actively enrolled and participating in a federal work authorization program with respect to all employees working in connection with the contract services provided to the City.

Affiant

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal this 15th day of May, 2012

Notary Public

My commission expires:

February 1, 2013