

RESOLUTION NO. 2004- 196 R

A resolution authorizing the City Manager to execute an agreement with Habitat for Humanity, Victoria, a Texas nonprofit corporation, to grant real properties located at 2302 and 2306 Ozark Street (that were obtained with CDBG funds) to Habitat in exchange for Habitat's agreement to construct at least three single-family housing units thereon and transfer said units to heads of low-income households in accordance with the regulations of the U.S. Department of Housing and Urban Development; and declaring an effective date.

IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF VICTORIA, TEXAS:

1.

The City Manager is authorized to execute an agreement with Habitat for Humanity, Victoria, a Texas nonprofit corporation, to grant real properties located at 2302 and 2306 Ozark Street (that were obtained with CDBG funds) to Habitat in exchange for Habitat's agreement to construct at least three single-family housing units thereon and transfer said units to heads of low-income households in accordance with the regulations of the U.S. Department of Housing and Urban Development, in the form attached as **Exhibit "A"**, with changes as are approved by the City Attorney.

2.

This resolution shall become effective immediately upon adoption.

PASSED, this the 16th day of November, 2004.

AYES: 5

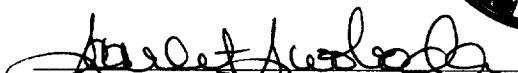
NAYS: 0

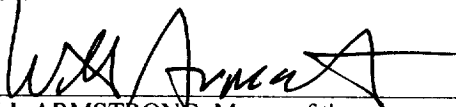
ABSTENTIONS: 0

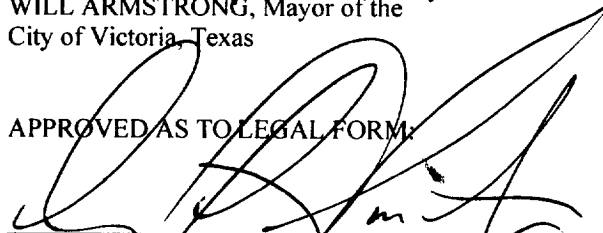
APPROVED AND ADOPTED, this the 16th day of November, 2004.



ATTEST:


SCARLET SWOBODA, City Secretary


WILL ARMSTRONG, Mayor of the
City of Victoria, Texas

APPROVED AS TO LEGAL FORM:

DAVID ATMAR SMITH, City Attorney

Distribution: Legal Department
Planning Department

Copies Sent: **NOVEMBER 18, 2004**

**Agreement between City of Victoria and
Habitat for Humanity, Victoria for Development of Low-Income Housing**

This agreement is entered into this ____ day of _____, 2004 by and between the City of Victoria, Texas, a municipal corporation, whose address is 105 W. Juan Linn, hereinafter, "City," and Habitat for Humanity of Victoria, a Texas non-profit corporation, whose address is 207 N. Glass, Victoria, Texas, hereinafter "Habitat," outlining each parties obligations and duties regarding the following programs:

WHEREAS, the City of Victoria has obtained a 0.376 acre tract of land described as Lots 29, 30, 31, and 32, Block "L" of Putney-Moore Subdivision, Victoria County, Texas, using Community Development Block Grant (CDBG) funds, and desires to develop said property for the public purpose of providing low-income housing, and

WHEREAS, Texas Local Gov't Code § 272.001 provides as follows:

(g) A political subdivision may acquire or assemble land or real property interest, except by condemnation, and sell, exchange, or otherwise convey the land or interests to an entity for the development of low-income or moderate-income housing. The municipality shall determine the terms and conditions of the transactions so as to effectuate and maintain the public purpose. If conveyance of land under this subsection serves a public purpose, the land may be conveyed for less than its fair market value. In this subsection, "entity" means an individual, corporation, partnership, or other legal entity.

NOW, THEREFORE, the City of Victoria, Texas and Habitat agree as follows:

1. Habitat's Primary Duties: Habitat shall perform the following tasks:

a. Habitat shall begin construction of one new single-family housing unit on each of the lots transferred pursuant to this agreement within 2 years after execution of this agreement. Construction will be completed within 3 years after execution of this agreement. Habitat shall return any lots to the City upon which construction of a new single-family housing unit has not begun within said 2-year time period or been completed within said 3-year time period.

b. The aforementioned houses to be constructed will be transferred to persons who are heads of low-income households within 6 months after completion of construction. Habitat must ensure that all recipients qualify as heads of low-income households as defined by HUD. To qualify as a low-income household the combined annual gross income of the recipient and all other persons in the household over the age of 18 years cannot exceed 80% of the City's median income, adjusted for family size as defined in 24 CFR Part 813.

The current income limit for low-income is as follows:

2004 City of Victoria Household Income Limits*

<u>Number of Persons in Family</u>	<u>Annual Family Income</u>
1	\$29,700
2	\$33,900
3	\$38,150
4	\$42,400
5	\$45,800
6	\$49,200
7	\$52,600
8 or more	\$55,950

*Figures subject to change on an annual basis.

c. The selection process will follow family selection criteria to be determined by Habitat. Habitat will provide the City with the household characteristics of the recipients and income data for all members of the households. Recipients will be provided assistance in the form of 0% interest loans repayable to Habitat for Humanity, Victoria. Program income derived from the loan repayments or resale will be retained and used for additional

- low-income housing construction by Habitat (with "low-income" defined in accordance with the criteria herein).
- d. Houses will be varied in lot orientation and appearance.
 - e. All dwelling units must be in compliance with the City of Victoria building codes.
2. **City's Primary Duty:** City shall deed a 0.376 acre tract of land described as Lots 29, 30, 31, and 32, Block "L" of Putney-Moore Subdivision, Victoria County, Texas, also known as 2302 Ozark and 2306 Ozark, Victoria, Texas, to Habitat by special warranty deed within 30 days after execution of this agreement. The deed may contain restrictions and other provisions that effectively require the transfer of the property in accordance with this contract or mandate the return of the property to the City upon a determination of impracticability of performance.
3. **Funding:** Funding for this program has been provided from the City of Victoria's Community Development Block Grant (CDBG) award. All parties shall operate this program in accordance with all applicable rules and regulations of the U.S. Department of Housing and Urban Development (HUD), and the City of Victoria.
4. **Program Monitoring:** Habitat shall provide the City access to documents related to the funded activity and any facility where the funded activity takes place. If the City has any questions or concerns about any report(s) or believes the funds are not being used correctly, the City may conduct a site visit.
5. **Custodianship of Records:** Habitat shall retain all documentation related to this program and the services administered pursuant hereto for 5 years following the completion of Habitat's primary duties.
6. **Audits and Inspections:** All Habitat records with respect to any matters covered by this Agreement shall be made available to the City or the federal government at any time during normal business hours, as often as the City or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by Habitat within 30 days after receipt by Habitat. Failure of Habitat to comply with the above audit and inspection requirements will constitute a violation of this contract and may result in the withholding of future payments. Habitat hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning Habitat audits and, as applicable, OMB Circular A-133.
7. **Records and Reports:** Habitat must maintain and submit to the City Planning Department on the last business day of each quarter records necessary to assist the City's record keeping requirements. This information includes, but is not limited to:
- a. address of each household receiving assistance;
 - b. household data on each applicant, including head of household, number of persons in household by age and sex;
 - c. number and type of disabilities, if any, of any household members;
 - d. race or ethnic origin of each member of the household;
 - e. gross annual income of the household; housing related costs incurred by the household, including rent or mortgage payments, taxes, insurance, and utilities;
 - f. employment information for the head of each household including name of current employer, date of last employment and name of last employer if not currently working;
8. **Lead-based Paint:** In no event may lead-based paint be used in the construction or rehabilitation of residential structures with CDBG funds. Habitat agrees that any construction or rehabilitation of residential structures with CDBG funds shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35. Such regulations 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 of blood 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.

9. National Flood Insurance Program: If the property is located in a Flood Zone Area, a Flood Insurance policy will be required.

10. Relocation, Displacement, and Real Property Acquisition: Habitat agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606. Habitat shall provide relocation assistance to persons (families, individuals, businesses, non-profit organizations or farms) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion of a CDBG assisted project. In addition, there must be a one-for-one replacement of any occupied or vacant occupiable low/moderate income dwelling which is demolished or converted to another use by Habitat in connection with a CDBG funded activity.

11. Conflict of Interest: Habitat agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest. It further covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Habitat further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by Habitat hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the City, or of any designated public agencies or Habitats which are receiving funds under the CDBG Entitlement program.

12. Civil Rights: No person shall on the grounds of race, color, national origin, religion, sex, disability or family status be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity assisted in whole or in part with Federal funds. Program funds must be utilized in accordance with the following:

a. The Fair Housing Act (42 U.S.C. 3601-3620) and implementing regulations at 24 CFR part 100; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1958-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR, Part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR, Part 1;

b. Executive Order 11063, as amended by Executive Order 12259, and 24 CFR Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063". The failure or refusal of Administrator to comply with the requirements of Executive Order 11063 or 24 CFR, Part 107 shall be a proper basis for the imposition of sanctions specified in 24 CFR 107.60;

c. The prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR, Part 146, and the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations issued at 41 CFR, Chapter 60;

d. The requirements of Executive Order 11246 (3 CFR 1964-65, Comp., p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR, Chapter 60;

e. The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise). Consistent with HUD's responsibilities under these Orders, each applicant must make efforts to encourage the use of minority and women's business enterprises in connection with CDBG funded activities. The Administrator will be required to identify contracts which have been bid by minority owned, women owned, and/or small disadvantaged business; and

f. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C., Section 794) and Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development, 24 CFR, Part 8. The activities funded herein shall be operated in accordance with 24 CFR, Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C., Section 4151 et. seq.), including the use of a telecommunications device for deaf persons (TDD's) or equally effective communication system.

13. Environmental Responsibilities: Program funds must be utilized in accordance with the Environmental Review Procedures for Title I Community Development Block Grant Programs, 24 CFR Part 58, as amended in 47 Fed. Reg.

15750 (April 12, 1982);

14. **Conditions for Religious Organizations:** Generally, CDBG funds may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities. The limitations described in 24 CFR 570.200(j) apply.

15. **Political Activities:** Habitat 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 24 CFR 570.207(a)(3).

16. **Suspension and Termination:**

a. In the event Habitat fails to comply with any term of this agreement, City may, upon written notification to Habitat, temporarily suspend this agreement by prohibiting Habitat from beginning construction activities on any lot provided to Habitat pursuant to this agreement.

b. If Habitat fails to materially comply, in City's sole discretion and judgment, with any term of this agreement or any term stated in a federal statute or regulation, with any assurance given to City by Habitat, or if the City determines this agreement should be terminated pursuant to 24 CFR 85.44, City may require Habitat to return any lot to the City upon which construction has not yet begun or, upon payment to Habitat in full compensation for work on any lot, any lot upon which construction has begun, but is not completed.

c. The City shall have the right to require specific performance of any term of this contract with respect to any lot upon which construction has begun, unless said lot has been transferred to the City at no cost in release of Habitat's obligations pursuant to this agreement with respect to said lot.

17. **"Independent Contractor":** It is expressly understood and agreed by the Parties hereto that City is contracting with Habitat as an Independent Contractor, and that neither Habitat, nor any of Habitat's officers, agents, or employees are performing any services under this contract as the employees of the City. 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. Habitat shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The City shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance as Habitat is an independent contractor.

18. **Grantor Recognition:** Habitat shall ensure recognition of the role of the grantor agency in providing services through this contract. All activities, facilities, publications, and items funded pursuant to this contract shall be prominently labeled as to funding source.

19. **Hold Harmless:** Habitat shall defend, indemnify and hold harmless the City and its officers, agents, and employees from all claims of any character, name, or description, suits, actions, judgments, fines, fees, charges, surcharges, administrative rulings or findings, or penalties of any kind incident to, arising out of, or in connection with this agreement or the services to be performed by Habitat under this agreement. This indemnity shall include, without limitation, attorney's fees, court costs, witness fees, and any other cost associated with the defense or prosecution of an action related to the foregoing. In the event of a claim or action against the City or communication leading the City to reasonably believe a claim or action will be initiated against it, the City may retain so much of the money due Habitat under this agreement as the City shall consider necessary to satisfy any indemnity hereunder. The City may further take any other action against Habitat to satisfy the aforesaid indemnity including, but not limited to, initiation of an action against Habitat or joinder in any action against the City. Habitat expressly agrees to defend, indemnify and hold harmless the City and its officers, agents, and employees in accordance with this clause regardless of whether the injury or damage is caused in whole or in part by the acts or omissions, including negligence, of the City or its officers, agents or employees.

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

21. **No Waiver:** It is expressly understood and agreed by the Parties hereto that any right or remedy provided by any other provision of this Contract shall not preclude the exercise of any other right or remedy under this Contract or under any provision of law. No action taken in the exercise of any right or remedy be deemed a waiver of any other right or remedy. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any

other right or remedy at any time.

22. No Assignment: Habitat shall not assign or subcontract this contract or any part thereof without the express written permission of the City.

23. No Oral Amendments: Changes contained in any section of this Agreement, unless otherwise noted, may only be made through a written amendment to this Agreement, executed by Habitat and City. Such amendments shall not invalidate this Agreement, nor relieve or release the City or Habitat from its obligations under this Agreement.

CITY OF VICTORIA, TEXAS

HABITAT FOR HUMANITY, VICTORIA

Denny L. Arnold, City Manager

Frances McCue, Board President

(seal)

ATTEST:

ATTEST:

Scarlet Swoboda, City Secretary

APPROVED AS TO FORM:

David Atmar Smith, City Attorney

Habitat for Humanity
COMMUNITY DEVELOPMENT BLOCK GRANT

