



Board of County Commissioners - Staff Report

Meeting Date: October 18, 2016

Submitting Dept: Housing

Presenter: April Norton

Subject: Agreement with Habitat for Humanity for Grove Phase 3 Affordable Housing Development

Statement / Purpose: A final agreement between Habitat for Humanity and Teton County for Grove Phase 3 Development has been drafted and is ready for the BCC review and approval.

Background / Description (Pros & Cons): On April 18, 2016 the BCC approved a motion to award the Grove Phase 3 development to Habitat for Humanity. Since that time, Teton County legal staff and the Jackson/Teton County Affordable Housing Department have been working with Habitat to finalize a development agreement.

On September 26, 2016 the BCC approved a contract to work with Eiden Construction, LLC to construct Grove Phase 3 stage 1 infrastructure. This work is expected to be complete by the end of this year, allowing Habitat for Humanity to commence development as early as possible in the spring of 2017.

Also on September 26, Habitat for Humanity presented a Grove Phase 3 update to the BCC. At that meeting, both Mr. Gingery and Stefan Fodor, representing Habitat for Humanity, agreed to present an agreement to the BCC for their consideration at the October 18 meeting.

On October 16, 2016 the Habitat for Humanity Board approved the development agreement, which is attached to this staff report.

Stakeholder Analysis & Involvement: Stakeholders include Habitat for Humanity; Teton County; Town of Jackson; Town and County taxpayers and residents; potential affordable homeowners; The Grove Phase 1 and 2 tenants, homeowners, and businesses; neighbors living near the development; etc.

Fiscal Impact: Based on the budget provided by Habitat for Humanity in April 2016, the estimated cost to build the infrastructure in Phase 3 is \$1.3M. This amount was budgeted for by the Commissioners in the FY16/17 budget. Each stage of infrastructure work will be bid separately.

Staff Impact: Staff will continue to spend time working on the bidding process for each stage of infrastructure, construction management, and project budget oversight over the next 4 to 5 years.

Legal Review: At this time, legal staff has not reviewed the final agreement approved by the Habitat for Humanity board on October 16, 2016.

Staff Input / Recommendation: Staff recommends approving this agreement, subject to review by the Teton County Attorney's Office.

Attachments: Agreement between the Jackson/Teton County Housing Authority and Habitat for Humanity for construction of affordable housing at The Grove Phase 3.

Suggested Motion: I move to direct and authorize the Jackson/Teton County Housing Authority Board to enter into a formal agreement with Habitat for Humanity for the construction of The Grove Phase 3, subject to legal review.

AGREEMENT BETWEEN THE JACKSON/TETON COUNTY HOUSING AUTHORITY AND HABITAT FOR HUMANITY FOR CONSTRUCTION OF AFFORDABLE HOUSING UNITS AT THE GROVE PHASE 3

THIS AGREEMENT is made and entered into on the _____ day of _____, 2016, by the **Jackson/Teton County Housing Authority** (hereinafter referred to as "JTCHA") and **Habitat for Humanity of the Greater Teton Area** (hereinafter referred to as "Habitat").

WHEREAS, the JTCHA is a duly constituted Housing Authority established by Teton County, Wyoming pursuant to Wyo. Stat. §15-10-116(b); and

WHEREAS, Habitat is an Internal Revenue Code §501(c)(3) non-profit organization that works in partnership with families in need to create simple, decent home ownership opportunities in Teton County, Wyoming, Lincoln County, Wyoming and Teton County, Idaho; and

WHEREAS, the JTCHA owns the following parcels of property in Teton County, Wyoming (the "Property"):

the Grove Phase 3 being Adjusted Parcel B comprising 1.86± AC being a part of the Land Described in Book 787 of Photo, Pages 739-470 located in the NW1/4 of SW1/4 Section 33 T41N, R116W 6th P.M. Town of Jackson, Teton County, Wyoming; and

WHEREAS, the Property was purchased using 2001 Special Purpose Excise Tax (SPET) funds for the Jackson/Teton County Housing Authority's Affordable Housing Program in Teton County, Wyoming; and

WHEREAS, the Property will be developed by Habitat to include 24 Category I Affordable Condominiums ("Phase 3") as defined by Section 7.4.2.F.1.d.ii.a of the Town of Jackson Land Development Regulations;

WHEREAS, the JTCHA and Habitat wish to enter into an agreement wherein Habitat will construct Phase 3 encompassed within the Property; and

WHEREAS, in order to construct this project, Habitat must obtain an Amended Final Development Plan approval from the Town of Jackson, Wyoming

WHEREAS, this Agreement will save taxpayer dollars by leveraging Habitat volunteer resources and private donations with JTCHA resources and public funds, and will enable the production of affordable housing for working families in Teton County meeting income, asset and employment qualifications; and

WHEREAS, it is the mission of both the JTCHA and Habitat to provide affordable housing opportunities in Teton County, Wyoming and this Agreement between the two organizations furthers their respective missions and provides significant benefit to the community;

WHEREAS, it is the intent of the JTCHA and Habitat to develop a design that is compatible with the goals and missions of both parties;

WHEREAS, Teton County, a duly organized political subdivision of the State of Wyoming will be responsible for constructing and providing certain infrastructure requirements as set forth below and signs on to this agreement for that sole purpose.

NOW THEREFORE, in consideration for the mutual exchange of promises contained herein, the JTCHA and Habitat agree and covenant as follows:

AGREEMENT

The above recitals are incorporated into and made a part of this Agreement.

RIGHTS AND OBLIGATIONS OF JTCHA

- 1. Property for Development.** JTCHA shall, pursuant to this Agreement, provide to Habitat, a temporary construction easement for the land East and North of the main access road in the Property (the "Habitat Site") as set forth on the "Grove Phase 3 Infrastructure Improvements Plans Site Plan, Project Number 06070.09" attached hereto as Exhibit A (the "Infrastructure Site Plan"). The land comprising the Habitat Site, shall ultimately be conveyed to the Grove Condominiums Owners Association, a nonprofit corporation organized under Wyoming Statute § 17-19-101 et. seq. (the "Association"). The conveyance of the Habitat Site to the Association shall occur at the time of Habitat's initial conveyance of all of the improvements located on and within the Habitat Site to individual homeowners.
- 2. Participation in Construction Drawings and Final Development Approval Process.** While Habitat is responsible for all steps necessary to produce construction drawings and secure Amended Final Development Plan Approval ("Amended FDP") by the Town of Jackson for Phase 3, the JTCHA shall actively and timely participate with Habitat in obtaining such approval and shall provide input and comment during the design phase and pursuit of Amended FDP.
- 3. Infrastructure Development.** JTCHA shall ensure that, within 90 days of the Amended FDP approval by the Town of Jackson, Teton County will have Phase 3 building sites infrastructure and rough grade at the Habitat Site completed, sufficient for Habitat to begin construction. The infrastructure obligations include utility connections, as they shall be defined in the Amended FDP and as set forth on the Infrastructure Site Plan. Utility connections, where applicable, (water, wastewater, stormwater, power, cable utilities) shall be stubbed out to within 5' of the building foundations. Other infrastructure obligations set forth in the Amended FDP, including but not limited to paving, grading and drainage, site concrete, etc., shall be completed by Teton County after the construction of all of the Phase 3 Units in question. Further, nothing shall prevent Teton County from performing its improvement obligations as set forth in this Paragraph prior to Amended FDP approval.
- 4. Ownership - Conveyance.** As Habitat will be constructing Condominiums, as defined in Wyoming Statute 34-20-101 § et. seq., JTCHA shall convey a separate fee simple estate in an individual air space unit (a "Unit"), together with an undivided fee simple interest in the

common elements to the ultimate owners of the improvements within each building within Phase 3. The existing Condominium Declaration for the Grove recorded in the Teton County Clerk's Office of Land Records at Book 920 P. 624, as amended (the "CC&Rs"), shall be further amended to provide the homeowners selected by Habitat with the exclusive right to own, occupy and utilize each individual Unit as well as an undivided interest fee simple interest in the Grove common elements and the same rights as other Unit owners within the Grove development comprised of the Grove Phases 2 and 3.

5. **Failure to Complete.** In the event Habitat does not complete Substantial Completion of all its Units, as defined and set forth below in Section 12, Habitat's rights, as to those Units not completed within the required timeframe, shall expire, but JTCHA shall honor all contractual agreements and obligations previously entered into by Habitat.
6. **Letter of Authorization.** Within 3 days of execution of this Agreement, JTCHA shall cause a letter of authorization in a form acceptable to the Town of Jackson to be issued to allow Habitat to pursue its Amended FDP before the Town of Jackson.
7. **Dissolution of JTCHA.** In the event the JTCHA ceases to exist or ~~is~~ otherwise is dissolved, either voluntarily or involuntarily, any elements of Phase 3 owned by the JTCHA shall be transferred to Teton County; subject to the terms of this Agreement which shall remain in full force and effect and Teton County shall assume all remaining obligations of JTCHA as provided in this Agreement.

RIGHTS AND OBLIGATIONS OF HABITAT

8. **Final Development Approval.** Habitat shall be responsible for obtaining Amended FDP approval and Final Plat Approval from the Town of Jackson for Phase 3 by April 1, 2017 in order to permit Habitat to construct its 24 Units as contemplated by this Agreement. This deadline may be extended for 4 month periods for good cause, for circumstances beyond the control of Habitat. JTCHA's consent to said extension shall not be unreasonably withheld.
9. **Construction Drawings and Building Permits.** Habitat shall be responsible for the production of all design and construction drawings associated with Phase 3 by April 1, 2017.
10. **Design-Build Team.** Habitat shall be solely responsible for the hiring and supervision of its Design-Build Team to design and construct the affordable housing development within Phase 3.
11. **Construction of Units.** Habitat shall, at its expense, construct 24 Units within Phase 3 which shall be Category 1 Deed Restricted Housing as currently defined in the Teton County Land Development Regulations. Habitat shall be responsible for securing the entirety of the Habitat Site within Phase 3 East and North of the main access road shown on the Site Plan and for providing a temporary construction barrier between the Habitat Site and the adjacent Grove Phase 2 development directly to the West during the construction of the Habitat Units.

- 12. Substantial Completion Defined.** Substantial completion of construction (“Substantial Completion”) is defined as completing the foundation, core, shell, roof and exterior siding of each Unit.
- 13. Deadline for Construction.** Habitat shall begin construction of the Phase 3 Units within 91 days of obtaining Amended FDP. Habitat shall achieve Substantial Completion no later than 4 years from June 1, 2017, or 4 years from when it commences construction, whichever is later. Habitat’s obligations to commence construction shall be tolled one month for every month Amended FDP is not granted after June 1, 2017 and shall be tolled from October 15, 2017 until April 1, 2018 due to winter conditions.
- 14. Occupant Selection.** Habitat shall follow its Board approved and Habitat for Humanity International advised home owner selection policies and procedures for selecting occupants for each Unit. Such policies and procedures shall also include a restriction that meets the Teton County Employment Requirement as set forth in the JTCHA Guidelines as currently defined. Habitat shall have the sole authority and obligation to select qualifying homeowners.
- 15. Project Development Costs.** Habitat shall be financially responsible for all approval fees, re-plat expenses, impact fees, permit fees, architectural fees, engineering fees, soil testing expenses, site preparation work beyond rough grade (defined to be the final elevation of the ground surface in its natural state before physical development), and construction costs associated with the development of Phase 3 excluding infrastructure costs which are the responsibility of Teton County as set forth in Section 3 above.
- 16. Ownership of Improvements.** Habitat shall own all improvements in Phase 3 until such time as the improvements located on and within the Units within Phase 3 are sold to owners selected by Habitat as set forth herein.
- 17. Insurance.** Habitat shall maintain the following insurance without interruption from the beginning of construction through final completion of construction: a) Commercial General Liability Insurance with project specific limits of not less than \$1M per occurrence, \$1M personal injury and \$2M general aggregate and said policy must cover liability arising from bodily injury (including death), property damage, and premises liability for all work performed by Habitat, must be primary, non-contributing and occurrence-based and must name the JTCHA as an additional insured; b) worker’s compensation and employer’s liability insurance for all employees performing work at the Habitat Site. Any liability policies by Habitat shall insure against any claims for personal injury, death, or property damage which may arise in the development of Phase 3, subject to the same exclusions in the preceding sentence, and shall remain in effect until all 24 units of Phase 3 have been constructed and sold for the first time to qualified applicants. Habitat or its contractors or subcontractors shall insure against all acts undertaken by them within the Habitat Site.
- 18. Dissolution of Habitat.** In the event that Habitat should be dissolved, either voluntarily, judicially or administratively, any residual interest in Phase 3 owned or retained by Habitat shall be transferred to the JTCHA, its assigns or successors.

JOINT RIGHTS AND OBLIGATIONS

19. Insurance. Contractors hired to perform work at Phase 3 shall be required to purchase and maintain builder's risk insurance covering the full cost of replacement of materials or equipment incorporated into or destined for incorporation into Phase 3 prior to the time when title to such materials or equipment passes to JTCHA or Habitat including those items that are stored away from the Habitat Site or are in transit to the Habitat Site. JTCHA as owner of the Property until the time of conveyance to the Association, shall be responsible for purchasing and maintaining property insurance written on a builder's risk, "all risk", or equivalent policy form in the amount covering Owner's interest in Phase 3 on a replacement cost basis without optional deductible. JTCHA shall be responsible for and shall insure against all acts or omissions within the Property, except for those actions of Habitat. JTCHA and Teton County shall insure the Property as set forth in paragraph 17 from the start of any construction work through and including final completion of Teton County's obligations to construct site infrastructure as set forth in Paragraph 3 of this Agreement.

20. Waiver of Subrogation. JTCHA and Habitat waive all rights against each other and any of their consultants or agents, employees, contractors, sub-contractors for any damages caused by fire or other causes of loss to the extent of actual recovery of any insurance proceeds under any insurance obtained. The parties shall require of any of their above enumerated parties similar waivers in favor of each party to this Agreement. The insurance policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation as set forth shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification.

21. Indemnification.

a) To the fullest extent permitted by law, JTCHA shall indemnify, hold harmless and defend Habitat and its consultants, agents, employees and contractors from and against all third party claims, actions, suits, demands, damages, liens, fines and expenses (including but not limited to reasonable attorneys' fees), which arise out of, relate to or result from acts or omissions, whether negligent or not, performed by JTCHA, its consultants, agents, employees or contractors on the Property and in connection with JTCHA's construction obligations as set forth in this Agreement.

~~a)~~

b) To the fullest extent permitted by law, Habitat shall indemnify, hold harmless and defend JTCHA and its consultants, agents, employees and contractors from and against all third party claims, actions, suits, demands, damages, liens, fines and expenses (including but not limited to reasonable attorneys' fees), which arise out of, relate to or result from acts or omissions, whether negligent or not, performed by Habitat, its consultants, agents, employees or contractors on the Property and in connection with Habitat's construction obligations as set forth in this Agreement.

22. Liens. The JTCHA and Habitat shall do all things reasonably possible to prevent the filing of any mechanics, judgment or any other lien against Phase 3. If any such lien(s) is filed against either party's interest in the Phase 3, that party shall either cause the same to be discharged of record within 20 days of the date of the filing of the same, or if in that party's discretion and in good faith, it determines that such lien should be contested, the party contesting the lien shall furnish such security as shall be necessary or required to satisfy the contesting party's interest in Phase 3 during the pendency of such contest. If a party against whom a lien is filed shall fail to discharge such lien within such period, or fail to furnish such security, then, in addition to any other right or remedy of the other party, the other party may, but shall not be obligated to, discharge the lien(s) either by paying the amount claimed to be due or by procuring the discharge of such lien by furnishing adequate security or in such other manner as is or may become prescribed by law. In such event, the party who failed to discharge the lien shall be responsible for all reasonable fees and costs, including attorney fees, incurred by the discharging party. Nothing contained herein shall imply any consent or agreement on the part of either party to subject that party to liability for the other party under any mechanics or other lien law.

DEFAULTS AND REMEDIES

23. Time is of the Essence. Time is of the essence, and if any payment or any other condition hereof is not made, tendered or performed by either the JTCHA or Habitat as herein provided, then such condition or obligation may be cured by the non-defaulting party and the non-defaulting party may seek contribution or offset from other obligations from the defaulting party as set forth below. Upon written notice of default, the defaulting party shall have 30 days to cure such default. In the event either party fails to cure said default, the following remedies shall apply.

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24. Failure to Complete. In the event Habitat has not achieved Substantial Completion of all 24 Units within Phase 3, subject to the tolling provisions of this Agreement, within the 4 years and 6 months of the start of construction, JTCHA shall have the right, but not the obligation, to complete construction of the Units which are not deemed Substantially Complete. In the event Habitat fails to achieve Substantial Completion as required under this agreement and JTCHA exercises its rights to complete construction, JTCHA shall fully assume all of Habitat's contractual obligations.

25. JTCHA Failure. In the event the JTCHA fails to provide the infrastructure as defined above in Paragraph 3 ~~and the building footprints as set forth in the current FDP that are~~ necessary for Habitat to build its units in accordance with the terms of this Agreement, or otherwise fails to meet its obligations under this Agreement, deadlines for Substantial Completion shall be extended by the same amount of time the Habitat Units are delayed by reason of JTCHA's failure to fulfill its contractual obligations.

26. Mediation. If a dispute arises between the parties relating to this Agreement, and is not resolved by the parties, the parties involved in such dispute shall first proceed in good faith to submit the matter to mediation. The parties will jointly appoint an acceptable mediator with mediation to be conducted in Jackson, Wyoming and will share equally in the cost of

the mediation. In the event the parties cannot agree on an acceptable mediator within 10 days of notice of dispute, the mediation shall terminate. In the event the entire dispute is not resolved within 30 calendar days from the date written notice of mediation is sent by one party to the other(s), the mediation, unless mutually agreed otherwise, shall terminate and the parties may proceed with recourse to the courts.

27. Attorney's Fees. In the event that any party shall become in default or breach of any of the terms of this Agreement and shall fail to cure such default within the timelines set forth above, such defaulting or breaching party shall pay all reasonable attorney's fees and other expenses which the non-breaching or non-defaulting party may incur in enforcing this Agreement, whether a lawsuit is filed or not. This provision shall not limit any other remedies to which the parties may otherwise be entitled.

28. Deed Restriction. Deed restrictions imposed on all Units in Phase 3 shall provide: 1) that the owner must use the Unit as their sole and primary place of residence; 2) that the Unit shall not be used for any unpermitted business activity; 3) that the Unit shall not be rented; 4) that Habitat has a right of first purchase on all future sales and conveyances; 5) that all future sales or conveyances of the Unit must be made to families qualified through Habitat's Family Selection Committee; 6) in the event of a divorce or death, Habitat may consent to the transfer of the Unit to a spouse or heir only upon receipt of a court order requiring such transfer; that Habitat has an option to purchase the Unit in the event of a transfer not in compliance with the Deed Restriction; 7) that capital improvements to the Unit may only be made with Habitat's prior written consent; 8) that the resale price of the Unit shall be the purchase price minus the outstanding balance owed under any mortgage approved by Habitat, minus amounts paid by Habitat to satisfy any liens plus any amounts approved by Habitat as permitted capital improvements; 9) that any default shall allow Habitat to exercise its Option to purchase the Unit; 10) that no liens other than Mortgages approved by Habitat may encumber the Unit; and 11) that the Deed Restriction shall be a covenant running with the land which may only be removed with the joint written approval of Habitat and JTCHA.

GENERAL PROVISIONS

29. Notices. Any notice or other communication required, permitted, or desired to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes either (i) upon delivery by hand to any party hereto, (ii) five days after the same has been mailed by prepaid, registered or certified mail, return receipt requested, addressed to the respective parties as follows, (iii) the same day as emailed if prior to 5:00 pm MST, or (iii) one day after the same has been sent by Federal Express or other reputable overnight courier addressed to the respective parties as follows:

If to JTCHA:
Jackson/Teton County Housing Authority
P.O. Box 714
260 W. Broadway #B
Jackson, WY 83001

ahnorton@tetonwyo.org

If to Habitat
Habitat for Humanity of the Greater Teton Area
P.O. Box 4194
854 West Broadway
Jackson, WY 83001
kendra@tetonhabitat.org

- 30. Governing Law.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Wyoming and venue shall lie in Teton County, Wyoming.
- 31. Amendment and Modification.** This Agreement shall not be altered, amended, changed, waived, or otherwise modified in any respect unless the same shall be in writing and signed by or on behalf of all parties hereto.
- 32. Severability.** If any provision hereof is invalid and unenforceable, then, to the fullest extent permitted by law, (i) the other provisions of this agreement shall remain in full force and effect and shall be liberally construed in order to carry out the intentions of the parties as nearly as may be possible and (ii) the invalidity or unenforceability of any provision shall not affect the validity or enforceability of any other provisions of the Agreement.
- 33. Entire Agreement.** This Agreement and any Exhibits incorporated and attached constitutes the entire understanding and agreement of the parties with respect to the subject matter covered in it and supersedes all prior agreements and understandings, written or oral, among any of the parties with respect to such subject matter.
- 34. Joint Drafting Effort.** This Agreement reflects the joint drafting efforts of both parties to this Agreement and any ambiguities in this Agreement shall not be construed against either party.
- 35. Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors, assigns, subsidiaries, executors, heirs and legal representatives.

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

[remainder of page intentionally left blank – signature pages to follow]

Jackson/Teton County Housing Authority

By: Matt Faupel, Chairman
Jackson/Teton County Housing Authority

Attest:

Danielle Goldyn-Haigh, Board Clerk

Acknowledgment

State of Wyoming)
) ss
County of Teton)

On this ___ day of _____, 2016, before me, the undersigned Notary Public, personally appeared Matt Faupel, for the Jackson/Teton County Housing Authority, a duly constituted county housing authority pursuant to W.S. § 15-10-116(b), and known to me, or proven by satisfactory evidence, to be a designated agent of said entity that executed the forgoing and acknowledge said instrument to be the free and voluntary act and deed of said entity, and on oath stated that he is authorized to execute said instrument on behalf of the entity.

Notary Public

Habitat for Humanity of the Greater Teton Area

By Patty Lummis, President

Acknowledgment

State of Wyoming)
) ss
County of Teton)

On this _____ day of _____, 2016, before me, the undersigned Notary Public, personally appeared Patty Lummis, to me personally known, who, being by me duly sworn, did say that she is the President of the Board of Directors of Habitat For Humanity of the Greater Teton Area, a Wyoming not for profit corporation and that instrument was signed and sealed on behalf of said corporation, and said Board President acknowledged said instrument to be the free act and deed of said corporation.

GIVEN UNDER my hand and seal the date first above written.

Notary Public

Teton County as to the obligations set forth in Section 3, 19 & 30-35 only

By: Barbara Allen, Chair

Attest:

Sherry Daigle, Clerk

Acknowledgment

State of Wyoming)
) ss
County of Teton)

On this ___ day of _____, 2016, before me, the undersigned Notary Public, personally appeared Barbara Allen, for Teton County, Wyoming, a political subdivision of the State of Wyoming, or proven by satisfactory evidence, to be a designated agent of said entity that executed the forgoing and acknowledge said instrument to be the free and voluntary act and deed of said entity, and on oath stated that she is authorized to execute said instrument on behalf of the entity.

Notary Public