

## AGREEMENT

THIS AGREEMENT (the "Agreement"), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the City of Overland Park, Kansas (the "CITY"), and SAFEHOME, Inc., a non-profit Kansas Corporation ("SAFEHOME").

WHEREAS, SAFEHOME has developed a program to provide temporary shelter for persons fleeing domestic violence; and

WHEREAS, SAFEHOME has developed and operates a shelter located within Johnson County as a resource for the CITY; and

WHEREAS, SAFEHOME has identified a need to complete certain improvements to improve the shelter's facilities; and

WHEREAS, the CITY has approved and proposes to make a grant of up to **\$17,276** from the Community Development Block Grant (CDBG) program, for the purpose of funding necessary improvements identified in the grant proposal dated March 26, 2010.

NOW, THEREFORE, in consideration of the promises and covenants of this Agreement, the parties hereto agree as follows:

### **I. Statement of Services**

SAFEHOME shall use the CDBG grant solely for the replacement and installation of 28 air conditioning/ heating units as defined in the proposal dated March 26, 2010.

SAFEHOME understands that CDBG funds are to principally benefit those persons of low- and moderate-income, as established by the Department of Housing and Urban Development for the Kansas City metropolitan region; and SAFEHOME, by signing this Agreement, agrees to provide adequate certification that the facility and operation outlined in this Agreement will principally serve low- and moderate-income persons.

### **II. Term**

The term of this Agreement shall be for the period commencing on June 1, 2011, and ending May 31, 2012, subject to the terms and conditions hereinafter contained.

### **III. Funding**

The City agrees to disburse to SAFEHOME a grant of up to **\$17,276** from fiscal year 2011 CDBG funds, payment subject to conditions hereinafter stated and those applicable regulations as established by the Department of Housing and Urban Development, Catalog of Federal Domestic Assistance Number 14-218.

An amount up to but not exceeding the grant shall be disbursed by the CITY upon receipt of evidence of expenditures made by SAFEHOME as outlined in Section IV.

The cost and liability to the CITY for work under this Agreement shall not exceed the amount of fiscal year 2011 CDBG funds authorized and available to the CITY for this project and shall be subject to the release of funds by the Department of Housing and Urban Development.

#### **IV. Records and Reports**

SAFEHOME agrees to maintain records and submit reports to the CITY as may be required by the CITY. Such records shall include contracts, proposals, invoices, vouchers and other documentation associated with work under this Agreement. SAFEHOME shall provide the CITY with access to all records upon request. SAFEHOME agrees to maintain all records for five years following the termination of this Agreement.

SAFEHOME shall provide to the CITY, within thirty days of the termination of this Agreement, a full accounting of the expenditure of all grant funds. All grant funds unexpended as of May 31, 2012, shall be returned to the CITY within thirty days.

#### **V. SPECIAL REQUIREMENTS**

SAFEHOME agrees that any renovations or improvements shall comply with applicable zoning ordinances, building code requirements and other city and state codes, ordinances or licensing requirements. SAFEHOME understands that execution of this Agreement is in no way a waiver or approval of any provision of this Section.

SAFEHOME understands and agrees that the administration and expenditure of funds from this grant shall be in compliance with CDBG regulations; provided further, SAFEHOME agrees to be solely responsible for ensuring said compliance. SAFEHOME further certifies that it will comply with the applicable provisions of the Code of Federal Regulations 24 CFR, Part 570, to include, but not limited to, 24 CFR, Section 570.502, and Office of Management and Budget Circulars, to include, but not limited to, Circular A-133: Audits of States, Local Governments, and Non-Profit Organizations, revised June 24, 1997; provided further, that SAFEHOME agrees to comply with applicable federal law and regulations described in 24 CFR, Part 570, Subpart K. SAFEHOME agrees to comply with Davis-Bacon prevailing wage requirements for expenditures in excess of \$2,000, where laborers or mechanics will be utilized to complete the federally funded project. SAFEHOME further agrees to refrain from entering into any contract with a contractor on the excluded parties list per 24 CFR Part 570, Subpart K, 570.609.

Title 31 U.C.S., Section 1352, requires all subgrantees, contractors, subcontractors, and consultants who receive federal funds via the CITY to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan, or cooperative agreements.

In addition, contract applicants, recipients, and subrecipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the contract period.

Necessary forms are available from the Grant Program Coordinator, Community Planning and Services of the CITY and must be returned to the CITY with other contract documents. It is the responsibility of the general contractor to obtain executed forms from any subcontractors who fall within the provisions of the Code and to provide the CITY with the same.

## VI. NON-DISCRIMINATION

### A. Non-Discrimination. SAFEHOME agrees that:

1. During the performance of this Agreement or any subcontract resulting thereof, SAFEHOME, all subcontractors and vendors shall observe the provisions of the Kansas Acts Against Discrimination (K.S.A. 44-1001, *et seq.*) and Title VII of the Civil Rights Act of 1964 as amended and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, national origin, age, disability, ancestry, veteran status, or low income;
2. In all solicitations or advertisements for employees SAFEHOME, all subcontractors and vendors shall include the phrase “equal opportunity employer” or a similar phrase to be approved by the Kansas Human Rights Commission (“Commission”);
3. If SAFEHOME, a subcontractor or vendor fails to comply with the manner in which SAFEHOME, subcontractor or vendor reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, SAFEHOME, subcontractor or vendor shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the CITY;
4. If SAFEHOME, a subcontractor or vendor is found guilty of a violation of the Kansas Acts Against Discrimination under a decision or order of the Kansas Human Rights Commission which has become final, SAFEHOME, subcontractor or vendor shall be deemed to have breached this Agreement, and this Agreement may be cancelled, terminated or suspended in whole or in part by the CITY;
5. SAFEHOME shall include the provisions of paragraphs 1 through 4 above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

### B. Age and ADA Discrimination. SAFEHOME further agrees that SAFEHOME shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 *et seq.*), and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project, and shall furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this Project and shall furnish any certification required by any federal, state or local governmental agency in connection therewith.

## VII. GENERAL ADMINISTRATION

It is understood and agreed that the written terms and provisions of the Agreement shall supersede all prior verbal statements of any and every official and/or other representative of the CITY and SAFEHOME, and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way, the written Agreement.

The parties agree that neither party shall assign or transfer their interest in this Agreement without the written consent of the other

The failure of the CITY or SAFEHOME to insist on strict performance of any of the terms and conditions herein shall not be deemed a waiver of the right to demand strict performance of that or any other provision at any time thereafter.

SAFEHOME agrees to defend, indemnify, and hold harmless the CITY and its agents and/or employees from any and all claims, settlements, and judgements for personal injury, bodily injury, property damage, and/or death arising out of SAFEHOME's or any of its agents', servants', and/or employees' negligent acts and/or failures to act in the performance of this Agreement.

SAFEHOME shall maintain, either through traditional insurance, in whole or in part, or through a risk management reserve fund, in whole or in part, coverage of the types and in such amounts as may be necessary to protect itself and the CITY against all hazards or risks of loss as hereinafter specified, whether such hazards or risks of loss be generated by SAFEHOME, its officers, employees, or agents, and shall provide the CITY with evidence of such coverage.

- 1) Commercial General Liability - \$500,000 combined single limit per occurrence for bodily injury, personal injury, and property damage.
- 2) Workers' Compensation and Employers' Liability
  - a) Workers' Compensation - Statutory  
(Include all states' endorsement)
  - b) Employer's Liability - \$100,000 Each Occurrence
- 3) Comprehensive Automobile Liability - \$500,000 combined single limit per occurrence written in a comprehensive form, protecting the COUNTY against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles and shall cover the operation on and off the site of any automobile, whether it is owned, non-owned, or hired.

The parties agree that upon completion of all work specified herein and the satisfaction of all contingencies and provisions of this Agreement and acknowledgment by the CITY, this Agreement shall thereupon become null and void and of no further effect.

## **VIII. Termination**

### **A. Termination for Convenience**

The CITY may, when the interests of the CITY so require, with 60 days notice, terminate this contract in whole or in part, for the convenience of the CITY. The CITY shall give written notice of the termination to SAFEHOME, specifying that the contract, or a designated part thereof, shall be terminated; and when termination becomes effective, SAFEHOME shall incur no further obligations to the CITY in connection with the terminated work or services; and on the date set in the notice of termination, SAFEHOME will stop work or services on behalf of the CITY to the extent specified.

In the event the contract is terminated for convenience of the CITY, the CITY will disburse funds for costs incurred and funds expended by SAFEHOME prior to the date of termination.

**B. Termination for Default**

If SAFEHOME is violating any of the conditions of this Agreement or is executing the same in bad faith, the CITY may serve written notice on SAFEHOME of its intention to terminate the contract and unless, within seven (7) days after the serving of the notice, a satisfactory arrangement has been made for the continuance thereof, this contract shall terminate. The CITY retains the right to withhold the grant or any portion thereof for damages incurred as a result of SAFEHOME's breach of this Agreement. SAFEHOME further agrees to repay to the CITY the full amount of all grant funds advanced by the CITY under this Agreement, should SAFEHOME be in default. Repayment shall be made in full within thirty days (30) of default by SAFEHOME.

**IX. SEVERABILITY**

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

**X. SECTION HEADINGS AND SUBHEADINGS**

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

**XI. WAIVER**

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

**XII. ENTIRE AGREEMENT**

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

**XIII. GOVERNING LAW**

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Kansas.

*The remainder of this page is intentionally blank*

Executed in triplicate the date first above written.

CITY OF OVERLAND PARK, KANSAS

SAFEHOME, INC.

By \_\_\_\_\_  
Carl Gerlach, Mayor

By \_\_\_\_\_  
Donald Curtis, President

ATTEST:

ATTEST:

\_\_\_\_\_  
Marian Cook, City Clerk

\_\_\_\_\_  
Janee' M. Hanzlick, Associate Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephen B. Horner  
Senior Assistant City Attorney