

RESOLUTION 2015-87

A RESOLUTION APPROVING A HOUSING DEVELOPMENT INCENTIVE AGREEMENT BETWEEN THE CITY OF LOVINGTON AND ROBERTS RANCHES FOR THE BRIDLEWOOD ESTATES PROJECT

WHEREAS, the purpose of the Local Economic Development Act, NMSA 1978 Section 5-10-1 through Section 5-10-13 (2007) is to provide “public support for economic development to foster, promote and enhance local economic development efforts...”; and

WHEREAS, the City has a housing shortage that hinders and delays economic development in the City; and

WHEREAS, the City has issued a Request for Proposals for Housing Production Services (RFP No. 011513) (RFP) in an effort to increase the supply of additional family housing units for the citizens of Lovington; and

WHEREAS, Roberts Ranches has submitted a response to the RFP for the development of Bridlewood Estates, which will create an additional forty-six (46) homes in the City of Lovington; and

WHEREAS, the Lovington Economic Development Corporation Board of Directors has recommended providing up to \$6,000 in reimbursement per completed home for off-site infrastructure development.

NOW THEREFORE, BE IT RESOLVED by the City Commission that a Housing Development Agreement between the City and Roberts Ranches is approved for:

1. The development of forty-six (46) single family dwellings located in the Bridlewood Estates Project; and
2. each completed home is eligible for up to six thousand dollars (\$6,000) of actual costs for off-site infrastructure improvements; and
3. the total maximum amount of reimbursement will not exceed two hundred and seventy-six thousand dollars (\$276,000); and
4. a copy of the Agreement will be attached to this Resolution for reference.

PASSED, APPROVED, AND ADOPTED SEPTEMBER 28, 2015.

Scotty Gandy, Mayor

ATTEST:

Carol Ann Hogue, City Clerk

**HOUSING DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF LOVINGTON
AND FAMILY HOUSING DEVELOPER**

THIS AGREEMENT is entered into on this _____ day of _____, 2015
by and between the City of Lovington, New Mexico, a municipal corporation (hereinafter
“City”); and Robbie Roberts, d/b/a Roberts Ranches
(hereinafter “Developer”) for the purpose of completing Housing Development services to be
provided to the City.

RECITALS:

- ** The City requires to contract with a Housing Development Company to provide services for providing Market Rate Housing to the City and Citizens of Lovington, New Mexico. The City has issued RFP # 011513 dated January 15, 2013 to solicit Developer proposals.

- ** Developer has submitted a written proposal to the City to complete the required Housing Developer Services work for affordable housing, pursuant to the Developer proposal dated August 26, 2015.

NOW, THEREFORE, the City of Lovington and Developer do hereby agree as follows:

A. Work To Be Performed

1. The Developer shall furnish to the City its Professional Housing Developer Services for certain work regarding the Lovington Additional Family Housing Project, as requested by the City. All work completed under this agreement shall be pursuant to the City's RFP # 011513 which is attached hereto and made a part of this Agreement as Exhibit #1; and pursuant to Developers response proposal to that RFP, which is attached hereto and made a part of this Agreement as Exhibit #2, to the extent that its provisions are not inconsistent with the RFP and applicable laws. Both of these said documents are attached hereto and made a part of this agreement.

2. Developer shall furnish to City its professional Housing Developer Services as requested by City and as provided by this Agreement. The specific duties include all assistance as necessary to produce and operate Family Housing Development in Lovington. According to the RFP #011513 and Developer's Proposal, Developer is required to begin construction of additional family housing and associated infrastructure to serve the intended development property located in the Sunrise Addition to the City of Lovington. The Developer shall build forty-six (46) single_family homes on the property identified in the Developer's Proposal. Developer shall raise sufficient funds to acquire real property and develop family housing in Lovington per Developer's attached proposal response to RFP 011513.

3. Specific activities required are to provide privately owned real property in the City including designing, building and operating market rate housing projects. For proposals deemed to best meet the needs of the City, the City shall provide financial incentives to assist with financing those family housing development proposals. The City's participation may include any or all of the following funding assistance from the City:
 - a. The City shall provide funding to the developer for the actual cost, up to the maximum grant amount of public infrastructure of newly constructed streets, sidewalk, and utilities, with these infrastructure items to be designed and installed by the developer.

Type of Infrastructure Project:

1.	Water Utility Extensions	1
2.	Sewer Utility	1
3.	Street Extensions	
4.	Street or Driveway work access	42
5.	Drainage Construction	42
6.	Utility Taps	42
7.	Engineering & Survey	1
8.	Other Fire Hydrants	1
9.	Other Manholes	2
10.	Other	

Based on quantities of required publicly owned infrastructure installed with the project, the City shall determine if the value of the infrastructure is adequate as an equal exchange of value for the amount of City subsidy contributed to the housing project. The City shall resolve any issues concerning value or extent of infrastructure and amount of square footage of constructed housing units.

- b. Cash payments to the Developer shall be paid by the City on basis, up to the Maximum Grant Amount, and per Developer's proposal, based on the following maximum subsidy schedule: **\$6,000 per completed home. Maximum award is \$276,000.**

- c. Payment For Services

City subsidy shall be paid when the project is complete and certificate of occupancy is issued. If project proposal is for the construction of more than four (4) units, payment will be paid after completion of every four units. Payment will be made within fifteen (15) days following a written request from the Developer and upon City inspection of project completion.

- d. Program features and requirements are detailed in the City RFP # 011513 and the Developer's response proposal.

1. The Minimum Project Development Size is 4 housing units per project location. Each approved project must be fully served by infrastructure when complete. Subsidy of privately owned on-site infrastructure is not permitted.
2. The City encourages infill property development. Infill infrastructure improvements will be funded to provide new or replacement water or sewer facilities, curbing, sidewalk, street improvements and paving, if additional housing is proposed as the project.
3. Full Developer Financing for 100% of a project must be in place prior to award of proposals. The design of the project must be complete within 90 days of award of the contract with the City.
4. Construction/Installation must be 50% complete within six months of award, with total completion within 1 year following award of the contract. Completion date may be extended for projects exceeding 20 units.
5. Construction and installation of housing units and public infrastructure will meet currently adopted State of New Mexico regulations and requirements and APWA standards.

6. Construction/Installation shall be of energy-efficient design per New Mexico Energy Conservation Code 2009, utilizing either stucco, brick/stone or hardwood siding on all exterior surfaces.
 7. All vacant homes and lots within the project must be maintained to meet all City codes and ordinances. Failure to comply with City codes and ordinances shall void reimbursement for that completed home.
 8. Any variances or encroachments granted after September 28, 2015 for a particular lot or home shall void reimbursement for that completed home.
- e. Performance Schedule of Actions Required of the Developer. Following are general guidelines of milestones or target dates for significant work items to begin. Specific dates established below which are firm dates not to be missed are 1) the date for completion of "dried in" status at Day 180, and 2) the date for Project 100% completion at Day 365. Nothing prohibits the Developer from starting or finishing these activities earlier than the following dates following.

Day	1	Development Agreement approved by City and executed by all parties.
Day	5	Developer submits draft site plan to City
Day	90	Developer submits final design and building plans.
Day	110	Developer complies with State of New Mexico and Building Code and receives Building Permit.
Day	130	Site grading complete. Survey started on building locations. Plumbing & Utility work started. Foundations and footers started. (Site Grading on or before 120 days
Day	150	Framing crews start.
Day	180	Project is "dried-in" with finished roofing, and all doors and windows installed, and exterior finishes completed.
Day	360	Project 100% completed. The City Manager may grant a one-time sixty (60) day extension for projects containing more than twenty (20) units.

B. ASSIGNMENT OF AGREEMENT

This Section refers to assignability of this Agreement, and not to assignability of the Project to be developed for housing. Developer shall not assign or transfer any interest in this Agreement. Except that Developer is permitted, upon City approval, to assign its interest to a Partnership or Corporation in which the Developer is the principal party or to an affiliated company, working with the Developer on the Project. Subject to the foregoing provision, this Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their respective successors and assigns; provided that upon any assignment of this Agreement by either party, the other party shall not be released from any obligation under, or liability accruing pursuant to this Agreement. Consent shall not unreasonably be withheld by either party.

C. INSURANCE REQUIREMENTS AND HOLD HARMLESS PROVISION

1. Developer agrees to obtain and maintain appropriate insurance during the course of the work program with the City of Lovington, as follows, and shall indemnify, defend and hold harmless City, its employees, agents, officers and officials from any and all claims, losses, causes of action, and/or liabilities resulting from the conduct, negligence, errors or omissions of Developer or any employee or agent of Developer while engaged in performing the services called for herein. Developer will provide a current Certificate of Insurance to be attached to this agreement, with the City of Lovington as shown as an additional insured party.
2. The Developer shall maintain insurance coverage for General Liability, Automobile Liability, Errors and Omissions Insurance, and Workers' Compensation, subject to review and approval of the City Attorney.

D. GOVERNING LAW AND PROVISIONS

1. This Agreement shall be governed by the laws of the State of New Mexico. Jurisdiction and venue relating to any litigation or dispute arising out of this Agreement shall be in the District Court of Lea County, New Mexico, only. If any part of this contract shall be deemed in violation of the laws or Constitution of New Mexico, only such part thereof shall be thereby invalidated, and all other parts hereof shall remain valid and enforceable.
2. If any party is found by a court to have breached this Agreement, the breaching party agrees to pay all reasonable costs, attorney's fees and expenses that shall be made or incurred by another party in enforcing any covenant or provision of this Agreement, including the expenses of in house counsel.

E. FINAL PAYMENT AND RELEASE OF CLAIMS

1. Developer, upon final payment of all amounts due under this Agreement, releases the City and its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement.
2. City, upon Developer's final completion of all work items and covenants required of the Developer under this Agreement, shall release the Developer from all liabilities, claims and obligations whatsoever arising from or under this Agreement, on the day that is one (1) year following the date of the issuance of a final certificate of occupancy on the Project.

F. AMENDMENTS

This Agreement shall not be altered, changed, or amended except by written instrument approved and executed by both parties hereto.

G. BREACH

1. The following events constitute a breach of this Agreement by Developer:
 - a. Developer's failure to perform or comply with any of the terms, conditions or provisions of this Agreement, including RFP # 011513.

- b. Developer's failure to complete design plans and obtain a Building Permit within the initial thirty (30) day period following the execution of this Agreement.
 - c. Developer's failure to complete the "dried-in" construction (finished roofing, and all doors and windows installed, and exterior finishes completed) within the initial one hundred eighty (180) day period following the execution of this Agreement.
 - d. Developer's failure to complete the construction of the entire project within the initial three hundred sixty five (365) day period following the execution of this Agreement.
2. The following events constitute a breach of this Agreement by City:
 - a. City's failure to perform or comply with any of the terms, conditions or provisions of this Agreement, including making timely and appropriate payments to the Developer.

H. REMEDIES UPON BREACH

1. Any party may sue to collect any and all damages that may accrue by virtue of the breach of this Agreement.
2. If any party is found by a court to have breached this Agreement, the breaching party agrees to pay all reasonable costs, attorney's fees and expenses that shall be made or incurred by another party in enforcing any covenant or provision of this Agreement.
3. If Developer fails to complete design plans and obtain a Building Permit within the initial ninety (90) day period following the execution of this Agreement, this Agreement shall be automatically terminated.
4. If Developer fails to complete the "dried-in" construction (finished roofing, and all doors and windows installed, and exterior finishes completed) within the initial one hundred eighty (180) day period following the execution of this Agreement, the City Manager may authorize one thirty (30) day extension period. If the project is still not completed to the dried-in stage at the end of the thirty day extension, this Agreement shall be automatically terminated.
5. If Developer fails to complete the construction of the entire project within the initial three hundred sixty five (365) day period following the execution of this Agreement, the Manager may grant a one-time sixty (60) day extension of the completion date.

I. NOTICE

All notices given pursuant to or in connection with this Agreement shall be made in writing and posted by regular mail, postage prepaid, to the City, ATTN: City Manager, 214 S. Love St., Lovington, NM 88260; to Developer ATTN: Howard Roberts, d/b/a Roberts Ranches, 913 W. Avenue H, Lovington, NM 88260, and to such other address as requested by either party. Notice shall be deemed to be received on the fifth day following posting.

J. ENTIRE AGREEMENT

The foregoing constitutes the entire agreement between the parties hereto and may be modified only in writing by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

City of Lovington

Developer

By: Scotty Gandy, Mayor

By: Howard Roberts

ATTEST:

APPROVED AS TO FORM:

Carol Ann Hogue, City Clerk

Patrick McMahon, City Attorney

City Manager

By: James R. Williams