

**RESOLUTION NO. 2020-10  
2120 GRASSHOPPER LANE  
DEVELOPMENT AGREEMENT**

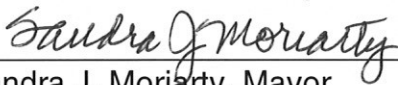
**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA,  
ARIZONA, APPROVING A DEVELOPMENT AGREEMENT WITH HOPE HOUSE OF  
SEDONA, A PRIVATE NON-PROFIT CORPORATION, FOR THE 2120  
GRASSHOPPER LANE PROJECT.**

WHEREAS, the City of Sedona ("City") and Hope House of Sedona, a private non-profit corporation, intend to enter into a development agreement for an affordable housing unit at 2120 Grasshopper Lane in West Sedona that will include provisions to ensure the project addresses local affordable housing needs by providing temporary/transitional housing for homeless families with children in Sedona.


NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE COUNCIL OF THE CITY OF SEDONA, ARIZONA, THAT:

The City of Sedona, through its Mayor and Council, hereby finds that the development agreement attached hereto as Exhibit A is consistent with the Community Plan pursuant to A.R.S. § 9-500.05, and approves of the agreement, authorizing the signature by the Mayor and recording by law.

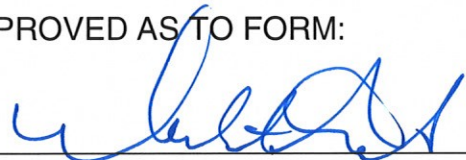
APPROVED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, this 14<sup>th</sup> day of July, 2020.

  
\_\_\_\_\_  
Sandra J. Moriarty, Mayor

ATTEST:

  
\_\_\_\_\_  
Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Robert L. Pickels, Jr., City Attorney

## EXHIBIT A

When recorded mail to:

City Clerk  
City of Sedona  
102 Roadrunner Drive  
Sedona, Arizona 86336

### **DEVELOPMENT AGREEMENT (Construction of Affordable Housing Unit)**

THIS DEVELOPMENT AGREEMENT ("Agreement") for the construction of one (1) affordable housing unit at 2120 Grasshopper Lane in West Sedona ("Project") is entered into and effective this 14<sup>th</sup> day of JULY, 2020, by and between the CITY OF SEDONA, an Arizona municipal corporation ("City") and the Hope House of Sedona, a private non-profit corporation ("Hope House").

#### **RECITALS**

- A. The City of Sedona is the current owner of the real property located at 2120 Grasshopper Lane in Sedona and Hope House desires to purchase the property from the City prior to construction of the Project.
- B. The City Council chose Hope House to receive approximately \$330,000 of Community Development Block Grant (CDBG) funding from the City's periodic CDBG allocation (every four years) towards the construction of a temporary/transitional housing unit for homeless families with children.
- C. Hope House intends to construct the Project and restrict its use and occupancy to transitional/temporary housing for homeless families with children.
- D. Hope House has asked the City to fund associated building, development impact and sewer capacity fees for the Project.
- E. Hope House and the City wish to enter into this Agreement to provide for a financial contribution from the City's affordable housing fund to be used to pay for the development impact and sewer capacity fees for the Project, and for Hope House to implement certain restrictions on the Project for the benefit of City.
- F. The addition of affordable housing units is identified as a goal in the City's Community Plan, the 2020 City Council identified priorities and the City's Development Incentives and Guidelines for Affordable Housing policy. Because of the benefit to the City in the Project, the City is willing to contribute towards the cost of constructing this affordable housing unit through this Agreement.

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- G. Arizona Revised Statutes § 9-500.05 allows a municipality and any other person having an interest in real property located in a municipality to enter into a development agreement pertaining to any matter relating to the development of such real property, including applicable land use including applicable land use rules, regulations and official policies; permitted land use; density and intensity of land use; phasing of the development and duration of the development agreement; and development fees.

NOW THEREFORE, in consideration of the terms and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### AGREEMENT

1. **Accuracy of the Recitals.** Each of the parties to the extent such knowledge is within their respective control, hereby acknowledges, to the best of their knowledge, the accuracy of the Recitals, which are incorporated herein by this reference.
2. **Term.** Once executed by the parties, the term of this Agreement shall be deemed to commence as of the Effective Date and shall continue until all of the covenants and conditions identified herein have been fully completed.
3. **Additional Covenants of Hope House.**
  - 3.1 Hope House shall construct (or cause to be constructed) a housing unit and restrict the use and occupancy of the housing unit to transitional/temporary housing for homeless families with children in accordance with CDBG requirements.
  - 3.2 Hope House shall pay all the construction costs, which include the costs associated with the design, engineering, acquisition, and construction of the unit, with the exception of development impact and sewer capacity fees funded by the City and other building permit and plan reviews fees waived by the City in accordance with this agreement.
  - 3.3 Hope House shall commence construction within three hundred and sixty-five (365) days of the issuance of City construction permits and shall continue work until the Project is complete.
  - 3.4 Hope House shall continue to operate the unit as transitional/temporary housing for homeless families with children for a minimum of five (5) years from the date the Project is complete in accordance with CDBG requirements, and will continue to operate the unit as transitional/temporary housing for homeless families with children or as affordable housing unit in accordance with the definitions of "affordable" as outlined in the City's Development Incentives and Guidelines for Affordable Housing (DIGAH) for an additional ten (10) years beyond the CDBG requirement.

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- 3.5 Should Hope House decide to sell the property, Hope House will provide the City of Sedona first right of refusal to purchase the unit at fair market value at the time of sale.

### **4. Additional Covenants of City.**

- 4.1 The City will contribute Sixteen Thousand Eight Hundred and Eight and 04/100 Dollars (\$16,808.04) (the "City Contribution") from City's Affordable Housing Fund towards the development impact and sewer capacity fees for the Project. The City will pay those fees, upon issuance of building permit, on behalf of Hope House.
- 4.2 The City will waive development review and building permit fees in the amount of Two Thousand and Twenty-Five and No/100 Dollars (2,025.00) for the Project.

- 5. Approvals.** Hope House shall obtain all necessary approvals, permits, consents and authorizations from the City prior to constructing the Project.

- 6. City Representations and Warranties.** The City represents and that all representations set forth by City in this Agreement are accurate and truthful to the best of its knowledge and belief.

- 6.1 That the City is a duly organized, validly existing municipal corporation in the State of Arizona. The transactions contemplated by this Agreement, the execution of this Agreement and the city's performance hereunder have been duly authorized by all requisite action of the City and no other approval or consent is required for this Agreement to be binding upon the city. The individuals executing this Agreement have all necessary authority to enter into this Agreement and to bind the City. The execution of this Agreement and the consummation of the transactions contemplated hereby will not result in any violation of, or default under, any term or provision of any applicable Agreement, instrument, law, rule, regulation or official policy to which the City is a party or by which the City is bound.

### **7. Hope House Representations and Warranties.**

- 7.1 Hope House represents and warrants that each of their respective representations set forth in this Agreement are accurate and truthful to the best of its knowledge and belief.
- 7.2 That Hope House is a duly organized, validly existing Arizona non-profit corporation licensed to do business in the State of Arizona. Hope House is not a construction company or a licensed contractor. The transactions contemplated by this Agreement, the execution of this Agreement and Hope House's performance hereunder have been duly authorized by all requisite action of Hope House and no other approval or consent is required for this Agreement to be binding upon Hope House. The

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individuals executing this Agreement have all necessary authority to enter into this Agreement and to bind Hope House. The execution of this Agreement and the consummation of the transactions contemplated hereby will not, to the best of Hope House's knowledge, result in any violation of, or default under, any term or provision of any applicable agreement, instrument, law, rule, regulation or official policy to which Hope House is a party or by which Hope House is bound.

**8. Appointment of Representatives.** To further the commitment of the parties to cooperate in the implementation of this Agreement, the City and Hope House each shall designate and appoint a representative to act as a liaison between the City, its various departments and Hope House. The initial representative for the City (the "City Representative") shall be its Community Development Director, Karen Osburn, the initial representative for Hope House shall be John Lothrop, President, Hope House of Sedona Board of Directors (the "Hope House Representative"). The representatives shall, after reasonable notice, be available at all reasonable available times to discuss and review the performance of the parties' respective obligations under this Agreement.

**9. Indemnification.**

- 9.1 During the term of this Agreement, Hope House agrees to indemnify and hold harmless the City, their elected officials, appointees, employees, affiliates, agents, assigns and successors from any liability for claims, suits, losses, damages to persons or property, including investigation and expert witness and reasonable attorney's fees, arising as a result of Hope House's breach of this Agreement or for any injury or death resulting from Hope House's negligence in relation to the construction of the Housing Project.
- 9.2 During the term of this Agreement, City agrees to indemnify and hold harmless Hope House, their officers, employees, affiliates, agents, assigns and successors from any liability for claims, suits, losses, damages to persons or property, including investigation and expert witness and attorney's fees, arising as a result of City's negligence or breach of this Agreement. The Parties agree that neither will be liable to the other for consequential damages.

**10. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement and no person or entity not a Party or a successor-in-interest to a Party to this Agreement will have any right or cause of action under this Agreement.

**11. Conflict of Interest.** This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.



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**12. Attorney's Fees.** If it becomes necessary for a Party of this Agreement to bring an action at law or other proceedings to enforce any of the terms or provisions of this Agreement, the successful Party in the action or proceeding is entitled to an award of its reasonable attorney's fees with the amount to be determined in accordance with A.R.S. § 12-341.01.

**13. Amendments.** No amendment is authorized under this Agreement except by written document executed by the City and Hope House.

**14. Assignment.** This Agreement may be assigned, with express written consent of the non-assigning Parties. Consent shall not be unreasonably withheld.

**15. Limitation of Liability.**

15.1 No member, official or employee of the City shall be personally liable to Hope House or any successor in interest to such party for any amount which may become due to Hope House from the City or any obligation under the terms of this Agreement.

15.2 No member, manager, or agent or employee of Hope House shall be personally liable to the City, or any successor in interest to such party for any amount which may become due to the City from Hope House or any obligation under the terms of this Agreement.

**16. Further Assurances.** The parties agree to take such actions including the execution and delivery of such mutually acceptable documents, instruments, petitions and certifications as may be required to carry out the terms, provisions and intent of this Agreement.

**17. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

**18. Severability.** If any provision in this Agreement, or any paragraph, sentence, clause, phrase, word or the application thereof; in any circumstance, is held invalid, this Agreement shall be construed as if such invalid part were never included herein and the remainder of this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

**19. Disclaimer.** Nothing contained in this Agreement nor any act of the City or Hope House shall be deemed or construed by any of the parties, or by any third person, to create or imply any relationship of third party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship involving the City or Hope House.

**20. Force Majeure.** The time for performance of any obligation or the satisfaction of any contingency under this Agreement shall be extended for the period during

## EXHIBIT A

which a party is prevented from performing by the action or inaction of the other party, acts of God, government, or other force or event beyond the reasonable control of such party.

**21. Right of Termination.** Notwithstanding anything to the contrary contained herein, in the event that the Project cannot be constructed, Hope House shall have the right, but not the obligation, to terminate this Agreement by notice to the City. In the event that Hope House shall elect to so terminate this Agreement, and if, at such time the City Contribution has been paid to Hope House, Hope House shall reimburse the city in full for the City Contribution, within thirty (30) days of such termination.

**22. Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Arizona.

**23. Amendments.** This Agreement may be amended only by a mutual written agreement fully executed by the Parties.

**24. Entire Agreement.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties, oral or written, are superseded and merged into this Agreement.

This Agreement is effective as of the date of the last authorized signature affixed below.

[Signature page follow.]

EXHIBIT A

Attest:

City of Sedona

Susan L. Irvine  
Susan L. Irvine, CMC, City Clerk

By Sandra J. Moriarty  
Sandra J. Moriarty, Mayor

APPROVED AS TO FORM:

Robert L. Pickels, Jr.  
Robert L. Pickels, Jr. City Attorney

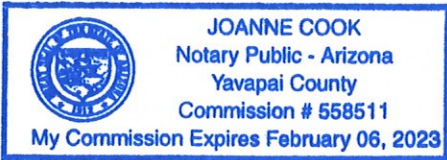
STATE OF ARIZONA     )  
  ) ss.  
COUNTY OF YAVAPAI    )

On this 16<sup>th</sup> day of JULY, 2020 before me personally appeared Sandra J. Moriarty who acknowledged herself to be the Mayor of the CITY OF SEDONA, an Arizona municipal corporation whom I know personally, and she, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Jo Anne Cook  
Notary Public



**END OF PAGE**



EXHIBIT A

Hope House of Sedona

John Lothrop  
John Lothrop, President of the Board

STATE OF ARIZONA )  
COUNTY OF YAVAPAI ) ss. )

On this 16<sup>th</sup> day of JULY, 2020, before me personally appeared John Lothrop who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity as Board President of the Hope House of Sedona., and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Susan L. Irvine  
Notary Public



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