

**CITY OF CLEARWATER, FLORIDA
AND
HABITAT FOR HUMANITY OF PINELLAS COUNTY
COMMUNITY HOUSING DEVELOPMENT ORGANIZATION, INC.**

COMMUNITY HOUSING DEVELOPMENT ORGANIZATION AGREEMENT

THIS AGREEMENT (“Agreement”), made and entered into this ___th day of _____, 20___, by and between the **City of Clearwater, Florida**, a municipal corporation existing by and under the laws of the State of Florida, herein after referred to as the “City”, and Agency, a not-for-profit organization organized under the laws of the State of Florida, herein after referred to as the “Provider”;

WHEREAS, the City is the recipient of a HOME Investment Partnership Program (HOME) Grant from the U.S. Department of Housing and Urban Development (HUD) pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, 42 U.S.C. 12701 et seq. (HOME Program), codified and implemented by 24 CFR Part 92; and

WHEREAS, under the provisions of the Act, the City is required to set-aside at least 15% of its HOME Investment Partnership Program entitlement allocation to organizations that meet the requirement for Community Housing Development Organizations (CHDOs), as specified by the HOME Program, for the CHDO to own, develop or sponsor housing for families at or below 80% of the area median income; and

WHEREAS, the Provider has met the requirements established by the federal government and has been certified as a CHDO by the City, pursuant to the National Affordable Housing Act of 1990, as amended; and

WHEREAS, the City and the Provider desire to sign an agreement which sets forth terms and conditions for the use and acceptance of the FY 2016-2017 HOME Program CHDO Set Aside funds; and

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

PART I – SPECIFIC TERMS AND CONDITIONS

A. Source and Use of Funds

1. Sources of Funds: The sole source of funding from the City for payment of services performed under this Agreement is the HOME Investment Partnership Program entitlement provided to the City by HUD. The Provider agrees that in the event that the HOME Investment Partnership Program entitlement is reduced or withheld by HUD, the City shall not be liable for payment of contracted services from any City fund other than the HOME Investment Partnership Program entitlement, in which case the Provider further agrees that the maximum sum payable under this Agreement may be reduced by the City. In the event HUD determines that the City or the Provider have not fulfilled their obligation under the HOME Investment Partnership entitlement requirements, or the City determines that Provider has not fulfilled its obligation under the HOME Investment Partnership Program requirements, HUD or the City may demand reimbursement of expenses paid under this Agreement. The Provider shall provide said reimbursement from non-federal sources within ten days of said notice from the City.

Funding in this agreement includes allocation in the amount of \$42,799.20 from the FY 2016-2017 HOME Program CHDO set-asides.

The Provider further acknowledges that this Agreement is necessary to comply with the requirements of 24 CFR Part 92 – HOME Investment Partnership Program and incorporated herein by reference, which is the source of funds provided under this Agreement, and agrees that it will comply with, and will require all subcontractors, subgrantees and assigns to comply with all terms and conditions of said 24 CFR Part 92 and this Agreement, as amended. It shall be the Provider responsibility to ensure that it has the latest version of all applicable laws and regulations in its possession to ensure compliance with their provisions.

2. Use of Funds: In consideration of HOME Investment Partnership Program entitlement funding allocated by the City, the Provider shall operate the programs and specific activities described in the Proposal. The Provider shall utilize its HOME allocation as an owner-developer to provide housing for families at or below 80% of the area median income in accordance with policies established by HUD and therefore shall:

a. HOME funds provided to this project will be used for the activities identified in the detailed project description as stated below: (information listed is only provided as a tool)

- Number of units 1
- Type of units (Rental/Owner) Owner
- Income Limits 80% of Area median income

B. Program Requirements

The Provider shall comply with all requirements of 24 CFR Subpart F pertaining to affordable housing including, but not limited to:

1. Minimum/Maximum per Unit Subsidy/Value: The minimum pre-unit subsidy amount for HOME Investment Partnership Program entitlement funds invested shall not be less than One Thousand dollar (\$1,000). The maximum per-unit subsidy/value of units assisted with HOME funds shall not be no more than the per-unit dollar limit established for mortgages under Section 221 (d)(3)(ii) of the National Housing Act for the Tampa-Clearwater-St. Petersburg metropolitan area.
2. Affordability: The City will enforce the Recapture provision defined in the Mortgage, Note and Land Use Restrictive Covenant in order to address the continued affordability of housing units acquired with HOME funds.
 - a. The Provider shall utilize the HOME Agreement, Mortgage, Note and Land Use Restrictive Covenant to address key recapture provisions as affordability period, principal residency and transfer of title of the property. All documents shall provide the right to transfer to the City in the event the Provider ceases operating as a CHDO under the HOME Program, merges with another entity, terminates, dissolves, liquidates or its existence as an entity is otherwise forfeited.
3. Affordability Period: Rental units shall provide affordable housing to low- and moderate-income households for the following minimum affordability periods.

Activity	Average Per-Unit HOME \$ Investment	Minimum Affordability Period
Rehabilitation or Acquisition of Existing Housing	<\$15,000/unit \$15,000-40,000/unit >\$40,000/unit	5 years 10 years 15 years
Refinance of Rehabilitation Project	Any dollar amount	15 years
New Construction or Acquisition of New Housing	Any dollar amount	20 years

3. Income Restrictions: The Provider maintains that the homebuyer's income, of the newly constructed single-family home, shall not exceed 80 percent of the area median income.

The Provider shall be responsible for determining and verifying the income eligibility of the HOME tenants. The Provider shall determine the income by using the Section 8 Program definition of annual gross income and shall verify the income through third party verifications.

4. Duration of Restrictions: The provisions of 24 CFR Subpart F, as it may be amended, shall survive termination of this contract for any reason.
5. Housing Quality Standards: The Provider maintains that all new and rehabilitated units shall meet all applicable local codes, rehabilitation standards, and ordinances in accordance with 24 CFR Part 92.251; as well as the Model Energy Code published by the Council of American Building Officials (newly constructed units), the Southern Building Code, the accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973 or the Cost Effective Energy Conservation and Effectiveness Standards in 24 CFR Part 39 (substantially rehabilitated units, defined as having a rehabilitation cost of greater than or equal to \$25,000). The Provider shall maintain all work funded under this Agreement is performed by properly licensed and qualified contractors in accordance with applicable state, county and city laws and codes and that all rehabilitation work requiring a construction permit is obtained.
6. Housing Inspections: The Provider maintains that all units assisted with HOME funds are decent, safe and sanitary and meet the general conditions listed in Section 5 of this agreement. Further, the Provider agrees that it will make all records and property assisted with HOME funds available for inspection within a reasonable period.
7. Site Sensitivity: The Provider maintains that it will not undertake any activity that may adversely affect historic or environmentally sensitive sites; and to mitigate any findings identified in the environmental checklist. The City shall be responsible for ensuring the proposed projects meet the requirements listed in 24 CFR Part 58.
8. Property Management: The Provider shall be responsible for the maintenance and upkeep of all such properties and maintain sufficient insurance to cover the cost of replacement.
9. Audit: The Provider maintains that it shall, at any time during normal business hours and as often as the City and/or Comptroller General of the United States and/or any of their duly authorized representatives may deem necessary, make available for examination all of the Provider's records, books, documents, papers, and data with respect to all matters covered by this Agreement and shall permit the City and/or the Comptroller General to audit and examine all books, documents, papers, records and data related to this Agreement.

D. CHDO Proceeds

All CHDO proceeds resulting for the CHDO's investment of its CHDO set-aside funds will be returned to the City and categorized as program income. CHDO proceeds include, but are not limited to, the permanent financing of a CHDO project which is used to pay off a CHDO financed construction loan; the sale of CHDO development ownership housing; the principal and interest payments from a loan to a buyer of CHDO developed homeownership housing. All returned CHDO proceeds shall be reinvested and applied towards housing activities for low to moderate income individuals and families including acquisition, construction and rehabilitation of HOME eligible projects.

C. Method of Payment

1. Funding Allocation: Both parties agree that the total compensation to be paid hereunder for actual expenses incurred shall be no more than FORTY TWO THOUSAND SEVEN HUNDRED NINETY-NINE DOLLARS AND 20/100 (\$42,799.20). The City hereby acknowledges that the funds provided shall be derived from the 15% CHDO set-aside for FY 2016-2017.

The Provider may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

The funds will be expended in accordance with the terms and conditions of the agreement. Funds reserved for the Provider may increase or decrease, subject to production standards. Any remaining funds shall revert to the City or other City approved agency. Such compensation shall be paid in accordance with the projected accomplishments and budget descriptions.

D. Return on Investment

1. CHDO Proceeds: Funds provided to this activity shall be considered program income and shall be returned to the City once the property is sold.
2. Recaptured Funds: Funds recaptured, because housing no longer meets the affordability requirements under 24 CFR Part 92.254, are subject to the requirements of Part 92, and must be properly identified and deposited in the Provider's HOME Account for use for additional HOME eligible projects. Recaptured funds must be used prior to the drawing down of additional HOME Investment Partnership entitlement funds from the City under this Agreement. The Provider is required to submit an annual report by September 30th of every year that identifies the current unit tenant, and affordability period for all previously HOME assisted projects detailed in Part I, Section F.2 of this Agreement in order to determine continued compliance with affordability requirements.

E. Project Approval Process

The Provider shall submit a completed project proposal package to the City that includes all of the required documents referenced in this document and demonstrates compliance with the HOME Program regulations stated in the Final Rule, 24 CFR Part 92 prior to City approval of the project. Upon complete submittal of the project proposal package, the City shall respond to project proposals in writing within fifteen working days. Closings on proposed construction shall not be scheduled prior to project approval by the City.

F. Program Evaluation and Monitoring

1. Program Goals: The annual performance under this Agreement shall be measured against the program goals set forth in the Provider's Application.

2. Program Monitoring: The City has the right to monitor and evaluate all aspects of activities carried out by the Provider. Such evaluations will be affected by the submission of reports and information by the Provider and monitoring visits of the by the City. The City will conduct biannual monitoring/site visits throughout the current contract year. Contractual requirements related to inspections, reports, and records include, but are not limited to:
 - a. Program Records – The Provider shall maintain monthly bank statements in a separate HOME Account, records. Reports and other information as may be required by HUD in 24 CFR Part 92.508 or by the City pertaining to matters of this Agreement.
3. Project Files: The Provider shall maintain accurate individual project files with detailed records of each property, including:
 - a. Acquisition, construction or renovation costs and operating costs attributed to a project, identifying direct assistance funded through the HOME Investment Partnership fund, CHDO Proceeds, project revenue or other sources;
 - b. A copy of the executed note and mortgage on the property;
 - c. Set-up/Completion reports on the property. Completion reports must be submitted to the City within sixty (60) days of rehab/construction and lease-up completion;
 - d. The Provider’s annual report verifying ownership and household income for each completed HOME Investment Partnership entitlement assisted unit throughout the affordable term; and
 - e. Documentation substantiating compliance with Equal Opportunity, Fair Housing and Affirmative Marketing, and other contractual requirements. The Provider shall maintain a summary of this information and shall submit this information to the City upon request. These records shall be made available to HUD and/or representatives of the Comptroller General of the United States for audit, inspection or copying purposes during normal business hours.
4. Activities Report: A monthly activity report shall be completed and submitted by the tenth working day of each month summarizing HOME funded, and other low-income housing activities, during the previous month and during the fiscal year-to-date. The report shall detail property acquisitions, construction project status, sales of property, CHDO proceeds and a description of the fund activity in the Provider’s HOME account. This report must include a monthly bank statement of the HOME Account and copies of prior month checks written against this account.
5. Records Retention: The Provider shall retain all records pertaining to this Agreement, including, but not limited to financial, statistical, property and programmatic records, for five years from the last day of the City’s fiscal year, (September 30th), in which this Agreement expires, five years after the affordability period or is terminated. All records, which are subject to audit findings, shall be retained for five years in the manner prescribed above or until an ongoing audit is completed and all issues raised by the audit are resolved, whichever is later. Nothing herein shall be construed to allow destruction of records that may be required to be retained longer by federal, state or local law. These records shall be made available to HUD and/or representatives of the Comptroller General of the United States for audit, inspection or copying purposes during normal business hours.
6. Reversion of Assets: The Provider certifies that immediately upon the earliest of: 1) the event of default under the terms and conditions of this Contract; 2) dissolution of the Provider; 3) termination of any program described herein; or 4) the expiration or termination of this Agreement, if said Agreement is not renewed or extended, any HOME Investment Partnership entitlement funds remaining in the Provider’s HOME Account, repayments of all loans, proceeds from the sale of property and title to property that has been purchased, newly constructed, and/or rehabilitated with

HOME funds and not yet leased, accounts receivable, and/or proceeds or assets attributable to the use of the HOME Investment Partnership entitlement funds, shall revert to the City. The Provider further stipulates that in the event that non-expendable personal property purchased under this Agreement is sold during the term of this Agreement, or for one year received by the Provider at any time after contract expiration, any income from the sale shall be returned to the City within ten days from the sale date. In the event that the balance of funds held in Habitat for the Provider's HOME Account, combined with the proceeds from the sale of the above HOME funded personal property, is not sufficient to repay HOME Investment Partnership entitlement funds drawn by the Provider's on open HOME projects, the Provider must provide a written explanation to the City at least 20 working days prior to the sale of any CHDO property.

G. Time of Performance

1. Annual CHDO Recertification: The CHDO Recertification documentation shall clearly demonstrate that the CHDO continues to meet the definition of a CHDO, and shall be submitted to the City by December 15, 2017, or the City may decline to recertify and decline to renew this Agreement.
2. Commencement and Term: Services described in this Agreement shall commence on December 15, 2016 and shall continue in effect through December 15, 2017. This Agreement may be subject to renewal, through December 15, 2018 only if the Provider has been recertified according to Part I, Section H, Paragraph 1, and has made significant progress toward the performance of the goals stipulated in the Work Program.
3. The agreement must be in effect through the affordability period, if rental, or until completion of the project and ownership by the low to moderate income family.
4. Reallocation of Funding: Upon consideration of renewal of this Agreement, the City shall evaluate the performance of the Provider in comparison to the goals defined in the Work Program. In the event there is no activity toward these goals, the City has the right to divide the funding stipulated in this Agreement among other qualified CHDOs.

PART II – GENERAL TERMS AND CONDITIONS

1. Religious Organizations: As partial consideration of receipt of funds under this Agreement:
 - a. The Provider shall not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;
 - b. The Provider shall not discriminate against any person seeking assistance from the Provider CHDO on the basis of religion and will not limit services or give preference to persons on the basis of religion;
 - c. The Provider shall provide no religious instruction or counseling, conduct no religious workshops or services, engage in no religious proselytizing, and exert no other religious influence on any client or employee of the Provider;
 - d. No property, from which services are provided under this Agreement, shall contain religious symbols for decoration for the term of this Agreement and the term of any mortgage and/or promissory notes issued pursuant to this Agreement; and
 - e. The Provider shall include subparagraphs a-d, above, in any subcontracts pursuant to this Agreement.

2. Other Program Requirements: The Provider shall comply with all the requirements of 24 CFR Subpart H, included, but not limited to:
- a. Equal Opportunity: In order to maintain statistical data on the use and participation of minority and women owned business enterprises as contractor/subcontractors in HOME Program contracting activities, the Provider shall be required to identify projects which have been bid by, and contracted and/or sub-contracted to minority owned, women owned, and/or small or disadvantaged businesses, by project dollar value. The Provider shall provide certification of compliance with all federal requirements under equal opportunity legislation including, but limited to:
 - i. The requirements of Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR Part 100; Executive Order 11063, as amended, (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and title VI of the Civil Rights Act of 1964 (U.S.C. 2000d) (Nondiscrimination in Federal Assisted Programs) and implementing regulations issued at 24 CFR Part 1;
 - ii. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C.6101-07) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under section 50 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;
 - iii. The requirements of Executive Order 11246 (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR chapter 60.
 - iv. The Federal requirements set forth in 24 CFR part 5, subpart A, are applicable to participants in the HOME program. The requirements of this subpart include: nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended or ineligible contractors; and drug-free workplace.
 - b. Any contract exceeding \$200,000 and any subcontract exceeding \$100,000 shall comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The Contractor shall comply with HUD's Regulations in 24 CFR Part 135, which implement Section 3, and shall include the following clause, referred to as the Section 3 clause, in all subcontracts resulting from the commitment of funds under this Agreement:

“The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing”.
 - c. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties of this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
 - d. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in a conspicuous place at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and

job title subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- e. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulation in 24 CFR Part 135.
 - f. The contractor will certify that any vacant employment positions, including training positions that are filled after the contractor is selected, but before the contract is signed, will certify that employment opportunities to be directed were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
 - g. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from further HUD assisted contractors.
 - h. The requirements of Executive Order 11625 concerning Minority Business Enterprise and 12138 concerning Woman's Business Enterprise be consistent with HUD's responsibilities under these orders, each applying entity must make efforts to encourage the use of minority and women business enterprises in connection with HOME funded activities. Any applying entity must prescribe procedures acceptable to the City to establish activities it uses to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women. To encourage the use of women and minority owned businesses in bids for the Program, the City will provide, on request, the latest list of such businesses.
3. Fair Housing/Affirmative Marketing: The Provider shall comply with all HUD and City of Clearwater fair housing and affirmative marketing requirements and policies, as set forth:
- a. The Provider shall be required to use affirmative fair housing marketing practices in soliciting clients, determining eligibility and concluding transactions, and affirmatively further fair housing efforts according to CFR Part 570.904(c). The Provider shall make affirmative marketing steps to provide information and otherwise attract eligible persons in the housing market to the available housing without regard to race, color, national origin, sex, religion, familial status or disability.
 - b. The Provider advertising of vacant units must include an equal opportunity logo or statement. Advertising media may include newspapers, radio, television, brochures, leaflets, or a sign on the property. The Provider may use community organizations, places of worship, employment centers, fair housing groups, housing counseling agencies, social service centers or medical service centers as resources for this outreach.
 - c. The Provider must maintain a file containing all marketing efforts (i.e. copies of newspaper ads, memos of phone calls, copies of letters) to be available for inspection when requested by the City.
 - d. The Provider shall maintain a list of all families residing in each unit. The City will assess the affirmative marketing efforts of the Provider by comparing predetermined occupancy goals (based on the area from which potential families will come).
 - e. The City will assess the efforts of the Provider during the marketing of the units by use of a compliance certification or personal monitoring visits to the project at least once a year.

- f. Those participating entities requesting HOME Investment Partnership entitlement funds for developments containing five or more units must provide a description of intended actions that will inform and otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market to the available housing. In such cases, the Provider must provide the City with an annual assessment of the affirmative marketing program. Said assessment must include:
 - i. Methods used to inform the public and potential owners about federal fair housing laws and affirmative marketing policy (i.e. the use of the Equal Housing Opportunity logotype or slogan in print advertising);
 - ii. Methods used to inform and solicit applications from persons in the housing market who are not likely to apply without special outreach;
 - iii. Records describing actions taken by the participating entity and/or owner to affirmatively market units; and records to assess the results of these actions.
4. Anti-displacement: The Provider shall not cause permanent displacement of current residents under the terms of this Agreement; shall inform sellers of the property of the fair market value of such property and that the Provider or buyer does not have the power of eminent domain and will not acquire the property unless a mutually agreeable price can be negotiated; and shall not acquire any property that would result in the displacement of existing tenants. The Provider further agrees that if involuntary or economic displacement occurs as a result of the Provider's actions, the Provider shall bear all the costs of relocation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1979, as amended, and Section 104(d) of the Housing and Community Development Act of 1994, as amended.
5. Labor Standards: Projects to be constructed or rehabilitated which contain 12 or more HOME assisted units, shall comply with the Davis/Bacon Act, applicable provisions of the Contract Work Hours and Safety Standards Act, 24 CFR 92.354 in Part II, Section 5 and other applicable federal laws and regulations pertaining to Labor Standards.
6. Lead-Based Paint: Housing assisted with HOME Investment Partnership entitlement funds constitutes HUD-Assisted housing for the purpose of the Lead-Based Paint Poisoning Act and is therefore, subject to 24 CFR Part 35, and shall require each buyer of subject Properties to execute the "Watch Out for Lead Based Poisoning" notifications. All such executed notifications shall be maintained in the Provider project file and a copy submitted to the City upon request.
7. Conflict of Interest: the Provider, as an owner/developer of this project, shall ensure that it, (or officer, employee, agent or consultant of the Provider), will not occupy any HOME assisted affordable housing units in the project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the Provider who occupies a housing unit as the project manager or maintenance worker.

The City may provide an exception to the provisions listed above on a case-by-case basis when the City determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the Provider's HOME assisted project. In order for the City to provide this exception, the Provider must make a written request and the City will make its determination based on the following factors:

- a. Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group;

- b. Whether the person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted housing in question;
 - c. Whether the tenant protection requirements of Section 92.53 are being observed;
 - d. Whether the affirmative marketing requirements of Section 92.351 are being observed and followed; and
 - e. Any other factor relevant to the City's determination, including the timing of the requested exception.
8. Debarment and Suspension: The Provider attests that it has not been debarred, suspended, proposed for debarment, or ineligible from participating in federally funded projects, and acknowledges that it shall not employ, award, or fund any contractors or subcontractors that have been debarred, suspended, proposed for debarment, or ineligible from participating in the federally funded projects.
9. Flood Insurance: In the event that properties are located in a Flood Zone, this Agreement is predicated upon the Provider certifying that either the cost of rehabilitation necessary to meet all applicable codes and standards does not exceed 50 percent of the appraised value of the property improvements, or that the lowest habitable floor level is at or above the allowable flood level based upon a valid survey, prepared by a licensed surveyor. If projects can be financed with HOME Investment Partnership entitlement funds as a result of compliance with either of these requirements, buyers shall maintain flood insurance for full replacement value as required by mortgagees.
10. Lobbying Prohibited: The Provider certifies, to the best of its knowledge or belief, that:
- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Provider, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds, other than federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Provider shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, with a copy of said submittal provided to City within ten days of submission.
 - c. The Provider shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements), and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000.
11. Enforcement: All transactions and related documents must be pre-approved by the City to assure compliance with all provisions of 24 CFR, Part 92. The affordability requirements are enforce by a

deed restrictions if the project is rental. The City may enforce this Agreement through termination, as follows:

- a. Termination of Contract for Cause: If, through any cause, either party shall fail to fulfill in a timely and proper manner its obligation under this Agreement, or shall violate any of the covenants, agreements, or stipulations of this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to said party of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, assets shall become the property of the City in accordance with Part I, Section F, Paragraph 3 of this Agreement. Notwithstanding the above, the Provider shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Provider. The City may withhold any payments to the Provider for the purpose of set-off until such time as the exact amount for damages due to the City from the Provider is determined.
 - b. Force Majeure: This Agreement may not be terminated if the failure to perform rises from unforeseeable causes beyond the control and without the fault or negligence of either party. Such causes may include, but are not restricted to: acts of God; acts of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault and negligence of either party. In the event of default, lack of compliance or failure to perform on the part of the Provider, the City reserves the right to exercise corrective or remedial actions, to include, but are not limited to:
 - i. Requesting additional information from the Provider to determine reasons for, or extent of noncompliance or lack of performance;
 - ii. Issue a written warning advising the Provider of deficiency and advising the Provider that more serious sanctions may be taken if situation is not remedied;
 - iii. Advise the Provider to suspend, discontinue or not incur costs for activities in question;
 - iv. Withhold payment for services provided; or
 - v. Require the Provider to reimburse the City for the amount of costs incurred for any items determined ineligible.
 - c. Termination for Convenience: The City may terminate this Agreement at any time, by giving written notice to the Provider of such termination and specifying the effective date of such termination, at least fifteen days before the effective date thereof. In that event, assets shall become the property of the City in accordance with Part I, Section F, Paragraph 3 of this Agreement. If this Agreement is terminated by the City as provided herein, the Provider will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Provider covered by this Agreement, less payments of compensation previously made.
12. Assignment and Subcontracting: The Provider shall not assign or otherwise transfer any interest in this Agreement nor enter into any subcontract pursuant to this Agreement without submitting said proposed subcontract to the City and without the prior written approval of the City of the proposed subcontract. All federal requirements of this Agreement shall be applicable to any subcontracts entered into under this Agreement and it shall be the Provider's responsibility to ensure that all federal requirements are included in said subcontracts and that all subcontractors abide by said requirements. The City shall have the right to withhold approval at its sole discretion.

13. HUD Requirements: Unearned payments under this Agreement may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by HUD at any time.
14. Hold Harmless: The Provider shall defend, indemnify and hold the City and all of its officers and employees, including but not limited to members of the Clearwater City Council, harmless from and against all costs, expenses, liabilities, suits, claims, losses, damages, and demands of every kind or nature, by one or on behalf of any person or persons whomsoever or whatsoever arising out of or in any matter resulting from or connected with any accident, injury, death or damage which may happen during the time period covered by this Agreement for services under the administration and direction of said the Provider will defend any actions or suits brought against the City by reason of the Provider's failure or neglect in complying with any of the conditions and obligations of this Agreement, or any tort liability arising out of actions of the Provider or any of its agents or subcontractors.
15. Construction Bonding and Insurance: All construction contracts or subcontracts over \$100,000 let as the result of this Agreement shall include the following requirements: a) a bid guarantee, such as a bid bond, cashier's check or certified check, from each bidder equivalent to five percent of the bid price; b) a performance bond for 100 percent of the contract price; and c) a payment bond for 100 percent of the contract price. All such bonds obtained must be from companies listed in Treasury Circular 570, and provided to the City prior to commencement of construction.
16. Insurance: The Provider shall maintain insurance coverage in the amount deemed adequate by the City for all risks inherent in the functions and aspects of its operation including but not limited to risks of fire, casualty, automobile liability coverage, workmen's compensation insurance as required by law, and public liability insurance for personal injury and property damage.
 - a. At a minimum, the Provider shall maintain public liability insurance including contractual liability coverage with a combined single limit of \$1,000,000 and automobile liability insurance with coverage including \$100,000 personal liability, \$300,000 for any single incident and \$50,000 property damage. Property casualty and flood insurance must be maintained in an amount equal to the replacement value of the property.
 - b. The Provider shall have the City named as additional insured under the coverage provided by all policies required by this Agreement, with the exception of workmen's compensation insurance. The City shall be afforded the same notice as the named insured in the event of cancellation of any policy by an insurance company.
 - c. The Provider shall submit to the City, prior to the distribution of any funds under the Agreement, proof of insurance coverage which shall consist of a copy of all policies evidencing such coverage. The City reserves the right to request proof that the insurance premium for such policies effective during the term of this Agreement has been paid.
17. Copyrights and Patents: If this Agreement results in a book or other copyright materials or patent materials, the Provider may copyright or patent such, but the City and the United States Government reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use such materials and to authorize others to do so.
18. Notification: All notices, requests, demands or other communications hereunder shall be in writing and shall be deemed to have been served as of the postmark appearing upon the envelope if sent by the United States mail at the address listed below or upon the actual date of delivery if hand delivered to the address listed below. Either party may change the below listed address at which he receives written notices by so notifying the other party hereto in writing.

ADDRESS OF CITY:

City of Clearwater
Housing Division
Post Office Box 4748 (if mailed)
Clearwater, Florida 33758
112 South Osceola Avenue (if delivered)
Clearwater, Florida 33756

ADDRESS OF THE PROVIDER

Habitat for Humanity of Pinellas County
Community Housing Development Organization, Inc.
13355 49th Street North
Clearwater, Florida 33762

Should any section or any part of any section of this Agreement be rendered void, invalid or unenforceable by any court of law, for any reason, such as determination shall not render void, invalid, or unenforceable any other section or any part of any section in this Agreement.

19. Modification: No oral agreement or conversation with any officer, agent or employee of the City, either before or after execution of this Agreement, shall affect or modify any of the terms or obligations contained in this Agreement. Any such oral agreement or conversation shall be considered as unofficial information and in no way binding upon the City. This Agreement shall not be modified except in writing signed by authorized representatives of both parties.
20. Non-Waiver: No forbearance on the part of either party shall constitute a waiver of any item requiring performance by the other party hereunder. A waiver by one party of the other party's performance shall not constitute a waiver of any subsequent performance required by such other party. No waiver shall be valid unless it is in writing and signed by authorized representatives of both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officials on the day and date first above indicated.

**Habitat for Humanity of Pinellas County
Community Housing Development
Organization, Inc.**

By _____
President

Date

ATTEST:

Secretary

Date

Countersigned:

CITY OF CLEARWATER, FLORIDA

George N. Cretekos
Mayor – Councilmember

By: _____
William B. Horne, II
City Manager

Date

Date

Approved as to form:

Attest:

Laura Mahony
Assistant City Attorney II

Rosemarie Call
City Clerk

Date

Date