

AGREEMENT

Between

BROWARD COUNTY

and

CITY OF COCONUT CREEK

for

PROVIDING FOR DISBURSEMENT OF HOME PROGRAM FUNDS FOR  
HOUSING REHABILITATION PROGRAM

FY 2015 FUNDING

IN THE AMOUNT OF \$70,974

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AGREEMENT

Between

BROWARD COUNTY

and

CITY OF COCONUT CREEK

for

PROVIDING FOR DISBURSEMENT OF HOME PROGRAM FUNDS FOR  
HOUSING REHABILITATION - MINOR HOME REPAIR PROGRAM

FY 2015 FUNDING

IN THE AMOUNT OF \$70,974

This is an Agreement ("Agreement"), made and entered into by and between BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY,"

and

CITY OF COCONUT CREEK, a municipal corporation of the State of Florida, hereinafter referred to as "CITY," collectively referred to as the "Parties".

RECITALS

WHEREAS, pursuant to 24 CFR Part 92.101, the Parties entered into a standard form HOME Consortium Cooperation Agreement approved by the Board on June 9, 2009, providing for the Parties' inclusion in the Broward County HOME Investment Partnerships Program Consortium ("HOME Consortium"), and providing for COUNTY to be the HOME Consortium's representative member or lead entity to carry out the objectives of the HOME Program on behalf of all of its members; said HOME Consortium Cooperation Agreement is incorporated herein by reference; and

WHEREAS, COUNTY, as the representative member or lead entity for the HOME Consortium is the recipient of HOME Investment Partnerships Program grant funding ("HOME Funds") from the U.S. Department of Housing and Urban Development "HUD" pursuant to the HOME Investment Partnerships Act ("HOME Act") at Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, with implementing

rules and regulations set forth in 24 CFR Part 92 for all members of the HOME Consortium, and COUNTY desires to allocate a portion of the HOME Funds to CITY; and

WHEREAS, on May 12, 2015, the Board adopted Resolution #2015-256, approving FY 2015 - 2016 HOME funding to CITY under COUNTY's HOME Program, for housing rehabilitation activities; and

WHEREAS, COUNTY is required to enter into this Agreement with CITY in order for CITY to perform HOME eligible activities within CITY; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

### ARTICLE 1 - DEFINITIONS

The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - This document, Articles 1 through 12, the exhibits and documents that are expressly incorporated herein by reference.
- 1.2 **Board** - The Board of County Commissioners of Broward County, Florida.
- 1.3 **CFR** - The Code of Federal Regulations is the codification of rules and regulations published in the Federal Register by the executive departments and agencies of the federal government of the United States.
- 1.4 **Contract Administrator** - The Contract Administrator for COUNTY is the Director of the Division or the Assistant Director of the Division. The primary responsibilities of the Contract Administrator are to coordinate and communicate with CITY's Designated Representative, and to manage and supervise execution and completion of the Project and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, the Parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Project.
- 1.5 **County Administrator** - The administrative head of COUNTY appointed by the Board.
- 1.6 **County Attorney** - The chief legal counsel for COUNTY appointed by the Board.
- 1.7 **Division** - The Housing Finance and Community Development Division.

- 1.8 **HOME or HOME Program** - The HOME Investment Partnerships Program pursuant to Title II of the Cranston National Affordable Housing Act (42 U.S.C. 1271 et seq.), with implementing rules and regulations set forth in 24 CFR Part 92.
- 1.9 **HOME Funds** - The HOME Investment Partnerships grant funding provided to CITY under this Agreement.
- 1.10 **HUD** - The United States Department of Housing and Urban Development.
- 1.11 **Income Eligible Household** - Low-income and very low-income households described in 24 CFR Part 92.2, consisting of families as defined in 24 CFR Part 5.403, with an annual anticipated gross income that does not exceed eighty percent (80%) and fifty percent (50%) respectively, of the median annual income for the area, as determined by HUD, with adjustments for family size for households within the metropolitan statistical area for Broward County, or the non-metropolitan median for the State, whichever is greater.
- 1.12 **Project** - The Project consists of the services described in Article 2.
- 1.13 **Property** - The property(ies) assisted with HOME Funds under this Agreement for the Project.
- 1.14 **Rules and Regulations of HUD** - The rules and regulations of HUD including, but not limited to, 24 CFR Part 92, "HOME Investment Partnerships Program"; Fair Housing Act, 42 U.S.C. 3601 et seq.; Section 301 of the Housing and Urban-Rural Recovery Act of 1983; Pub. Law No. 98-181, 97 Stat. 1155, CPD Notice 92-18, Procedures for the Cash and Management Information (CMI) System for the HOME Program, the applicable provisions of 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards"; 24 CFR Part 91 "Consolidated Submissions for Community Planning and Development Programs" and any Executive Orders issued by the Federal Government impacting the HOME Program; as amended from time to time, and which are incorporated herein by reference.
- 1.15 **Subconsultant or Subcontractor** - A firm, partnership, corporation, independent contractor (including 1099 individuals), or combination thereof providing services under this Agreement through CITY for all or any portion of the work or activities. The term "Subconsultant" shall include all "Subcontractors" and the term "Subcontractor" shall include all "Subconsultants."

## ARTICLE 2 - PREAMBLE

- 2.1 Pursuant to 24 CFR Part 92, HUD allocates HOME funds by formula among eligible State and local governments to strengthen public-private partnerships

and to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low-income and low-income families.

- 2.2 Pursuant to 24 CFR Part 92.105, COUNTY has been designated by HUD as a participating jurisdiction, and receives its HOME funding allocation pursuant to the Consolidated Plan submitted to and approved by HUD in accordance with 24 CFR Part 91. COUNTY may use HOME funding to carry out multi-year housing strategies through acquisition (including homebuyer activities and purchase assistance), rehabilitation, new housing construction, and tenant-based rental assistance.
- 2.3 Under the Rules and Regulations of HUD, COUNTY is the administrator for the Program and is mandated to comply with all applicable statutes, codes, rules, and regulations of the United States as to the allocation and expenditure of HOME Funds as well as protecting the interests of certain classes of individuals who reside in COUNTY.
- 2.4 COUNTY desires to disburse HOME Funds to CITY and has obtained assurances from CITY that it will comply with all applicable statutes, codes, rules, and regulations of the United States, the Rules and Regulations of HUD, the State of Florida, and COUNTY relating to the Project and the Program, as a condition precedent to the release of such HOME Funds to CITY.
- 2.5 COUNTY shall conduct all programs and activities relating to housing and community development in a manner that affirmatively furthers fair housing. COUNTY shall fund only subrecipients who have taken steps to promote fair housing.
- 2.6 In the event CITY is found to be taking actions designed to discourage affordable housing for sale or rent within the boundaries of COUNTY, CITY shall not be eligible to receive HOME Funds under this Agreement.
- 2.7 In accordance with 2 CFR Part 2400.101, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR Part 200 are applicable to the HOME Funds provided by COUNTY under this Agreement. In accordance with 2 CFR Part 200.101(b)(3), with the exception of the requirements set forth in 2 CFR Part 200, Subpart F, Audit Requirements, in the event any of the provisions of Federal statutes or regulations relating to the HOME Program differ from the provisions set forth in 2 CFR Part 200, the provision of the Federal statutes or regulations shall govern.
- 2.8 This Agreement is subject to the availability of funds as more specifically described in Articles 4 and Article 10.

### ARTICLE 3 - PROJECT

- 3.1 CITY shall provide housing rehabilitation activities for Income Eligible Households as outlined in Exhibit "A," Project Description.
- 3.2 CITY shall comply with Exhibit "B," Costs/Budget for Project, and Exhibit "C," Timetable/Schedule for Project. Failure to maintain the implementation schedule within sixty (60) days of the deadlines set forth in Exhibit "C" may warrant a full review by the Division to meet HUD's required expenditure rates for the Program year. In the event CITY fails to maintain the implementation schedule within ninety (90) days of the deadlines identified in Exhibit "C," COUNTY may terminate this Agreement in accordance with Article 10, and may transfer all uncommitted and unexpended funds to the contingency account or be reprogrammed by COUNTY consistent with the Rules and Regulations of HUD for the HOME Program.
- 3.3 The Division may issue a Stop Order to CITY which shall halt all work on the Project in the event the work is not being performed according to the terms of this Agreement or when, in the Division Director's judgment, CITY, or any of its Subcontractors, have violated federal guidelines and regulations, or the terms of this Agreement.
- 3.4 The Division will carry out periodic monitoring and evaluation activities as determined necessary by the Division. The continuation of this Agreement is dependent upon satisfactory evaluations by the Division. Such evaluation will be based on the terms of this Agreement, comparisons of planned versus actual progress relating to the Project's scheduling, budget, in-kind contributions and output measures. Upon request, CITY shall furnish to the Division Director, COUNTY, or their designees, such records and information related to the Project as is determined necessary by the Division Director or COUNTY. CITY shall submit on a monthly and quarterly basis, and at other times upon the request of the Division Director, information and status reports required by the Division, COUNTY, or HUD on forms approved by the Division Director.
- 3.5 CITY shall meet with COUNTY at reasonable times and with reasonable notice to discuss the Project.
- 3.6 CITY shall provide COUNTY with Monthly Progress Reports utilizing the form provided in Exhibit "D," which shall indicate the status of all outstanding work that has been authorized by COUNTY for the Project. The first Monthly Progress Report shall be due one (1) month after the complete execution of this Agreement by the Parties. Following completion of the Project, CITY shall complete and submit to COUNTY the Project Completion Form set forth in Exhibit "F."

- 3.7 The Parties shall cooperate in the preparation of any and all reports required under this Agreement. CITY shall furnish to COUNTY any information COUNTY requests for preparation of reports required under the Rules and Regulations of HUD, specifically 2 CFR Part 200 and 24 CFR Part 92 including, but not limited to, the Consolidated Plan and the Annual Performance Report.
- 3.8 CITY shall use its own procurement procedures for the procurement of property and services, which shall reflect applicable state and local laws and regulations; and all procurement shall conform to applicable federal law and the applicable Procurement Standards set forth in 2 CFR Part 200, Subpart D.
- 3.9 CITY shall not charge any servicing, origination, or other fees for the costs of administering the Project, except as permitted under 24 CFR Part 92.214(b)(1).
- 3.10 CITY shall ensure that the recapture and affordability restrictions set forth in 24 CFR Part 92.503 are enforced by requiring each Income Eligible Homeowner to execute a Mortgage, Promissory Note, and a Declaration of Restrictive Covenants in favor of CITY, for the amount of purchase assistance being provided. The documents shall be executed in a form substantially similar to the documents provided by COUNTY to CITY for CITY's use, for an affordability period of ten (10) years consistent with the requirements set forth in 24 CFR Part 92.503, and as further described in Exhibit "A," Project Description.
- 3.11 No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last ten (10) years of weather data recorded in the Fort Lauderdale/Hollywood International Airport Weather Station.

**ARTICLE 4 - FUNDING AND METHOD OF PAYMENT AND PROVISIONS RELATING TO THE USE OF THE FUNDS**

- 4.1 The maximum amount of HOME Funds payable by COUNTY under this Agreement shall be set forth in the applicable category(ies) below:  
  
**Check applicable category(ies):**  Regular HOME Dollars - \$70,974  
 CHDO Dollars - 15% Community Housing Development Organization (CHDO) set-aside
- 4.2 COUNTY shall reimburse CITY for the Project expenses incurred as provided in Exhibit "B," Costs/Budget for Project, provided a suspension of payment as provided in this Agreement has not occurred, and provided further that CITY complies with the procedures for invoices and payments as set forth in this



Article. At no time shall COUNTY distribute HOME Funds to CITY if it has not provided the required deliverables. In the event HUD reduces the HOME funding allocation to the HOME Consortium, COUNTY shall reduce CITY's allocation proportionately.

- 4.3 Regular HOME Dollars. Regular HOME Dollars means HOME Funds allocated by COUNTY to CITY under this Agreement in accordance with 24 CFR Part 92 and that are not designated as a fifteen percent (15%) CHDO set-aside, as described in Section 4.4.
- 4.4 CHDO Dollars. COUNTY, as the participating jurisdiction pursuant to 24 CFR Part 92.300, is required to set-aside fifteen percent (15%) of HUD's annual fiscal year HOME funding allocation to COUNTY specifically for CHDO development-related activities. CHDOs are established pursuant to 24 CFR Part 92, Subpart G, Community Housing Development Organization, to receive the set-aside HOME Program funding, and must be approved by COUNTY for the primary purpose of developing affordable housing for CITY. CITY shall administer the fifteen percent (15%) CHDO set-aside in accordance with 24 CFR Part 92.300, and shall enter into an agreement with a COUNTY-approved CHDO to provide the HOME eligible activities under this Agreement.
- 4.5 CITY shall invoice COUNTY monthly, if eligible Projects expenditures have been made, utilizing the form provided in Exhibit "G," Request for Payment, for eligible Project costs described in Exhibit "A," Project Description, and 24 CFR Part 92.206, on the following basis:
  - 4.5.1 CITY shall provide COUNTY with documentation of costs associated with any CITY personnel providing services for the Project.
  - 4.5.2 CITY shall provide COUNTY with an executed original of any contracts with Subcontractors authorizing services, work, or activities to be performed for the Project.
  - 4.5.3 CITY shall submit a certified copy of the purchase order authorizing the work or activities for which it is invoicing.
  - 4.5.4 CITY shall submit to COUNTY a certified copy of all Subcontractor invoices for the Project indicating the services, work, activities, or materials for which it is invoicing.
  - 4.5.5 CITY's administrator or the administrator's authorized representative shall certify that the services, work, activities, or materials being invoiced has been received or completed.
  - 4.5.6 Upon submittal of the final invoice for reimbursement of eligible Project expenditures made during the term of this Agreement, CITY shall provide

COUNTY with a final and complete Monthly Progress Report, utilizing the form provided in Exhibit "D."

- 4.6 Following receipt of invoices and supporting documentation, as described in Section 4.3, the Division shall review the invoices and supporting documentation to determine whether the items invoiced have been received or completed and that the invoiced items are proper for payment. Upon determination by the Division that the items invoiced have been received or completed, the Division shall make payment to CITY the amount it determines to be payable. Payment for travel expenses, if any, shall be made in accordance with COUNTY guidelines for travel reimbursement.
- 4.7 CITY shall not be entitled to payment by COUNTY for any invoices if received by COUNTY later than sixty (60) days after expiration or earlier termination of this Agreement; however, invoices for impact fees, if applicable, will be honored by COUNTY for up to twelve (12) months after expiration or earlier termination of this Agreement.
- 4.8 COUNTY shall pay CITY within thirty (30) calendar days from receipt of CITY's Request for Payment for reimbursement of eligible Project expenses, in accordance with COUNTY's Prompt Payment Ordinance, Section 1-51.6, Broward County Code of Ordinances.
- 4.9 CITY shall expend the HOME Funds allocated to the Project by the end of the term of this Agreement. All HOME Funds not expended within the term of this Agreement shall remain in the custody and control of COUNTY. CITY shall ensure there is an expenditure of HOME Funds within twelve (12) months of execution of this Agreement by the Parties, and thereafter, every ninety (90) days, wherever possible.
- 4.10 COUNTY may suspend payment under this Agreement for any of the following events:
  - 4.10.1 Ineligible use of HOME Funds;
  - 4.10.2 Failure to comply with the terms of this Agreement;
  - 4.10.3 Failure to submit reports as required, including a favorable audit report;
  - 4.10.4 Submittal of incorrect or incomplete reports in any material respect; and
  - 4.10.5 Failure to comply with the indemnification obligations under this Agreement.

In the event COUNTY elects to withhold payment to CITY pursuant to this Section 4.10, COUNTY shall specify the action(s) that must be taken by CITY as

a condition precedent to resumption of payments, and should specify a reasonable date for compliance.

- 4.11 CITY shall not request disbursement of HOME Funds under this Agreement until the HOME Funds are needed for the payment of eligible costs as described in 24 CFR Part 92.209. Program Income, repayments, or recaptured funds, as described in 24 CFR Part 92.503, hereinafter collectively referred to as ("recapture monies"), derived from the Project shall be accounted for by CITY and reported to COUNTY utilizing the Monthly Progress Report set forth in Exhibit "D." Program Income, as defined in 24 CFR Part 92.2, received by CITY from HOME eligible activities shall be deducted first by CITY from any invoice submitted by CITY for eligible costs. The remaining balance of eligible costs shall be requested from COUNTY utilizing the Request for Payment form provided in Exhibit "G."
- 4.12 Payments to CITY shall be sent to:
- City of Coconut Creek  
Attention: City Manager  
4800 West Copans Road  
Coconut Creek, Florida 33063
- 4.13 Any documentation required under this Agreement shall be furnished to COUNTY at the following address:
- Ralph Stone, Director  
Broward County Housing Finance and Community Redevelopment  
Division  
110 N.E. 3rd Street, Third Floor  
Fort Lauderdale, Florida 33301
- 4.14 At the sole discretion of the Division Director, unexpended HOME Funds not provided to or reimbursed to CITY under the terms of this Agreement may be reallocated by COUNTY to other HOME Program projects approved for funding by the Board.
- 4.15 Any HOME Funds paid to CITY in excess of the amount to which CITY is finally determined to be entitled to under this Agreement shall be repaid to COUNTY within a reasonable period after demand, and if not paid, COUNTY may reduce the debt by making an administrative offset against other requests for reimbursements.
- 4.16 Notwithstanding any provision of this Agreement to the contrary, COUNTY shall not be required to reimburse CITY any HOME Funds under this Agreement, if COUNTY is not able to obtain such funding from HUD for the payment of these costs, and COUNTY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work

which has not been remedied or resolved in a manner satisfactory to the Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by COUNTY.

- 4.17 Notwithstanding any provision in this Agreement to the contrary, in the event COUNTY is required to repay HUD any HOME funding received from HUD for the Project, pursuant to any repayment requirements set forth in 24 CFR Part 92, or any other applicable Rules and Regulations of HUD, CITY may be required to repay COUNTY such HOME Funds in accordance with the repayment provisions set forth in Section 8.5 of this Agreement.

#### **ARTICLE 5 - LIABILITY AND INDEMNIFICATION**

- 5.1 CITY is a state agency under Section 768.28, Florida Statutes, and shall be fully responsible for acts and omissions of its agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this Agreement or any other contract.
- 5.2 In the event CITY contracts with a Subcontractor to perform any work or activities for the Project, any contract with such Subcontractor shall include the following provisions, in substantially the form provided below:
- 5.2.1 Indemnification: To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless Broward County, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Subcontractor and persons employed or utilized by Subcontractor in the performance of this Contract. These indemnifications shall survive the term of this Contract.

#### **ARTICLE 6 - INSURANCE**

- 6.1 CITY is a state agency under Section 768.28, Florida Statutes, and shall furnish the Contract Administrator with written verification of liability protection in accordance with state law prior to final execution of this Agreement. In the event CITY elects to purchase excess liability coverage, Broward County, shall be named as an additional insured and certificate holder under said policy, and COUNTY shall be notified of said coverage and provided evidence of same.
- 6.2 In the event CITY contracts with a Subcontractor, to provide any of the work or activities set forth herein, the contract shall require the Subcontractor, at a minimum, to maintain in full force and effect, at Subcontractor's sole cost and expense, during the term of the contract, insurance of the types and amounts as

provided in Exhibit "H," Insurance Requirement, attached hereto, and name Broward County as an additional insured.

#### **ARTICLE 7 - ASSURANCES AND CERTIFICATIONS**

- 7.1 CITY shall comply with all applicable federal, state, and county laws, ordinances, codes, and regulations relating to the use of HOME Funds including, but not limited to, the Rules and Regulations of HUD, and requirements which may be imposed by the HOME Consortium. Any conflict or inconsistency between the any federal, state, or county regulations and this Agreement shall be resolved in favor of the more restrictive regulations.
- 7.2 CITY shall establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other association.
- 7.3 CITY shall comply with the requirements set forth in the Division's "Procedures Manual for Subrecipients," as may be amended from time to time, and incorporated herein by reference. COUNTY will provide CITY with a copy of the manual and any amendments thereto.
- 7.4 CITY shall not use HOME Funds to support or engage in any explicitly religious activities including, but not limited to, activities that involve overt religious content such as worship, religious instruction, or proselytization, as further described in 24 CFR Part 92.257.
- 7.5 CITY certifies, to the best of its knowledge and belief, that:
  - 7.5.1 No federal appropriated funds have been paid or will be paid, by or on behalf of CITY, 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.
  - 7.5.2 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 of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Agreement, CITY shall complete and submit to COUNTY Standard Form - LLL, "Disclosure Form to Report Lobbying," set forth in Appendix B to 24 CFR Part 87, in accordance with its instructions.

- 7.5.3 The language of this Section 7.5 shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all subgrantees shall be required to certify and disclose accordingly.
- 7.6 CITY shall comply with the requirements set forth in 24 CFR Part 92.50 and 24 CFR Part 5.105, Other Federal requirements, as applicable to the Project, including, but not limited to, the following:
- 7.6.1 Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and implementing regulations at 24 CFR Part 146, which prohibit discrimination of persons on the basis of race, color, or national origin, including, but not limited to, exclusion from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity for which CITY receives federal financial assistance.
- 7.6.2 Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3601 et seq.), which prohibits discrimination of persons on the basis of race, color, religion, sex, and national origin in housing practices.
- 7.6.3 Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.), and the implementing regulations set forth in 24 CFR Part 146, which prohibit discrimination of persons on the basis of age under any program, or activity for which CITY receives federal financial assistance.
- 7.6.4 Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations set forth in 24 CFR Part 8, which prohibit discrimination of qualified individuals with disabilities in participating in, or receiving benefits and services under any program or activity for which CITY receives financial federal assistance.
- 7.6.5 Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.), which requires certain federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and use by, physically handicapped persons.
- 7.6.6 Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 et seq.), which prohibits discrimination of individuals on the basis of race, color, sex, national origin, religion, or age.
- 7.6.7 Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u, and the implementing regulations set forth in 24 CFR Part 135, as applicable), which provides for training, employment, contracting, and other economic opportunities for low and very low-income persons.

- 7.6.8 The disclosure requirements and prohibitions set forth in 31 U.S.C. 1352 and implementing regulations set forth in 24 CFR Part 87; and the requirements for funding competitions established by the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531 et seq.).
- 7.6.9 The prohibitions set forth in 2 CFR Part 2424 relating to the use of debarred, suspended, or ineligible contractors and participants.
- 7.6.10 The Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.) and the implementing regulations set forth in 2 CFR Part 2429.
- 7.7 CITY shall comply with the recordkeeping and reporting requirements under this Agreement and 24 CFR Part 92, as applicable, to enable COUNTY to comply with its recordkeeping and reporting requirements set forth in 24 CFR Part 92.508.
- 7.8 In addition to the audit rights, and retention of records requirements set forth in Section 12.4, CITY shall provide COUNTY, HUD, and the Comptroller General of the United States, through any of their duly authorized representative, access to any books, documents, papers, and records of CITY, or its Subcontractors providing Project services under this Agreement, which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. The rights of access granted under this Section 7.8 shall not be limited to the required retention of records period set forth in Section 12.4, and shall remain in effect for as long as the records are retained.

#### **ARTICLE 8 - FINANCIAL RESPONSIBILITY**

- 8.1 CITY shall comply with the requirements, standards, and the applicable provisions set forth in 2 CFR Part 200, "Uniform Administrative Requirements, Costs Principles, and Audit Requirements for Federal Awards."
- 8.2 CITY shall comply with the audit requirements set forth in 2 CFR Part 200, Subpart F, "Audit Requirements," and any revisions, as applicable. The audit required under 2 CFR Part 200 must be filed with COUNTY within one hundred twenty (120) days after the close of the fiscal year of CITY. All HOME Funds provided by COUNTY should be shown via explicit disclosure in the annual financial statements or the accompanying notes to the financial statements.
- 8.3 CITY shall use HOME Funds provided by COUNTY only for eligible Project activities specifically outlined in this Agreement.

8.4 CITY shall budget and expend all HOME Funds provided by COUNTY under this Agreement in accordance with the Division's "Procedures Manual for Subrecipients," described in Section 7.3.

8.5 In addition to COUNTY's right to terminate this Agreement in accordance with Article 10, CITY shall be required to repay to COUNTY, in COUNTY's sole discretion, any HOME Funds determined by COUNTY to be ineligible for reimbursement under the terms of this Agreement including, but not limited to, in the following events:

8.5.1 Use of any HOME Funds for ineligible Project expenses or activities, including any over payments by COUNTY.

8.5.2 Any HOME Funds expended by CITY, or any of its Subcontractors, in violation of this Agreement.

In the event CITY is required to repay COUNTY any HOME Funds pursuant to this Section 8.5, CITY shall repay such funds from nonfederal resources within thirty (30) days of notice provided by COUNTY, and if not paid, COUNTY may, in its sole discretion, elect to withhold payment on any subsequent request for payment by CITY, or reduce CITY's obligation to repay COUNTY by making an administrative offset against any request for payment. COUNTY, in its sole discretion, may reallocate any funds CITY repays to COUNTY pursuant to the terms of this Agreement to other eligible HOME projects. This provision shall survive the expiration or earlier termination of this Agreement.

8.6 CITY shall disclose to COUNTY any and all third party funding, whether public or private, for the Project. No COUNTY funding shall be used to supplant existing third party funding.

8.7 Reversion of Assets. Upon expiration or earlier termination of this Agreement, CITY shall transfer to COUNTY any HOME Funds on hand at the time of expiration or earlier termination, and any accounts receivable attributable to the use of HOME Funds.

8.8 Withdrawal from the HOME Consortium.

8.8.1 In the event CITY elects to withdraw from the HOME Consortium in subsequent three (3) year consortia qualifications periods, and CITY is designated by HUD to be a HOME Participating Jurisdiction pursuant to 24 CFR Part 92, Subpart C, and receive HOME Funds to operate its own HOME Program, COUNTY shall transfer to CITY on the effective date of CITY's withdrawal from the HOME Consortium any recapture monies in its possession, as provided in Section 4.11, that are attributable to CITY's HOME funding allocation. In this event, upon transfer of the HOME Funds to CITY, CITY shall assume all obligations and responsibilities attributable to such HOME Funds.



8.8.2 In the event CITY elects to withdraw from the HOME Consortium in subsequent three (3) year consortia qualifications periods, and CITY is not designated by HUD as a HOME Participating Jurisdiction pursuant to 24 CFR Part 92, Subpart C, CITY shall transfer to COUNTY, within sixty (60) days of the effective date of CITY's withdrawal from the HOME Consortium, any recapture monies in its possession, as provided in Section 4.11, that are attributable to CITY's HOME funding allocation during the period of time CITY was a HOME Consortium member. In this event, COUNTY shall retain all obligations and responsibilities attributable to such HOME Funds.

8.8.3 In the event CITY elects to withdraw from the HOME Consortium as provided in this Section, and if the applicable three (3) year consortia qualification period overlaps with the term of this Agreement, CITY shall provide COUNTY with notice of termination of this Agreement for convenience as provided in Article 10, and CITY shall transfer to COUNTY any recapture monies in its possession, as provided in Section 4.11, that are attributable to CITY's HOME funding allocation during the period of time CITY was a member of the HOME Consortium within sixty (60) days of termination of this Agreement.

8.9 Affirmative Marketing Policy. CITY shall comply with the Affirmative Marketing Policy, set forth in Exhibit "E," as it relates to marketing the Project to Income Eligible Households.

#### **ARTICLE 9 - TERM OF AGREEMENT**

The term of this Agreement shall commence retroactively to October 1, 2015, and shall end September 30, 2017, as further described in Exhibit "C," Timetable/Schedule for Project, unless terminated earlier or extended pursuant to the terms of this Agreement. CITY shall expend the HOME Funds allocated to the Project within the term of this Agreement. CITY may submit a written request for an extension to the term of this Agreement to the Division Director no less than ninety (90) days prior to the expiration date. In the event the Division Director approves an extension to the term of this Agreement, the Parties shall enter into an amendment as provided in Section 12.18.

#### **ARTICLE 10 - TERMINATION**

10.1 This Agreement is subject to the availability of HOME funding from HUD. In the event HUD terminates, suspends, discontinues, or substantially reduces the HOME funding for the Project activity under this Agreement, COUNTY may terminate this Agreement upon CITY's receipt from COUNTY of no less than Twenty-four (24) hours' notice. COUNTY shall be the final authority as to the availability of HOME Funds.

10.2 Termination for Cause.

10.2.1 This Agreement may be terminated for cause by COUNTY, at the discretion of and through the County Administrator, if CITY fails to comply with any terms under this Agreement and has not corrected the breach within five (5) days after receipt of written notice from COUNTY identifying the breach. Any notice of termination provided by COUNTY pursuant to this Subsection 10.2.1 shall also provide CITY with an opportunity to appeal the action, and a copy of the appeal process shall be attached to the notice. CITY shall file an appeal within five (5) days of receipt of COUNTY's notice of termination.

10.2.2 Termination for cause by COUNTY may include, but is not limited to, CITY's failure to commence work on the Project, as set forth in Exhibit "C," Timetable/Schedule for Project, within ninety (90) days from the date of complete execution of this Agreement by the Parties, repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives under this Agreement, failure to repay COUNTY as provided in Section 8.5, or contracting with a Subcontractor to provide any Project services under this Agreement who has been debarred, suspended, or is otherwise excluded from, or ineligible for participation in, any federal assistance program subject to 2 CFR Part 2424. The Agreement may also be terminated for cause if CITY is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes.

10.2.3 In the event this Agreement is terminated by COUNTY for cause, CITY shall repay to COUNTY any HOME Funds determined by COUNTY to be due in accordance with Section 8.5. COUNTY may, in its sole discretion, reduce CITY's obligation to repay COUNTY by making an administrative offset against any requests by CITY for payment up to the effective date of termination as provided in Section 10.4.

10.3 Termination for Convenience. This Agreement may be terminated for convenience by either party, which termination date shall be not less than thirty (30) days after the date of such written notice. Termination for convenience for COUNTY shall be by the Board. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. If COUNTY erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which

shall be effective thirty (30) days after such notice of termination for cause is provided.

- 10.4 In the event this Agreement is terminated for any reason, COUNTY will reimburse CITY upon receipt of a Request for Payment utilizing the form provided in Exhibit "G," for documented and committed eligible Project expenses in accordance with the terms of this Agreement and Exhibit "B," Costs/Budget for Project, incurred by CITY prior to the effective date of termination of this Agreement. For purposes of this Agreement, documented and committed eligible Project expenses means any verifiable committed expense including, but not limited to, a Purchase Order for payment of materials and supplies, executed by CITY or a Subcontractor on CITY's behalf, for Project activities under this Agreement. However, CITY shall not encumber any HOME Funds under this Agreement after either party provides written notice of termination to the other party. Any payment by COUNTY pursuant to this Section 10.4 is subject to the repayment provisions in Section 8.5.
- 10.5 Notice of suspension or termination of this Agreement shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the County Administrator, which the County Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 10.6 In the event CITY elects to terminate this Agreement, or withdraw from the HOME Consortium in accordance with the provisions set forth in 24 CFR Part 92, Subpart C, CITY shall not be entitled to receive any unused portion of the HOME funding allocated to CITY.
- 10.7 Notice of suspension or termination of this Agreement shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the County Administrator, which the County Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 10.8 In the event this Agreement is terminated for any reason, any amounts due CITY shall be withheld by COUNTY until all documents are provided to COUNTY pursuant to Section 12.1 of Article 12.

#### **ARTICLE 11 - NOTICES**

In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail with a contemporaneous copy via e-mail to the addresses listed below and shall be effective upon mailing. The addresses for notice

shall remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this Article.

FOR COUNTY:

Ralph Stone, Director  
Broward County Housing Finance and Community Redevelopment  
Division  
110 N.E. 3<sup>rd</sup> Street, Third Floor  
Fort Lauderdale, Florida 33301  
Email address: rstone@broward.org

FOR CITY:

City of Coconut Creek  
Attention: City Manager  
4800 West Copans Road  
Coconut Creek, Florida 33063  
Email address: MBlasi@coconutcreek.net

## **ARTICLE 12 - MISCELLANEOUS**

### **12.1 RIGHTS IN DOCUMENTS AND WORK**

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of COUNTY, and, if a copyright is claimed, CITY grants to COUNTY and the Federal Government a non-exclusive, royalty free, and irrevocable license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by CITY, whether finished or unfinished, shall become the property of COUNTY including, but not limited to, any patent rights with respect to any discovery or invention which arises or is developed in the course of or under this Agreement, and shall be delivered by CITY to the Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to CITY shall be withheld until all documents are received as provided herein. CITY shall ensure that the requirements of this Section are included in all agreements with its Subcontractor(s).

### **12.2 EQUAL EMPLOYMENT OPPORTUNITY**

No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement.

CITY shall include the foregoing or similar language in its contracts with any Subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 CFR Parts 23 and 26.

Failure by CITY to carry out any of the requirements of this Section shall constitute a material breach of this Agreement, which shall permit COUNTY to terminate this Agreement or to exercise any other remedy provided under this Agreement, Broward County Code of Ordinances, Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

By execution of this Agreement, CITY represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. COUNTY hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle COUNTY to terminate this Agreement and recover from CITY all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

### 12.3 PUBLIC RECORDS

COUNTY is a public agency subject to Chapter 119, Florida Statutes. To the extent CITY is a contractor acting on behalf of COUNTY pursuant to Section 119.0701, Florida Statutes, CITY shall:

- 12.3.1 Keep and maintain public records that ordinarily and necessarily would be required to be kept and maintained by COUNTY were COUNTY performing the services under this Agreement;
- 12.3.2 Provide the public with access to such public records on the same terms and conditions that COUNTY would provide the records and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- 12.3.3 Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and
- 12.3.4 Meet all requirements for retaining public records and transfer to COUNTY, at no cost, all public records in possession of CITY upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to COUNTY in a format that is compatible with the information technology systems of COUNTY.

The failure of CITY to comply with the provisions set forth in this Section shall constitute a default and breach of this Agreement and COUNTY shall enforce the default in accordance with the provisions set forth in Section 10.2.

#### 12.4 AUDIT RIGHTS, AND RETENTION OF RECORDS

COUNTY shall have the right to audit the books, records, and accounts of CITY and its Subcontractors that are related to this Agreement. CITY and its Subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement and performance thereunder. All books, records, and accounts of CITY and its Subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, CITY, or its Subcontractor, as applicable, shall make same available at no cost to COUNTY in written form.

CITY and its Subcontractors shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the minimum required retention period set forth in 24 CFR Part 92, of five (5) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or five (5) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for COUNTY's disallowance and recovery of any payment upon such entry.

CITY shall ensure that the requirements of this Section are included in all agreements with its Subcontractors.

#### 12.5 TRUTH-IN-NEGOTIATION REPRESENTATION

CITY's compensation under this Agreement is based upon representations supplied to COUNTY by CITY, and CITY certifies that the information supplied, including without limitation in the negotiation of this Agreement, is accurate, complete, and current at the time of contracting. COUNTY shall be entitled to recover any damages it incurs to the extent such representation is untrue.

#### 12.6 PUBLIC ENTITY CRIME ACT

CITY represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. In addition to the foregoing, CITY further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida

Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CITY has been placed on the convicted vendor list. Notwithstanding any provision in this Agreement to the contrary, if any representation stated in this Section is false, COUNTY shall have the right to immediately terminate this Agreement and recover all HOME Funds paid to CITY under this Agreement.

#### 12.7 INDEPENDENT CONTRACTOR

CITY is an independent contractor under this Agreement. In providing Services under this Agreement, neither CITY nor its agents shall act as officers, employees, or agents of COUNTY. CITY shall not have the right to bind COUNTY to any obligation not expressly undertaken by COUNTY under this Agreement.

#### 12.8 THIRD PARTY BENEFICIARIES

Neither CITY nor COUNTY intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and no third party shall be entitled to assert a claim against either of them based upon this Agreement.

#### 12.9 ASSIGNMENT AND PERFORMANCE

Except for subcontracting approved in writing by COUNTY at the time of its execution of this Agreement or any written amendment hereto, neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by CITY without the prior written consent of COUNTY. If CITY violates this provision, COUNTY shall have the right to immediately terminate this Agreement. CITY represents that each person and entity that will provide services under this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render services. CITY agrees that all services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

#### 12.10 CONFLICT OF INTEREST

CITY shall comply with the requirements set forth in 24 CFR Part 92.356 relating to the Conflict of Interest provisions. Any possible conflicting interest on the part of CITY, its officers, employees, or agents, shall be disclosed in writing to the Division.

#### 12.11 CONFLICTS

Neither CITY nor its employees shall knowingly have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CITY's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. None of CITY's officers or employees shall, during the term of this Agreement, serve as an expert witness against COUNTY in any legal or administrative proceeding in which he, she, or CITY is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of COUNTY in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this Section shall not preclude CITY or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding. CITY shall not be in violation of this paragraph unless it has actual knowledge of such conduct of its officers or employees.

In the event CITY is permitted pursuant to this Agreement to utilize Subcontractors to perform any services required by this Agreement, CITY shall require such Subcontractors, by written contract, to comply with the provisions of this Section to the same extent as CITY.

#### 12.12 MATERIALITY AND WAIVER OF BREACH

Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof. COUNTY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

#### 12.13 COMPLIANCE WITH LAWS

CITY shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

#### 12.14 SEVERABILITY

In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.



#### 12.15 JOINT PREPARATION

This Agreement has been jointly prepared by the Parties hereto, and shall not be construed more strictly against either party.

#### 12.16 INTERPRETATION

The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

#### 12.17 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached hereto or referenced or incorporated herein and any provision of Articles 1 through 12 of this Agreement, the provisions contained in Articles 1 through 12 shall prevail and be given effect. In the event there is a conflict between any provisions set forth in this Agreement and a more stringent state or federal provision which is applicable to any services performed under this Agreement, the more stringent state or federal provision shall prevail.

#### 12.18 AMENDMENTS

The Parties may amend this Agreement to conform to changes in federal, state, or local laws, regulations, directives, and objectives. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and CITY or others delegated authority to or otherwise authorized to execute same on their behalf. The County Administrator shall be authorized to execute amendments that extend the term of the Agreement or that change the Project, so long as the Project consists of eligible activities under 24 CFR Part 92. The Division Director shall be authorized to approve, in writing, line item budget changes to the information set forth in Exhibit "B," Costs/Budget for Project, during the term of this Agreement and for sixty (60) days after expiration or earlier termination of this Agreement, as provided in Section 4.7 of this Agreement, in order to reconcile CITY's expenditures of HOME Funds, provided such changes do not

result in an increase in the HOME Funds set forth in Section 4.1 of this Agreement, and Exhibit "B." The written document from the Division Director approving such changes shall be deemed incorporated into this Agreement.

#### 12.19 LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the Parties agree that the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, CITY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

#### 12.20 PRIOR AGREEMENTS

This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

#### 12.21 PAYABLE INTEREST

12.21.1 Payment of Interest. COUNTY shall not be liable to pay any interest to CITY for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof CITY waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This paragraph shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

12.21.2 Rate of Interest. If, for whatever reason, the preceding subsection is determined to be invalid or unenforceable by a court of competent

jurisdiction, the annual rate of interest payable by COUNTY under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, 0.25% (one quarter of one percent) simple interest (uncompounded).

#### 12.22 INCORPORATION BY REFERENCE

Any and all Recital clauses stated above are true and correct and are incorporated herein by reference. The attached Exhibits "A" - "H" are incorporated into and made a part of this Agreement. The Rules and Regulations of HUD and any other HUD regulations addressed in this Agreement which are not specifically identified in the definition contained in Section 1.14 shall be incorporated herein by reference.

#### 12.23 LEGAL PROVISIONS DEEMED INCLUDED

Each and every provision of any law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and this Agreement shall be read and enforced as though it were included herein and if, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon application of either party, this Agreement shall be amended to make such insertion.

#### 12.24 SURVIVAL

Either party's right to monitor, evaluate, enforce, audit and review, any obligations to indemnify and insure, any assurances and certifications, and items of financial responsibility shall survive the expiration or earlier termination of this Agreement. Any provision of this Agreement which contains a restriction or requirement which extends beyond the date of termination or expiration set forth herein shall survive expiration or earlier termination of this Agreement and be enforceable.

#### 12.25 FURTHER ASSURANCE

The Parties shall execute, acknowledge, deliver, and cause to be done, executed, acknowledged, and delivered all such further documents, and perform such acts as shall reasonably be requested of it to carry out this Agreement and give effect hereto. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Agreement, the Parties intend to cooperate with each other in effecting the terms of this Agreement.

#### 12.26 TIME IS OF THE ESSENCE

Time is of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

#### 12.27 SPECIFIC PERFORMANCE

In addition to all other remedies, CITY's obligations contained herein shall be subject to the remedy of specific performance by appropriate action commenced in a court of competent jurisdiction.

#### 12.28 FORCE MAJEURE

If the performance of this Agreement, or any obligation hereunder is prevented by reason of hurricane, earthquake, or other casualty caused by nature, or by labor strike, war, or by a law, order, proclamation, regulation, ordinance of any governmental agency, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, provided that the party so affected shall first have taken reasonable steps to avoid and remove such cause of non-performance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other party in writing and resume performance hereunder whenever such causes are removed; provided, however, that if such non-performance exceeds sixty (60) days, the party that is not prevented from performance by the force majeure event shall have the right to terminate this Agreement upon written notice to the party so affected. This section shall not supersede or prevent the exercise of any right the Parties may otherwise have to terminate this Agreement.

#### 12.29 COUNTY BUSINESS ENTERPRISE PROGRAM

COUNTY has established a policy relating to County Business Enterprise ("CBE") program participation in all COUNTY contracts. Although this Agreement does NOT have assigned CBE goals, CITY shall comply with the procurement standards set forth in 2 CFR Part 200.321.

#### 12.30 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

#### 12.31 DESIGNATED REPRESENTATIVE

CITY's Designated Representative under this Agreement is the City Manager.

12.32 COUNTERPARTS AND MULTIPLE ORIGINALS

This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY, through the County Administrator, authorized to execute same by action of the Board on May 12, 2015, and CITY OF COCONUT CREEK, signing by and through its Mayor duly authorized to execute same.

COUNTY

WITNESSES:

BROWARD COUNTY, through the  
County Administrator

\_\_\_\_\_  
Signature

By \_\_\_\_\_  
Bertha Henry

\_\_\_\_\_  
Print Name

\_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Approved as to form by  
Joni Armstrong Coffey  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

Insurance requirements  
approved by Broward County  
Risk Management Division

By \_\_\_\_\_  
Signature (Date)

By \_\_\_\_\_  
Patrice M. Eichen (Date)  
Assistant County Attorney

\_\_\_\_\_  
Print Name and Title above

PME:dp  
HOME ILA Coconut Creek Rehab Activities  
01/27/16  
#16-129.12

AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF COCONUT CREEK  
PROVIDING FOR DISBURSEMENT OF HOME PROGRAM FUNDS FOR  
REHABILITATION PROGRAM, FY 2015 FUNDING, IN THE AMOUNT OF \$70,974

CITY

CITY OF COCONUT CREEK

ATTEST:

By Leslie Wallace May  
City Clerk

By Rebecca C. Tooley  
Mayor

Rebecca A Tooley  
Print/Type Name

1 day of February, 2016

By Mary C. Blasi  
City Manager

MARY C. BLASI  
Print/Type Name

1<sup>st</sup> day of FEBRUARY, 2016

Approved as to form:

Janell C. Pyle  
City Attorney 2/1/16

**EXHIBIT "A"**  
**PROJECT DESCRIPTION**

FY 2015 Funding

Project Description - City of Coconut Creek Housing Rehabilitation Program

Allocation HOME Funds: \$70,974

The HOME Funds in the amount of \$70,974 provided by COUNTY to CITY under the Agreement shall be used for housing rehabilitation. A minimum of two (2) Income Eligible Households shall be assisted in an amount up to Thirty Thousand Dollars (\$30,000) per household, including all rehabilitation costs defined in the Agreement for HOME Eligible Activities. Applicants will be processed by CITY on a first come, first served basis. CITY's Program shall be administered in accordance with CITY's Local Housing Assistance Plan (LHAP).

CITY shall ensure that each Income Eligible Household assisted with HOME Funds under the Agreement execute a Promissory Note and Mortgage in favor of CITY in accordance with the terms of the CITY's Local Housing Assistance Plan (LHAP), which includes the following requirements:

- Ten (10) year term, 0% interest Deferred Payment Loan ("Loan").
- Loan due upon sale, transfer, rental, cash-out refinance, or home equity loan, before expiration of the ten (10) year occupancy period.
- Loan is satisfied at the end of ten (10) years. For elderly applicants (62 years of age or older), ten percent (10%) of the Loan shall be forgiven each year on the anniversary date of the Loan, provided the property remains the primary residence of the homeowner.
- Subordination policy, no lower than second position and with no cash out.

CITY shall comply with HOME Rules and Regulations governing the Project and CITY's Program including, but not limited to, the following:

- All rehabilitation shall be in compliance with applicable local codes and the Florida Building Code in accordance with 24 CFR Part 92.251, Property Standards.
- Lead-based paint testing and abatement, as needed, in accordance with 24 CFR Part 92.355.
- Income Eligible Household shall refer to a household with a maximum household income less than 80% of COUNTY median.
- Federal procurement procedures set forth in 24 CFR Part 92.504(c)(4) are applicable to the selection of the contractor.
- Ensure compliance with the recapture and affordability restrictions set forth in the Agreement.



**EXHIBIT "B"**

**COSTS/BUDGET FOR PROJECT**  
**FY 2015**

<b>CATEGORY</b>	<b>FUNDING SOURCE</b> <b>HOME</b>
A. Construction Costs	\$60,000
B. Soft Costs	3,877
C. Staff Costs (Service Delivery)	<u>\$ 7,097</u>
<b>TOTAL</b>	<b>\$70,974</b>

**BUDGET NARRATIVE FY 2015 Funding**

- A. Construction Costs - Hard Costs (Home Rehabilitation and Repair) - \$60,000
- B. Soft Costs - Inspections, Appraisal, Doc Stamp/Recording Fee - \$ 3,877
- C. Staff Costs (Service Delivery costs associated with implementing the Project) - \$ 7,097

**EXHIBIT "C"**  
**TIMETABLE/SCHEDULE FOR PROJECT**

<b><u>WORK TASKS</u></b>	<b><u>START-UP</u></b>	<b><u>COMPLETION</u></b>
Identify and process Income Eligible Households	October 2015	March 2017
Provide Monthly Progress Reports to COUNTY	One month after execution of Agreement by the Parties	September 2017
Commence Work Write-Ups	January 2016	April 2017
Commence Repairs	February 2016	June 2017
Repairs Completed	N/A	July 2017
Final Invoice to COUNTY	N/A	August 2017
Provide Close Out Report to COUNTY	N/A	September 2017

**EXHIBIT "D"**  
**MONTHLY PROGRESS REPORT**

Period Covered: \_\_\_\_\_ to \_\_\_\_\_ Date of Report: \_\_\_\_\_

**A. Project Information.**

Agency:

Person Preparing the Report:

Signature and Title:

Project Title:

Project Start-up Date:

Project Completion Date:

Amended Completion Date:

**B.1 Project Cost.**

	<u>Budget</u>	<u>Funds Expended</u>	<u>Percentage</u>
Total Project	\$ _____	\$ _____	_____ %
HOME Funding	\$ _____	\$ _____	_____ %
Other Funding	\$ _____	\$ _____	_____ %

**B.2 Declaration of Agency Budget Changes.**

Program Income/Recapture:

Source of Program Income/Recapture:

**B.3 Other Grant Awards.**

Date(s): \_\_\_\_\_ Dollar Amount \_\_\_\_\_

Funding Source \_\_\_\_\_

**B.4 Percent of Project Completed to date. \_\_\_\_\_**

**EXHIBIT "D"**  
**MONTHLY PROGRESS REPORT**  
**(Continued)**

**C. 1 Describe specific work tasks and qualified accomplishments completed this month:**

<u>Task</u>	Qualified Accomplishments <u>This Month</u>
-------------	---

**C.2 Describe success or problems encountered with the Project:**

---

**C.3 Anticipated problems or concerns with the Project: Please identify technical assistance needed and/or requested from the Housing Finance and Community Redevelopment Division staff.**

---

**C.4 Anticipated advertisements and/or other contractual services: If applicable, has the Housing Finance and Community Redevelopment Division staff been advised and appropriate steps taken to assure compliance?**

**D. Program Objectives:**

Work Tasks	Projected Yearly/ <u>Total Performance</u>	Monthly <u>Progress</u>	Progress <u>YTD</u>	Supporting <u>Documentation</u>
------------	---	----------------------------	------------------------	------------------------------------

**EXHIBIT "D"**  
**MONTHLY PROGRESS REPORT**  
**(Continued)**

**DIRECT BENEFIT REPORT FORM**

Please specify total number of persons or households (as applicable) assisted/served since execution of the Agreement.

Households	Persons	Low to Moderate Income	Low Income	White-Not Hispanic Origin	Black-Not Hispanic Origin	American Indian or Alaskan Native	Hispanic	Asian or Pacific Islander	Female Headed Household

**EXHIBIT "E"**  
**AFFIRMATIVE MARKETING POLICY**

A. AFFIRMATIVE MARKETING:

1. DISSEMINATION OF INFORMATION

The following methods shall be used to inform the public, owners, and potential tenants about Federal Fair Housing Laws and the marketing policy of the Housing Finance and Community Development Division.

From time to time, CITY shall canvass the eligible areas disseminating program and fair housing information flyers to tenant associations, civic associations, public service agencies, tenant groups, civic and fraternal organizations, churches, housing counseling, consumer affairs, business and non-profit groups.

Public service announcements will be made on radio and television stations. Press releases will be placed in newspapers and other publications circulated widely in target areas.

The Equal Housing Opportunity logo will be used on all printed materials.

2. OWNER PRACTICES AND PROCEDURES

CITY must adhere to the following requirements and practices in order to carry out the affirmative marketing policies of the Housing Finance and Community Redevelopment Division's Program.

Advertise in circulars and periodicals having wide distribution in target areas. Display leaflets, brochures, and other printed materials containing the equal housing logo in conspicuous locations at places frequented by potential tenants and persons least likely to apply for the rental housing.

3. SPECIAL OUTREACH

CITY shall endeavor to notify the public of its programs by conducting special outreach activities including, but not limited to, community organizations, places of worship, employment centers, fair housing groups, and housing counseling agencies.

4. FAILURE TO COMPLY WITH REQUIREMENTS

Failure on the part of CITY to comply with the affirmative marketing requirements provided herein, or to cure or remedy identified violations within thirty (30) days of notification of violations shall result in in suspension of undisbursed HOME Funds under the Agreement.

**EXHIBIT "E"**  
**AFFIRMATIVE MARKETING POLICY**  
**(continued)**

B. CIVIL RIGHTS

No person shall be discriminated upon based on race, color, sex, age, marital status, handicap, religion, or national origin in the rental, lease, sale, or use of the property to be constructed with HOME Investment Partnerships Program (HOME) Funds obtained through the HOME Program in accordance with Title 8 of the Civil Right Act of 1968, 42 U.S.C. 3601-3619, and the HUD Fair Housing Code 24 CFR Parts 14, 100, 103-106, 109, 110, 115, and 121.

C. INTEREST OF PUBLIC BODY

No member of the governing body of Broward County or CITY or any employee of the Housing Finance and Community Redevelopment Division or CITY may have any interest, direct or indirect, in the proceeds of any loan or in any contract entered into by the borrower for the performance of work financed, in whole or in part, with the proceeds of the loan.

D. DISPLACEMENTS

Multi-family housing projects are designed to increase the supply of rental housing for low and very low-income families. However, in the event that displacement occurs, relocation will be conducted in accordance with COUNTY's relocation policies consistent with 24 CFR Part 92.353. Information on this policy may be obtained from the Broward County Housing Finance and Community Redevelopment Division, 110 N.E. 3rd St., Third Floor, Fort Lauderdale, Florida 33301.

The existing evaluation and monitoring activities conducted by the Housing Finance and Community Redevelopment Division will be applied to the HOME Program to ensure compliance with local and federal policies, regulations, and required reports. In instances of noncompliance, corrective action will be taken.





**EXHIBIT "G"**  
**REQUEST FOR PAYMENT**

Broward County Board of Commissioners, Broward County, Florida  
Housing and Community Redevelopment Division

HOME PROGRAM  
FY 2015 FUNDING  
CONTRACT PERIOD \_\_\_\_\_ THROUGH \_\_\_\_\_  
HOME Funding Amount: \$ \_\_\_\_\_

1. Project: \_\_\_\_\_
2. City: \_\_\_\_\_
3. Billing # \_\_\_\_\_
4. Billing Period Covered \_\_\_\_\_
5. % of Total Contract Expended through this Billing \_\_\_\_\_

6.	Cost Categories	Total Expenditures Up to last billing	Expenditures this billing	Total Expenditures to date
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Project Costs:

(Itemized per Exhibit "B")

TOTALS	\$ _____	\$ _____	\$ _____

**EXHIBIT "G"**  
**REQUEST FOR PAYMENT**  
**(continued)**

Detail of Request for Payment (attach copies of backup for billing)

<u>Vendor/Client Name</u>	<u>Invoice #</u>	<u>Description</u>	<u>Amount</u>
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Certification: I certify that this billing is correct and just and based upon obligations of record for this project; that the work and services are in accordance with Broward County approved agreement, including any amendments thereto; and that the progress of the work and services under the project agreement are satisfactory and are consistent with the amount billed.

\_\_\_\_\_  
Signature and title of Authorized Official

\_\_\_\_\_  
Date

**EXHIBIT H**

**Insurance Requirements**

The following coverage is deemed the minimum insurance required for this project. The selected firm must be prepared to provide proof of insurance commensurate with or in excess of this requirement. Any deviation is subject to the approval of Risk Management.

TYPE OF INSURANCE	MINIMUM LIABILITY LIMITS		
		Each Occurrence	Aggregate
<b>COMMERCIAL GENERAL LIABILITY</b> Broad form or equivalent  <i>With no exclusions or limitations for:</i> <input checked="" type="checkbox"/> Premises-Operations <input checked="" type="checkbox"/> Explosion, Collapse, Underground Hazards <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury <input checked="" type="checkbox"/> Other: Mobile Equipment	Bodily Injury		
	Property Damage		
	Combined single limit Bodily Injury & Property Damage	\$ 500 k	\$ 1 mil
	Personal Injury		
<b>BUSINESS AUTO LIABILITY COMPREHENSIVE FORM</b>  <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Scheduled <input checked="" type="checkbox"/> Any Auto	Bodily Injury (each person)		
	Bodily Injury (each accident)		
	Property Damage		
	Combined single limit Bodily Injury & Property Damage	\$ 500 k	
<b>EXCESS/UMBRELLA LIABILITY</b>  <i>May be used to supplement minimum liability coverage requirements.</i>	Follow form basis or Add'l insd endorsement is required		
<input checked="" type="checkbox"/> <b>WORKERS' COMPENSATION</b> <i>If exempt: State Exemption Certificate or letter on company letterhead is required.</i> <input checked="" type="checkbox"/> <b>EMPLOYERS' LIABILITY</b>	Chapter 440 FS  (each accident)	<b>STATUTORY</b>  \$ 100 k	U.S. Longshoremen & Harbor Workers' Act & Jones Act is required for any activities on or about navigable water
<b>PRODUCT LIABILITY</b>  <i>Product liability coverage for the project.</i>	Product liability		
<b>CONTRACTORS' POLLUTION LIABILITY</b>  <i>Contractors' Pollution Liability coverage for the project.</i>	Contractors' Pollution Liability		
<b>LIABILITY FOR POLLUTION</b>  <i>Liability for pollution coverage for the project.</i>	Liability for Pollution		
DESCRIPTION OF OPERATIONS, LOCATIONS, VEHICLES BROWARD COUNTY AND CITY ARE LISTED AS AN ADDITIONAL INSURED ON THE GENERAL LIABILITY POLICY.			
<b>REFERENCE:</b>			
<b>CERTIFICATE HOLDER:</b> Broward County 115 South Andrews Avenue Fort Lauderdale, FL 33301			

Revised 2013