



Interoffice Memorandum

AGENDA ITEM

June 24, 2019

TO: Mayor Jerry L. Demings
-AND-
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director
Community, Environmental, and Development
Services Department

CONTACT PERSON: **Mitchell Glasser, Manager
Housing and Community Development Division
407-836-5190**

SUBJECT: July 16, 2019 – Consent Item
Consent to Assignment

On June 6, 2017, Orange County entered into agreements with Habitat for Humanity of Greater Orlando, Inc. and Habitat for Humanity of Seminole County and Greater Apopka, Inc. to utilize federal funds to acquire land for construction of 56 affordable single-family units in the South Apopka area. Of those, Habitat for Humanity of Seminole County and Greater Apopka, Inc. was to construct 22 units by December 31, 2021. Recognizing that meeting this completion date will be challenging, Habitat for Humanity of Seminole County and Greater Apopka, Inc. has requested to transfer 10 lots to Habitat for Humanity of Greater Orlando and Osceola County, Inc. to complete the project buildout in a timely manner.

The original Agreement between Orange County and Habitat for Humanity of Seminole County and Greater Apopka, Inc. requires a written consent by the County to complete such assignment. The Consent has been reviewed by the County Attorney's Office as to form.

ACTION REQUESTED: Approval and execution of Orange County, Florida and Habitat for Humanity of Seminole County and Greater Apopka, Florida, Inc. and Habitat for Humanity Greater Orlando and Osceola County, Inc. Consent to Assignment related to the Community Development Block Grant Program Agreement for Fiscal Year 2016-2017 Document Number: 20180240170 to transfer the construction responsibilities for 10 affordable housing units. District 2

JVW:NS:ER
Attachments

ORANGE COUNTY, FLORIDA

and

**HABITAT FOR HUMANITY OF SEMINOLE COUNTY AND GREATER APOPKA,
FLORIDA, INC.**

and

HABITAT FOR HUMANITY GREATER ORLANDO AND OSCEOLA COUNTY, INC.

CONSENT TO ASSIGNMENT

related to

**THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM AGREEMENT
FOR FISCAL YEAR 2016-2017
Document Number: 20180240170**

THIS CONSENT TO ASSIGNMENT (“Consent”) is by and between **ORANGE COUNTY, FLORIDA** (the “County”), a charter county and political subdivision of the State of Florida, located at 201 South Rosalind Avenue, Orlando, Florida 32802, **HABITAT FOR HUMANITY OF SEMINOLE COUNTY AND GREATER APOPKA, FLORIDA, INC.** (the “Assignor”), a qualified not-for-profit corporation registered under the laws of the State of Florida with offices at 251 Maitland Avenue, Suite 312, Altamonte Springs, Florida 32701, and **HABITAT FOR HUMANITY GREATER ORLANDO AND OSCEOLA COUNTY, INC.** (the “Assignee”), a qualified not-for-profit corporation registered under the laws of the State of Florida with offices at 4116 Silver Star Road, Orlando, Florida 32808. The County, the Assignor, and the Assignee may be referred to in this Consent individually as “party” or collectively as “parties.”

RECITALS

WHEREAS, on or about June 6, 2017, the County and the Assignor entered into an Agreement regarding the Community Development Block Grant Program for Fiscal Year 2016-2017 that was entered into the public record as Document Number 20180240170 (the “Agreement”) and is attached to this Consent as **Exhibit “A”**; and

WHEREAS, pursuant the Agreement, the Assignor agreed to acquire land to construct twenty-two (22) affordable housing units by the end of 2021 (the “Project Completion Date”); and

WHEREAS, Article IV, Section 2 on Page 20 of the Agreement, entitled “**Assignment**,” states that the Agreement shall not be assigned without the prior written consent of the County; and

WHEREAS, the Assignor is unable to complete the terms of the Agreement by the Project Completion Date and has requested that the County permit the Assignor to partially assign the Agreement to the Assignee to ensure that the Agreement is completed by the Project Completion Date; and

WHEREAS, the County is willing to consent to the Assignor's requested partial Assignment of the Agreement to the Assignee on the terms and conditions in this Consent.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Consent, and for valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

Section 1. **Recitals.** The recitals above are true and correct and form a material part of this Consent.

Section 2. **Documents.**

A. The documents that are hereby incorporated by either reference or attachment and therefore form this Consent are:

1. This Consent;
2. **Exhibit "A"**: the Agreement
3. **Exhibit "B"**: Scope of Work
4. **Exhibit "C"**: Legal Description
5. **Exhibit "D"**: Property Location Map

Section 3. **Effective Date.** This Consent shall be effective as of the date of execution by the County (the "Effective Date").

Section 4. **Assumption and No Release.** The Assignee expressly assumes and agrees, for the benefit of the County, to be bound by, and to perform and comply with, the obligations of the Assignor under the Agreement and in accordance with the "Scope of Work" attached to this Consent as **Exhibit "B."** The Assignee's obligations under the Agreement shall be limited to the extent of the Project (as defined in the attached Scope of Work), and upon the completion of the Project, the Assignee shall have no further obligations under the Agreement except for the limited obligation to comply with post completion obligations and reporting requirements set forth in the Agreement to the extent such obligations and requirements are related to the Project. Notwithstanding the Assignment, or the County's consent to the Assignment, the Assignor will be, and shall remain, jointly and severally liable for the performance of all of the Assignor's obligations under the Agreement from and after the Effective Date of this Consent.

Section 5. **Subsequent Assignments; Recapture.** This Consent does not constitute consent to any additional future assignment. Accordingly, this Consent does not relieve the Assignee, or any person claiming under or through the Assignee, of the obligation to obtain the consent of the County to any future assignment.

Section 6. **Default Under Agreement.** In the event of any default of the Assignee under the Agreement, the County may proceed directly against the Assignee, any guarantors, or anyone else liable under the Agreements without first exhausting the County's remedies against any other person or entity liable under the Agreement to the County. Notwithstanding the foregoing, any act or omission of the Assignee, or anyone claiming under or through the Assignee, that violates any of the provisions of the Agreement will be deemed a default under the Agreement by the Assignor.

Section 7. **Governing Law.** This Consent, and any and all actions directly or indirectly associated with this Consent, shall be governed by and construed in accordance with the internal laws of the State of Florida, without reference to any conflicts of law provisions.

Section 8. **Venue.** Each party hereby submits to the exclusive jurisdiction of, and waives any venue or other objection against, the Ninth Circuit Court in and for Orange County, Florida, for any legal proceeding(s) that may arise either directly, or indirectly, from this Consent. Should any federal claims arise for which the courts of the State of Florida lack jurisdiction, the parties hereby agree that venue for those actions shall be in the Orlando Division of the U.S. Middle District of Florida

Section 9. **Jury Waiver.** Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right that party does or might have to a trial by jury in any legal proceeding(s) that may arise either directly, or indirectly, from this Consent.

Section 10. **Attorneys' Fees and Costs.** With the exception of the indemnification terms of the Agreement, the parties shall each bear their own costs, expert fees, attorneys' fees, and other fees incurred in connection with this Consent, as well as for any or any legal proceeding(s) that may arise either directly, or indirectly, from this Consent.

Section 11. **Headings.** The headings or captions of articles, sections, or subsections used in this Consent are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Consent.

Section 12. **Representations and Construction.** Each party represents that they have had the opportunity to consult with an attorney, and have carefully read and understand the scope and effect of the provisions of this Consent. Neither party has relied upon any representations or statements made by the other party that are not specifically set forth in this Consent, and that this Consent is not to be construed against any party as if it were the drafter of this Consent.

Section 13. **Modifications to Consent.** Any agreement made after the date of this Consent is ineffective to modify, waive, or terminate this Consent, in whole or in part, unless that agreement is in writing, signed by the parties to this Consent, and specifically states that it is intended to modify this Consent.

Section 14. Effect; Conflict. Except as modified by this Consent, all terms and provisions of the Agreement are hereby ratified and confirmed and shall remain in full force and effect. In the event of any conflict between the provisions of this Consent and the provisions of the Agreement, the provisions of this Consent shall control.

Section 15. Notice. All notices under this Agreement shall be in writing and delivered by hand delivery, express courier, or United States Postal Service certified mail with return receipt requested, and shall be effective upon receipt of the same. Notices shall be delivered to each of the parties at the following addresses or at such other addresses as specified by written notice in compliance with the terms of this paragraph.

As to the County: Orange County Housing and Community
Development Division
Attn: Manager
525 East South Street
Orlando, Florida 32801

and

Orange County Administrator
Administration Building, 5th Floor
201 South Rosalind Avenue
Orlando, Florida 32802

As to the Assignor: Habitat for Humanity of Seminole County and
Greater Apopka, Florida, Inc.
Attn: Executive Director
P.O. Box 181010
Casselberry, Florida 32718

As to the Assignee: Habitat for Humanity Greater Orlando and Osceola
County, Inc.
Attn: President/CEO
4116 Silver Star Road
Orlando, Florida 32808

Section 16. Severability. The provisions of this Consent are declared by the parties to be severable. However, the material provisions of this Consent are dependent upon one another, and such interdependence is a material inducement for the parties to enter into this Consent. Therefore, should any material term, provision, covenant or condition of this Consent be held invalid or unenforceable by a court of competent jurisdiction, the party protected or benefited by such term, provision, covenant, or condition may demand that the parties negotiate such reasonable alternate contract language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from holding.

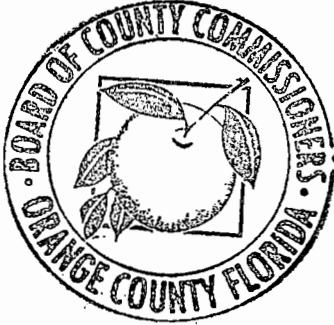
Section 17. Signatory. Each signatory below represents and warrants that he or she has full power and is duly authorized by their respective party to enter into and perform in accordance with this Consent. Such signatory also represents that he or she has fully reviewed and understands the above conditions and intends to fully abide by the conditions and terms of this Consent as stated.

Section 18. Counterparts and Facsimile Signatures. This Consent may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one Consent instrument. Any counterpart may be delivered by any party by transmission of signature pages to the other parties at the addresses set forth in the Notice section of this Consent, and delivery shall be effective and complete upon completion of such transmission. That notwithstanding, manually signed copies of signature pages shall nonetheless be delivered promptly after any such facsimile delivery.

Section 19. Entire Agreement. This Consent constitutes the final, complete, and exclusive statement between the parties to this Consent pertaining to the terms of the County's consent to Assignment of the Agreement. This Consent supersedes all prior and contemporaneous understandings or agreements of the parties, and is binding on and inures to the benefit of their respective heirs, representatives, successors, and assigns.

[SIGNATURES ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties have caused this Consent to Assignment to be executed and effective as of the date of execution by the County.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

Date 16 July 2019

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Craig A. Stopyra*
for Deputy Clerk

Printed Name: Craig A. Stopyra

ATTEST/WITNESS

By: *Emalee Schierman*

Print Name: Emalee Schierman

Habitat for Humanity of Seminole County and
Greater Apopka, Florida, Inc.

By: Executive Director

By: *Penny Seater*

Print Name: Penny Seater

Print Title: E.D.

ATTEST/WITNESS

By: *Steph M. Kinsley*

Print Name: Steph M. Kinsley

Habitat for Humanity Greater Orlando and
Osceola County, Inc.

By: President/CEO

By: *Catherine McManus*

Print Name: Catherine McManus

Print Title: President & CEO

BCC Mtg. Date: June 6, 2017

AGREEMENT
Between
ORANGE COUNTY, FLORIDA
And
HABITAT FOR HUMANITY OF SEMINOLE COUNTY AND GREATER APOPKA, INC.
Regarding
THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
FY 2016-2017

THIS AGREEMENT is made and entered into by and between Orange County, Florida, a charter county and political subdivision of the State of Florida (hereinafter "County") and Habitat for Humanity of Seminole County and Greater Apopka, Inc., a qualified not-for-profit corporation registered under the laws of the State of Florida (hereinafter "Agency").

RECITALS

WHEREAS, the Community Development Block Grant Program ("CDBG Program" or "Program") is administered by the United States Department of Housing and Urban Development ("HUD"); and

WHEREAS, the County has been selected to receive funding under the CDBG Program ("Grant"); and

WHEREAS, the County receives certain Community Development Block Grant funds under Grant Number B-16-UC-12-0003 CFDA 14.218 ("CDBG Funds" or "Funds") awarded under the Housing and Community Development Act of 1974; and

WHEREAS, the County has designated the Orange County Housing and Community Development Division to serve as its authorized designee in overseeing and managing the CDBG Funds ("Program Administrator"); and

WHEREAS, the Agency is a private not-for-profit corporation providing homeownership opportunities to low to moderate income individuals and households; and

WHEREAS, the Agency plans to acquire twenty-two (22) lots to construct an affordable housing development known as Juniper Bend (the "Project") at a site generally located east of Washington Avenue, west of Marvin C. Zanders Avenue, between West 12th Street and West 13th Street, in Apopka, FL 32703; and

WHEREAS, the Agency submitted a proposal to the County requesting monetary assistance for the Project as part of Orange County's 2016-2017 Action Plan, which was approved by the Board of County Commissioners ("Board") on August 2, 2016; and

WHEREAS, the Project meets a required national objective of the CDBG Program benefiting individuals presumed to be low-to-moderate income; and

WHEREAS, the County recognizes the need for the Project and desires to utilize certain CDBG Funds to assist with land acquisition stipulated by the Project; and

WHEREAS, the County has determined that the Project will serve a valid public purpose which will fulfill the purposes and policies of the Act and the CDBG Program; and

WHEREAS, the parties desire to enter into this Agreement to ensure the Agency's compliance with the requirements of the CDBG Program regulations, and to secure other covenants and obligations from the Agency regarding the Project and use of CDBG Funds.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the sufficiency and receipt of which the parties hereby acknowledge County and Agency agree as follows:

ARTICLE I

Section 1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein as a material part of this Agreement.

ARTICLE II

PROJECT SCOPE

Section 1. **Project Description.**

- 1.1 The Funds awarded by the County in this Agreement shall be used for land acquisition for affordable housing, which shall be completed in accordance with the scope of services attached hereto as Exhibit "A" and incorporated by this reference ("Scope of Work").
- 1.2 The Project shall be completed no later than December 31, 2021 (the "Completion Date"). The Completion Date may be extended by the Program Administrator, in its sole discretion, in the event of any unavoidable delays deemed to be beyond the control of the Agency. Any such extension of the Completion Date by the Program Administrator shall be done in writing.

ARTICLE III

RESPONSIBILITIES OF THE PARTIES

Section 1. **General Responsibilities.** The following general responsibilities shall apply to the parties of the Agreement, as applicable.

- 1.1 The Agency shall oversee all phases of the Project.
- 1.2 The County and Program Administrator shall retain the right, but not the obligation, to perform inspections of the Project and to conduct employee interviews as required under the Federal Labor Standard Provisions in accordance with 29 CFR §5.6(3) and as applicable to the Project. The County's inspections or lack thereof shall not operate to relieve the Agency of any responsibility, obligation, or liability assumed herein.

- 1.3 The County shall retain the right to review and comment on the solicitation plans and documents prior to the solicitation of bids, and shall approve the selected contractor prior to the Agency entering into any contract relating to the Project. The Agency shall provide to the Program Administrator a copy of all executed contracts with the selected contractors and sub-contractors.
- 1.4 The Program Administrator shall retain the right to review and evaluate all submittals, attend all construction progress meetings, and be fully informed of all construction issues including any deletions or revisions in work resulting in a change in the Completion Date, contract amount or scope of work.

ARTICLE IV

FUNDING AND BUDGET REQUIREMENTS

Section 1. Funding.

- 1.1 The Agency understands that one-hundred percent (100%) of the funding received pursuant to this Agreement is from federal CDBG Funds, and in the event the federal government disallows payment, for whatever reason, and requires repayment of the Funds, the Agency shall be responsible for reimbursing the County for the total amount owed.
- 1.2 The Agency expressly understands that the County's obligation and expenditure of the Funds contemplated under this Agreement are contingent upon receipt by the County of federal funds under the CDBG Program.
- 1.3 The Agency shall use these CDBG Funds only towards the Project which shall include only those eligible expenses permitted under the CDBG regulations, as set forth in 24 CFR Part 570, as may be amended. Should the Program Administrator, in its sole discretion, find that the Agency is not utilizing the Funds in accordance with the CDBG Program requirements or federal regulations, as applicable, the Program Administrator reserves the right to reduce or otherwise alter the funding amount of this Agreement. Notification of any such modification shall be provided in accordance with Article XIII of this Agreement.
- 1.4 Any Funds allocated to the Agency by the County for this Project, which are not expended within the term of this Agreement, shall be retained by the County. The Agency shall not be reimbursed by the County for any Project services or expenses not incurred within the term of this Agreement.
- 1.5 The Agency shall ensure that all services relating to the Project are completed by the Completion Date. Any request to extend the Completion Date shall be in writing and submitted to the Program Administrator no less than forty-five (45) days prior to the established Completion Date.

Section 2. **Budget.**

- 2.1 The total estimated cost of the Project is Three Hundred Eight Thousand Dollars (\$308,000) ("Project Cost"). The County agrees to provide the Agency up to, but no more than, Three Hundred Eight Thousand Dollars (\$308,000) in CDBG Funds towards the land acquisition stipulated by the Project. Payment of estimated Project Cost by the County shall be subject to the terms and conditions set forth herein, and in accordance with applicable federal requirements and the Agency's proposed budget, a copy of which is attached hereto and incorporated by this reference as **Exhibit "C"** ("Project Budget"). The parties agree that the County shall have the sole authority and discretion in determining the final amount to be expended by the County for the Project. Any additional costs incurred by the Agency associated with the completion of the Project shall be the sole responsibility of the Agency.
- 2.2 Upon written consent of the Program Administrator, the Agency may modify the Project Budget, provided, however, that the total County contribution shall not exceed the currently proposed Three Hundred Eight Thousand Dollars (\$308,000) limit without a written amendment to this Agreement which shall be executed by both parties.
- 2.3 The Agency acknowledges and agrees that it shall be responsible for any costs associated with the Project exceeding the County's anticipated contribution as set forth herein.
- 2.4 The Agency shall maintain sufficient financial resources to meet any expenses incurred during the period of time between the provision of services under this Agreement and payment by the County.

ARTICLE V

PAYMENT REQUESTS AND PAYMENT METHODS

Section 1. **Payment Requests.**

- 1.1 The Agency shall submit a written Payment Request for CDBG funds to the County, in accordance with the Project Budget, **Exhibit "C"**. A copy of a Payment Request is attached hereto and incorporated by this reference as **Exhibit "D"**. All Payment Requests and supporting documentation, as more specifically described in this Section, shall be submitted to the Program Administrator.
- 1.2 Supporting documentation required for processing a Payment Request shall include:
 - 1) A copy of a contract for sale;
 - 2) Final closing disclosure;
 - 3) Title commitment;
 - 4) A property survey; and
 - 5) Any other documentation requested by the Program Administrator.

- 1.3 A Payment Request shall be completed in its entirety. A Payment Request that is incomplete or which fails to include the required supporting documentation shall be deemed incomplete and rejected.
- 1.5 A completed Payment Request and supporting documentation shall be submitted to the Housing and Community Development Division Manager, 525 East South Street, Orlando, Florida 32801.

Section 2. **Payment Methods.**

- 2.1 Upon review and approval of the Agency's payment request, the Program Administrator shall submit the Agency's request for payment to the Orange County Comptroller's Office for processing.
- 2.2 A payment request that is deemed to be incomplete or that fails to include the necessary supporting documentation may result in the delay or possible denial of payment. All checks disbursed shall be made payable to the Agency and the title company.
- 2.3 The County reserves the right to withhold or deny payment of Funds to the Agency relating to the Project or this Agreement that is deemed to be unsatisfactory; or which are a result of the Agency's failure to comply with the terms and conditions of the CDBG Program or this Agreement. In such case, the Program Administrator shall provide written notice to the Agency specifying the corrective action to be taken and a reasonable date for compliance with such action.
- 2.4 The Agency shall repay the County any Funds paid in error to the Agency under the terms of this Agreement. The County reserves the right to reduce future payments due to the Agency by the amount owed to the County which is not repaid within ninety (90) days after the County's request.

ARTICLE VI

RECORDKEEPING, MONITORING, AND AUDITING

Section 1. **Risk Assessment.** The County shall conduct a risk assessment of the Agency and regularly complete a suspension and debarment check.

Section 2. **Recordkeeping.**

- 2.1 The Agency shall establish and utilize the best accounting practices in the maintenance of all records relating to this Agreement. Such practices shall be in the compliance with generally accepted accounting principles and shall fully and accurately reflect, track, and document the Agency's financial activities, in accordance with 2 CFR Part 200, subpart D.
- 2.2 All Funds received by the Agency from the County under the CDBG Program shall be kept in accounts separate and apart from all other funds and accounts of the Agency.

- 2.3 The Agency shall establish and maintain separate accounting records for the Agency's activities with sufficient documentation to identify the associated expenditures (e.g. detailed invoices, cancelled checks, payroll journals, bank statement reconciliations, etc.) and establish that such expenditures are allowable, necessary, and reasonable under this Agreement.
- 2.4 The Agency is strictly prohibited from co-mingling CDBG Funds with funds received by the Agency relating to any other Agency activity.

Section 3. Monitoring and Remedies for Non-Compliance.

- 3.1 The Agency shall systematically and expeditiously furnish the Program Administrator any and all data needed for the purpose of the CDBG Program monitoring and evaluation. This data shall include information on the services provided and any other data that may be required by the Program Administrator.
- 3.2 CDBG Program and financial monitoring shall be performed periodically by the Program Administrator with a Letter of Findings provided, if applicable, and shall be in compliance with the 2 CFR Part 200.328 Monitoring and Reporting Program Performance as incorporated in Exhibit "B". The Agency shall respond to any such Letter of Findings with a Corrective Action Plan and Implementation Schedule, as instructed by the Program Administrator, within thirty (30) days of the date of the Letter of Findings.
- 3.3 The Agency agrees to reimburse the County any and all monies identified as over-payment or ineligible as a result of monitoring findings.
- 3.4 The County shall have all legal and equitable remedies available to it including, but not limited to, injunctive relief, right to termination of monthly contribution payments, and/or restitution for any use by the Agency of CDBG Funds determined to be not in conformance with the terms and conditions of this Agreement. This provision shall survive the termination of this Agreement.
- 3.5 Failure to submit a Correction Action Plan and Implementation Schedule shall constitute a breach and may result in the termination of this Agreement.
- 3.6 Financial reporting shall be performed in accordance with the Federal Code 2 CFR § 200.327 ("Financial Reporting"), as incorporated in Exhibit "B." In the event of any conflict between the provisions set forth in this Section and the requirements of the Federal Code, the Federal Code shall take precedence.
- 3.7 The Agency shall allow the County and HUD representatives to review its files and allow on-site monitoring of the Project during the term of this Agreement, or as may be required by the County or HUD, to determine compliance with CDBG regulations.

- 3.8 Monitoring and program performance shall be completed in accordance with the Federal Code 2 CFR part 200.328 Monitoring and Reporting Program Performance as incorporated in Exhibit "B", as applicable. In the event of a conflict between the provisions of this Agreement and the requirements of the Federal Code, the Federal Code shall take precedence.

Section 4. **Auditing.**

- 4.1 The Comptroller (or its authorized designee) shall have the right to audit the Agency's use of Funds disbursed under this Agreement, from time to time, for compliance with the terms, conditions, and obligations set forth herein. The Agency shall provide full access to all records, documents, and information, whether paper or electronic data, necessary for the Comptroller to perform such audit.
- 4.2 ***Audit requirements.*** Any non-federal entity that expends \$750,000 or more during the non-federal entity's fiscal year in federal awards must have a single audit or program-specific audit conducted for that year in accordance with 2 CFR Part 200.501.
- 4.3 ***Single audit.*** Any non-federal entity that expends \$750,000 or more during the non-federal entity's fiscal year in federal awards must have a single audit conducted in accordance with 2 CFR §200.514 ("Scope of Audit"), except when elects to have a program-specific audit conducted in accordance with 2 CFR Part 200.501, sub-section (c).
- 4.4 ***Exemption.*** An exemption shall apply when the federal awards expended are less than \$750,000. A non-federal entity that expends less than \$750,000 during the non-federal entity's fiscal year in federal awards is exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200.503 ("Relation to Other Audit Requirements"), but records must be available for review or audit by appropriate officials of the federal agency, pass-through entity and Government Accountability Officer (GAO).

Section 5. **Audit Submission.**

- 5.1 Audits shall be submitted to the Program Administrator no later than thirty (30) days after the auditor's report is received by the Agency. All audits shall be completed no later than one-hundred eighty (180) days after the close of the Agency's fiscal year, or as specified in accordance with the Federal Code 2 CFR Part 200, subpart F ("Audit Requirements").
- 5.2 A copy of Audited Financial Statements or a copy of the Single Audit Reporting Package, including the associated management letter, which was conducted in accordance with 2 CFR Part 200, subpart F ("Audit Requirements"), shall be forwarded to the Program Administrator, with a copy to be provided to the Orange County Comptroller's Office, at the following address:

Orange County Board of County Commissioners
Housing and Community Development Division
Attn: Program Administrator
Orlando, Florida 32802-1393

Orange County Comptroller's Office
Finance and Accounting Department
Attn: Grants Section
P.O. Box 38
Orlando, Florida 32802

- 5.3 Audit requirements stipulates that grantees and sub-grantees that spend \$750,000 or more during their fiscal year in the federal awards must have a single or program-specific audit conducted for that year, in accordance with the provisions of 2 CFR §200.500 subpart F. The audits must be submitted to the Federal Audit Clearinghouse either thirty (30) days after receipt of the auditor's reports or nine (9) months after the end of the entity's fiscal year (FY) end date. The Federal Audit Clearinghouse website is: <https://harvester.census.gov/facweb/>.
- 5.4 Failure to comply with this requirement shall be deemed as a breach of this Agreement and may result in the withholding or denial of any requests for payment or reimbursement from the Agency.

ARTICLE VII

AFFORDABILITY PERIOD AND REPORTING REQUIREMENTS

Section 1. **Affordability Period.** The Agency shall ensure that all units constructed at the Project remain affordable for a minimum period of fifteen (15) years after the last housing unit to be developed at the Project is completed and available for occupancy. To ensure affordability, the property must be owned and occupied by the buyer and secured with a Down Payment Assistance, Orange County Note, and Mortgage (that equals to the amount of down payment assistance provided) for a period of fifteen (15) years ("Affordability Period") at zero percent interest beginning on the date of execution of the Note and the accompanying Mortgage. In the event of a default, the Note shall be due and payable in full. Payment in full shall be made within thirty (30) days of the declaration of default. The note shall be permanently forgiven fifteen (15) years after the date of the execution of the Note. In the event of a foreclosure, or short sale, and there is insufficient net proceeds (sales price minus superior lien and closing cost) from the sale of the property to recoup the note, the affordable period and note may be considered satisfied.

Section 2. **Annual Reporting.** The Agency shall submit to the Program Administrator an Annual Programmatic Report, a copy of which is attached hereto and incorporated by this reference as Exhibit "E", which provides information of program participants (individuals and households) served at the Project. The Annual Programmatic Report shall be submitted within thirty (30) calendar days of the end of each fiscal year (September 30) and shall provide the total number of persons receiving assistance for that year. The Agency shall provide to the Program Administrator any additional information deemed necessary by the Program Administrator, in its sole discretion.

ARTICLE VIII

RECORDS AND CONFIDENTIALITY

Section 1. Records Management.

- 1.1 The Agency shall retain copies of all records relating to this Agreement in accordance with the requirements set forth in 2 CFR §200.333 ("Retention Requirements for Records"), as incorporated in Exhibit "B", and the terms and conditions set forth in this Agreement. All such records shall be maintained in an organized and orderly manner and in a format acceptable to the Program Administrator. The County (or its designee), Program Administrator, Inspectors General, the Comptroller General of the United States, or HUD and/or any of their authorized representatives shall have full access and right to examine such records which shall include, but not be limited to, all contracts, leases, and/or financial records relating to the Project, including source documentation to support how CDBG Funds were expended, which shall include, but is not limited to, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by the general contractor, and other documentation as may be required by the County or Program Administrator to support expenditures related to the Project.
- 1.2 The Agency shall keep documentation which demonstrates that the Project is designed for the particular the project site, which includes provision of affordable housing for qualified low to moderate-income individuals and households.
- 1.3 The Agency shall retain copies of all records described in this Section, or otherwise relating to the Project, for a period of no less than six (6) years from the termination of this Agreement. If any litigation, claim, or audit is commenced prior to the expiration of this five-year period, the Agency shall maintain the records until the completion of such litigation (including any associated appeals), claim or audit findings have been resolved and for a period of six (6) years thereafter.
- 1.4 The records shall be made available to the County and Program Administrator, HUD and/or any of their authorized representatives, who shall have access to and the right to examine any of the said records during such period. This section shall survive the termination of this Agreement.

Section 2. Requirements for Personal Information Protection.

- 2.1 In accordance with Florida Statutes, the Agency shall take reasonable measures to protect and secure data in electronic form containing any personal information retained in the performance of the services relating to this Agreement. Personal Information shall mean an individual's first name or first initial and last name in combination with any of the following:
 - (a) A social security number;
 - (b) A driver's license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;

- (c) A financial account number or credit or debit card number in combination with any required security code, access code, or password that is necessary to permit access to an individual's financial account;
 - (d) Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; or
 - (e) An individual's health insurance policy number or subscriber identification number and a unique identifier used by a health insurer to identify the individual.
- 2.2 Personal information shall include a user name or e-mail address, in combination with a password or security question an answer that would permit access to an online account.
- 2.3 The Agency shall take reasonable measures to protect and secure data in electronic form containing the personal information, identified in this Section (collectively hereinafter referred to as "Personal Information"), that the Agency has been contracted to maintain, store, or process on behalf of the County or Program Administrator, in accordance with the requirements of this Section.
- 2.4 The Agency shall provide notice to the County as expeditiously as possible, but no later than forty-eight (48) hours, following the determination of the breach, or reasonable suspicion of a breach, of any system containing data in the electronic form that the Agency has been contracted to maintain, store or process on behalf of the County. Breach shall mean any unauthorized access of data in electronic form regardless of its source.
- 2.5 Notice of such breach to the County shall include the following:
- (a) A synopsis of the events surrounding the breach including the date(s) or date range of the breach of security;
 - (b) The number of individuals who were or potentially have been affected by the breach;
 - (c) A description of the Personal Information that was accessed or reasonably believed to have been accessed as part of the breach of security;
 - (d) The name, address, telephone number, and e-mail address of the employee, agent, or contractor from whom additional information may be obtained concerning the breach; and
 - (e) Any additional information requested by the Program Administrator.

Section 3. Public Records Compliance Requirements.

- 3.1 Agency shall comply with Florida State public records law and shall maintain all public records required by the County for services performed under this Agreement.
- 3.2 Upon request from the County or Program Administrator, the Agency shall provide copies of the requested records or allow the records to be inspected or copied within a reasonable time, at a cost that does not exceed the cost provided by the Florida Statutes.

- 3.3 The Agency shall ensure that all records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if Agency does not transfer the records back to the Program Administrator or County.
- 3.4 In the event the Agency fails to comply with the public records law requirements, Agency may be subject to penalties under Section 119.10, Florida Statutes.
- 3.5 If the Agency has questions regarding the application of Chapter 119, Florida Statutes, as to the Agency's duty to provide public records relating to this Agreement, the Agency shall contact Division Manager of the Orange County Housing and Community Development Division.

ARTICLE IX

TERM, SUSPENSION, TERMINATION, AND AMENDMENTS

Section 1. **Term.** The term of this Agreement shall be for a period from October 1, 2016 until December 31, 2021, unless otherwise terminated by either party. The project compliance requirements related to the provision of services to clients at the public facility (the "Project") shall be in effect for fifteen (15) years and shall survive the termination of this Agreement.

Section 2. **Suspension and Termination.** Notwithstanding anything to the contrary herein, and in accordance with 24 CFR §85.43, suspension and termination of this Agreement may occur if the Agency materially fails to comply with any term of the award contemplated herein, and that award may be terminated for convenience in accordance with 2 CFR Part 200 ("Uniform Administrative Requirements"). Continued performance by either party pursuant to this Agreement, after default of any of the terms of this Agreement, shall not be deemed a waiver of any right to terminate this Agreement for any subsequent default; and no waiver of any such default shall be construed or act as a waiver of any subsequent default. In the event this Agreement is terminated before the end of its term, the Agency shall reimburse the County all, or a portion, of the CDBG Funds expended on the Project. Such requirement shall be at the sole discretion of the County.

Section 3. **Amendments to Agreement.** Amendments to this Agreement that do not require approval by the Board shall be submitted to the Program Administrator in writing, on the Agency letterhead, and shall provide an explanation as to why an amendment is being requested. Any such proposed amendment or modification to the conditions and covenants of this Agreement shall become effective upon proper execution, such as signing, by the parties hereto.

ARTICLE X

DEFAULTS AND REMEDIES

Section 1. **Defaults and Remedies.**

- 1.1 Each of the following events shall constitute an Event of Default under this Agreement:

- (a) If the Agency fails to provide affordable housing to low to moderate-income individuals and households at the Project for a minimum period of fifteen (15) years from the Completion Date.
 - (b) If the Agency fails to comply with any of the regulations governing CDBG awards, including, but not limited to, 24 CFR Part 570, or fails to comply with any such terms contained in this Agreement and such failure is not corrected within the period of time allotted for cure in the written notice, which shall be provided as described in Article XIII of this Agreement.
 - (c) If at any time any material representation is made by the Agency in any certification or communication submitted to the County or Program Administrator in an effort to induce the use of CDBG Funds or the administration thereof is determined by the County to be false, misleading, or incorrect in a material manner.
 - (d) If the Agency does not disclose to the County, upon demand, the name of all persons with whom the Agency has contracted or intends to contract with for the land acquisition stipulated by the Project.
 - (e) If the Agency defaults or fails to promptly pay amounts owed to contractors or sub-contractors for work performed in the Project, when applicable.
 - (f) If the Agency voluntarily files for bankruptcy, reorganization, or any other insolvency proceedings, or if a receiver is appointed for the Project, or if the Project becomes subject to the bankruptcy court, or if there is an attachment, execution, or other judicial seizure of the Agency assets.
 - (g) If the Agency assigns, transfers, conveys, or sells its interest in this Project or the associated property or any interest in this Agreement without prior written consent of the County in accordance with 2 CFR §§200.310 -200.316 and the terms of this Agreement.
- 1.2 Failure of the County to declare a default shall not constitute a waiver of any rights by the County. Furthermore, the waiver of any default by the County shall in no event be construed as a waiver of rights with respect to any other default, past or present.
- 1.3 Upon the occurrence of any Event of Default, or any other breach of this Agreement, the County shall be free to terminate this Agreement; immediately withhold all funding and disbursements; demand repayment for amounts disbursed; and/or exercise all rights and remedies available to it under the terms of this Agreement, and under statutory law, equity, or common law. The County may also exercise any one or more of the actions contained in 2 CFR §200.338 through §200.342 (“Remedies for Noncompliance”). All remedies shall be deemed cumulative and, to the extent permitted by law, the election of one or more remedies shall not be construed as a waiver of any other remedy the County may have available to it.

- 1.4 In the event the County elects to terminate this Agreement, the County shall require the Agency to remit all, or a portion, of the CDBG Funds expended on the Project. The remittance amount, if any, shall be determined by the County, in its sole discretion, and shall be received by the County within ninety (90) calendar days from the date of termination.

ARTICLE XI

GENERAL TERMS AND CONDITIONS

Section 1. **Applicable Law.** The Agency shall abide by all applicable federal and State laws, rules and regulations dealing with the Project, whether presently existing or hereafter enacted or promulgated. The Agency shall comply with all CDBG Program requirements, HUD regulations, and 24 CFR Part 570, as amended from time to time, and all federal regulations and policies issued pursuant to these regulations, whether set forth herein or not. The Agency shall also comply with all other applicable federal, State and local statutes, ordinances, rules and regulations including, but not limited to, all applicable provisions of the Orange County Code. The Agency further agrees to utilize the Funds under this Agreement to supplement rather than supplant funds otherwise available.

Section 2. **Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.** In addition to the federal requirements set forth, in part, in Exhibit "B", the Agency shall comply with the Uniform Administrative Requirements set forth in 2 CFR Part 200 and 24 CFR §570.502, 2 CFR Part 200 subpart F ("Audit Requirements") and shall submit to the County appropriate documentation evidencing the same. The Agency shall also adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

Section 3. **Religious and Political Activities.** The Agency is prohibited from using Funds provided herein or personnel employed in the administration of the program for sectarian or religious activities, lobbying, or political patronage activities. The Agency further agrees that no Funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V, United States Code (Hatch Act), 24 CFR §570.270(a)(3), or 24 CFR §570.200(j).

Section 4. **Drug Free Workplace.** The Agency shall comply with the Drug Free Workplace Act of 1988 and implementing regulations in 24 CFR Part 24, subpart F regarding maintenance of a drug free workplace. The Agency shall complete and comply with the "Certification Regarding Drug-Free Workplace Requirements", attached hereto and incorporated by this reference as Exhibit "F." The Agency shall complete the certification form and a copy shall be kept in the files of both parties to this Agreement.

Section 5. **Prohibition of Use of Excessive Force.** The Agency accepts and acknowledges the County's "Certification Regarding Policy Prohibiting Use of Excessive Force" attached hereto and incorporated by this reference as Exhibit "G."

Section 6. **Anti-Lobbying Provision.** The Agency shall comply with the requirements set forth in 31 U.S.C. §1352 and implementing regulations at 24 CFR Part 87. The Agency shall execute and comply with the "Certification Regarding Lobbying" attached hereto and incorporated by this reference as Exhibit "H." A copy of this form shall be kept in the files of both parties to this Agreement.

Section 7. **Section 3 of the Housing and Urban Development Act of 1968/Equal Opportunity.** If applicable, the Agency shall comply with the provisions of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. §1701u) and its implementing regulations contained in 24 CFR Part 135 regarding economic opportunities for low and very-low income persons. The Agency shall comply with the provisions of the "Section 3 Clause", a copy of which is attached hereto and incorporated by this reference as Exhibit "I." The Agency shall keep records demonstrating compliance with these regulations, including 24 CFR §570.506(g)(5).

Section 8. **Equal Employment Opportunity.** The Agency shall comply with 24 CFR §570.607, Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086 and 12107 (Equal Employment Opportunity) and the implementing regulations in 41 CFR Part 60, and the provisions of the Equal Employment Opportunity Clause. Any contracts entered into by the Agency shall include a provision for requiring compliance with these regulations. The Agency shall keep records and documentation demonstrating compliance with these regulations.

Section 9. **Non-Discrimination.** The Agency shall not, on the grounds of race, color, religion, national origin or sex, exclude any person from participation in, or deny any persons the benefits of, or subject any person to discriminate, with respect to any part of the construction or operation of the Project. The Agency shall comply with 42 U.S.C. §5301, et seq., 42 U.S.C. §6101, 29 U.S.C. §794, 24 CFR §570.602 and 24 CFR Part 6. The Agency shall also at all times comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d, et seq.) and implementing regulations in 24 CFR Part 1. The Agency shall not discriminate on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §6101, et. seq.) and the implementing regulations contained in 24 CFR Part 146, or on the basis of disability as provided in Section 504 of the Rehabilitation Act of 1973, and the implementing regulations contained in 24 CFR Part 8. Any contracts entered into by the Agency shall include a provision for compliance with these regulations. The Agency shall keep records and documentation demonstrating compliance with these regulations.

Section 10. **Utilization of Minority/Women's Business Enterprise.** When applicable, the Agency, as well as any of its contractors or sub-contractors performing services relating to this Agreement, shall, to the greatest extent feasible, ensure that Minority/Women's Business Enterprises are included for consideration for participation in all construction, supply or service contracts, if any. The Agency shall comply with Executive Order 11625, as amended by Executive Order 12007 (Minority Business Enterprise); Executive Order 12432 (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (Women's Business Enterprise). The Agency, and its contractors or sub-contractors, shall keep records demonstrating compliance with this provision.

Section 11. **Fair Housing Act.** The Agency shall comply with the Fair Housing Act (42 U.S.C. §§3601-3620) and implementing regulations at 24 CFR Part 100; Executive Order 11063, as amended by Executive Order 12259 (Equal Opportunity in Housing); and their implementing regulations in 24 CFR Part 107 and shall keep all records demonstrating said compliance.

Section 12. **Compliance with Davis-Bacon Act.** If applicable, the Agency shall comply, and shall require its contractors and sub-contractors to comply, with 24 CFR §570.603, and the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. §276(a) to (a-7)), as amended, and as supplemented by Department of Labor regulation 20 CFR Part 5. Any construction contracts entered into by the Agency shall include a provision for compliance with the Davis-Bacon Act and supporting Department of Labor regulations. The Agency shall maintain documentation and records which demonstrate compliance with these regulations, including contract provisions and payroll records. Such documentation shall be provided to the County upon demand for the same.

Section 13. **Copeland "Anti-Kickback" Act.** If applicable, the Agency shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. §874) as supplemented by the Department of Labor regulations contained in 29 CFR Part 3. Any construction contracts entered into by the Agency shall include a provision for compliance with these regulations. The Agency shall maintain documentation and records which demonstrate compliance with these regulations. Such documentation shall be provided to the County upon request for the same.

Section 14. **Contract Work Hours and Safety Standards Act.** When applicable, the Agency agrees to comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §327-333), as supplemented by the Department of Labor regulations contained in 29 CFR Part 5. Any construction contracts entered into by the Agency shall include a provision for compliance with these regulations. The Agency shall maintain documentation and records which demonstrate compliance with these regulations. Such documentation shall be provided to the County upon request for the same.

Section 15. **Handicapped Accessibility Requirements.** If applicable, the Agency shall design and construct the Project so that it is accessible to and usable by individuals with handicaps, in compliance with the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157); the Uniform Federal Accessibility Standards, as set forth in 24 CFR §570.614; and the Americans with Disabilities Act of 1990 (42 U.S.C. §12131, et seq.). The Agency shall keep records demonstrating compliance with these regulations.

Section 16. **Resident Aliens.** The Agency agrees to comply with the requirements set forth in 24 CFR §570.613 regarding eligibility restrictions for certain resident aliens.

Section 17. **Agreement between County and HUD.** The Agency agrees that it shall be bound by the standard terms and conditions used in the CDBG Agreement between the County and HUD, and such other rules, regulations or requirements as HUD may reasonably impose in addition to the conditions of this Agreement, or subsequent to the execution of this Agreement by the parties hereto.

Section 18. **Debarment and Suspension.** Debarment and Suspension (Executive Order 12549 and 12689) – A contract award (see 2 CFR §180.220) must not be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR §180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Agency shall ensure that no contracts or agreements are entered into, as it relates to this Project, who are either debarred and/or suspended in the SAM system.

Section 19. **Environmental Review Requirements.** The Agency is required to provide information to the County regarding environmental assessments and remediation. The Agency shall submit to the County any changes to the original proposed scope of work, or any changes in the cost of the work, so that the County may evaluate this new information and conduct any further environmental review. This information shall be submitted to the County for approval at least thirty (30) days prior to the commencement of construction. The Agency agrees to assist the County in addressing any environmental issues that may arise during the County's review process.

Section 20. **Lead-Based Paint Prohibited.** The Agency shall not use lead-based paint on the Project and shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4821-4846), and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851-4856) and implementing regulations at 24 CFR Part 35, of which subparts A, B, J, K and R apply. The Agency shall maintain records demonstrating compliance with these requirements.

Section 21. **Historic Preservation.** The Agency shall comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470) and the procedures set forth in 36 CFR §800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty (50) years old or older or that are included on a federal, state, or local historic property list.

Section 22. **Environmental Protection.** The Agency shall comply with all applicable standards, rules or requirements issues under Section 306 of the Clean Air Act (42 U.S.C. §1857(h)), Section 508 of the Clean Water Act (33 U.S.C. Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15); and the standards and policies related to energy efficiency contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act.

Section 23. **Flood Disaster Protection.** The Agency shall comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. §4106) and implementing regulations in 44 CFR Part 59 through Part 79 in regard to the sale, lease or other transfer of land acquired, cleared or improved under the terms of this Agreement, as it may apply to the provisions of this Agreement.

Section 24. **Flood Insurance Program.** Should any construction or rehabilitation of existing structures, with assistance provided under this Agreement, occur in an area identified as having special flood hazards by the Director of Federal Emergency Management, the Agency shall comply with all relevant and applicable provisions of 24 CFR §570.605 concerning the National Flood Insurance Program. The Agency agrees that if any portion of the Project is located in a special flood hazard area that flood insurance will be required by the County and must be provided by the Agency.

Section 25. **Permits.** When applicable, the Agency shall obtain all necessary permits for the intended improvements or activities relating to the Project.

Section 26. **Displacement, Relocation, Acquisition and Replacement of Housing.** The Agency shall comply with 24 CFR §570.606 and shall keep all records demonstrating compliance with these requirements including, but not limited to, those records required in 24 CFR §570.606.

Section 27. **Conflict of Interest.** The Agency shall comply with the conflict of interest provisions contained in 24 CFR §570.611. In the procurement of supplies, equipment, construction and services, the Agency shall comply with the conflict statement rules in 24 CFR §85.36. The Agency shall comply with the conflict of interest provisions contained in 24 CFR §570.611 for those cases not governed by §85.36. This rule states that no officer or employee of the County or its designees or agents or consultants, no member of the Board, and no other public official who exercises or has exercised any functions or responsibilities with respect to activities assisted with CDBG Funds or who is in the position to participate in decision-making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one (1) year thereafter. The Agency shall also keep records supporting its requests for waivers of conflicts.

Section 28. **Gifts.** The Agency has an obligation to avoid or monitor gifts to the Agency that may create a potential conflict of interest or may create an appearance of a conflict.

ARTICLE XII

INDEMNIFICATION AND SAFETY REQUIREMENTS

Section 1. **Indemnification.** To the fullest extent permitted by law, the Agency shall release, indemnify, defend and hold harmless the County, its officials, agents, and employees from and against any and all claims, damages, losses, and expenses, demands, suits or other actions, liabilities, costs and expenses (including reasonable attorney's fees), of any kind or nature whatsoever arising directly or indirectly out of or caused in whole or in part by any act or omission of the Agency, its contractors or subcontractors (if any), anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable; excepting those acts or omissions arising out of the sole negligence of the County. Nothing herein shall be construed as a waiver of the County's right to sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes.

Section 2. **Environmental Indemnification.** The Agency shall defend, indemnify and hold harmless the County, its officials, agents, and employees from any claim arising from or in any way related to, the environmental condition of the property to be used for the Project, including, but not limited to, the cost of investigating, defending, and/or negotiating to a satisfactory conclusion claims made by environmental regulatory agencies, as well as all cleanup and property maintenance requirements imposed by any agency with lawful jurisdiction over the Project and associated property. This indemnification shall run from the time of initial discovery of any such adverse environmental condition and is not to be construed to commence only upon realization by the County of an actual pecuniary loss as a result of such adverse environmental condition. The existence of this indemnification shall not be construed as an indicia of ownership, management, or control of the Project by the County, and the County hereby recognizes and acknowledges that the County is not an owner or manager of the Project and does not exert any control thereupon. Notwithstanding anything herein to the contrary, this indemnification provision shall survive the termination of this Agreement.

Section 3. **Safety Requirements.** The Agency shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance under this Agreement.

- 3.1 When applicable, the Agency shall take all reasonable precautions for the safety and protection of:
- (a) All employees and all persons whom the Agency suffers to be on the premises and other persons who may be affected thereby;
 - (b) All property, materials, and equipment on the premises under the care and custody of the Agency; and
 - (c) Other property at or surrounding the premises including trees, shrubs, lawns, walkways, pavements, and roadways.
- 3.2 If applicable, the Agency shall comply with, and shall ensure that its employees, contractors, and sub-contractors comply with, all applicable safety laws or ordinances, rules, regulations, standards, and lawful orders from an authority bearing on the safety of persons or property for their protection from damage, injury, or loss. This shall include, but not be limited to, the following:
- (a) Occupational Safety & Health Act (OSHA);
 - (b) National Institute for Occupational Safety & Health (NIOSH);
 - (c) National Fire Protection Association (NFPA).

The Agency must also comply with the guidelines set forth in the Orange County Safety & Health Manual. The manual can be accessed online at the address below:

<http://www.orangecountyfl.net/VendorServices/OrangeCountySafetyandHealthManual.aspx>

- 3.3 In any emergency affecting the safety of persons or property, the Agency shall act with reasonable care and discretion to prevent any threatened damage, injury, or loss.

Section 4. **Insurance.**

- 4.1 Without limiting the Agency's indemnification, the Agency shall maintain on a primary basis and at its sole expense, at all times throughout the duration of this Agreement, all appropriate policies of insurance coverage concerning its operations with limits on forms (including endorsements) as described herein. Certificates with valid and authorized endorsements, evidencing the maintenance and renewal of such insurance coverage shall be delivered to the County thirty (30) days prior to the commencement of construction. The County shall be given notice in writing at least thirty (30) calendar days in advance of cancellation or modification of any policy of insurance. The County, its officers, and employees shall be named as additional insureds on all policies of liability insurance. These requirements, as well as the County's review and acceptance of insurance by the Agency is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the Agency under this Agreement.

4.2 Required Coverage:

- (a) **Commercial General Liability** – The Agency shall maintain coverage issued on the most recent version of the ISO form, as filed for use in Florida, or its equivalent with a limit of liability of not less than Five Hundred Thousand Dollars (\$500,000) per occurrence. The Agency further agrees coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability, or Separation of Insured. The General Aggregate limit shall either apply separately to this Agreement or shall be at least twice the required occurrence limit.
- (b) **Fidelity & Employee Dishonesty** – The Agency shall maintain fidelity/employee dishonesty coverage with a limit of not less than the CDBG Funds awarded for the Project.
- (c) **Workers' Compensation** – The Agency shall maintain any coverage required by federal and State workers' compensation or financial responsibility laws including, but not limited to, Chapters 324 and 440, Florida Statutes, as may be amended from time to time.

Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A-, Class VIII or better. In addition, such policy shall provide that the coverage shall be primary for losses arising out of the Agency's performance of the Agreement. Neither the County nor their insurers shall be required to contribute to any such loss. The required certificate shall be furnished by the Agency to the County prior to the execution of this Agreement.

At least thirty (30) calendar days prior to the expiration of any of the insurance policies referenced in this Section, the Agency shall provide the County with evidence of the renewal of said insurance policies in a form satisfactory to the County.

- 4.3 If applicable, the Agency shall require and ensure that each of its contractors/sub-contractors providing services hereunder procures and maintains until the completion of their respective services, workers' compensation, general liability and auto liability coverage in such limits and with such terms and conditions as to protect the Agency and the County's interest in this Project.

ARTICLE XIII

NOTICES

Notwithstanding anything herein to the contrary, no party shall be considered in default for failure to perform the terms and conditions hereof unless said party shall have first received written notice specifying the nature of such failure and said party fails to cure the same within the time specified in such notice. Any notice required or permitted hereunder shall be delivered by hand delivery, express courier, or certified mail, return receipt requested, and shall be effective upon receipt of the same. Notices shall be delivered to each of the parties at the following addresses or such other addresses as specified by written notice in compliance with the terms of this paragraph.

As to County: Orange County Housing and Community Development Division
Attn: Manager
525 East South Street
Orlando, Florida 32801

With copy to: Orange County Government
County Administrator
Orange County Administration Building
201 South Rosalind Avenue
Orlando, Florida 32801

As to Agency: Executive Director
Habitat for Humanity of Seminole County and Greater Apopka, Inc.
P.O. Box 181010
Casselberry, FL 32718

ARTICLE IV

MISCELLANEOUS

Section 1. **Entire Agreement.** The entire agreement between the parties with respect to the subject matter of this agreement is contained in this Agreement and its exhibits. No other agreement oral or written, regarding the subject matter herein shall be deemed to exist or to bind the parties hereto.

Section 2. **Assignment.** The Agency shall not assign, transfer, convey, or sell its interest in this Project or the associated property or any interest in this Agreement without prior written consent from the County. In the event the Agency assigns, transfers, conveys or sells its interest in the Project or the associated property without the required written consent of the County, the Agency may be declared in default under this Agreement by the County and the County may avail itself of all remedies provided for in Article X herein and the Agency shall remit to the County all CDBG Funds expended by the County under the terms of this Agreement.

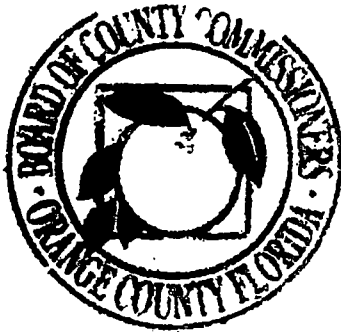
Section 3. **No Grant of Vested Rights.** This Agreement shall not be construed as granting or assuring or vesting any land use, zoning, development approvals, permission or rights to property owned or to be acquired by the Agency.

Section 4. **Captions.** Titles used throughout this Agreement are intended for ease of reference only and are not intended to be dispositive.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

ORANGE COUNTY, FLORIDA



By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor

Date: 6.6.17

ATTEST: Phil Diamond, CPA, Orange County Comptroller
As Clerk of the Board of County Commissioners

BY: *Laketa Louis*
for Deputy Clerk

Date: JUN 06 2017

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[REMAINING SIGNATURES ON THE FOLLOWING PAGES]

HABITAT FOR HUMANITY OF SEMINOLE COUNTY AND GREATER APOPKA, INC.

BY: *Penny Seater*
Penny Seater

TITLE: Executive Director

Date: 5/12/17

AND

Stan J. Feh
Board Chairman or Board Representative

STATE OF FLORIDA
COUNTY OF ORANGE

The aforesaid instrument was acknowledged before me on the 12th day of May, 2017 by Penny Seater, Executive Director, Habitat for Humanity of Seminole County and Greater Apopka, Inc., a Florida not-profit corporation, on behalf of the corporation. He/she is personally known to me or has produced _____, as identification.



KELLY L. PISCIOTTA
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF163557
Expires 1/15/2019

Kelly L. Pisciotta
Signature of Notary Public
Kelly L. Pisciotta
Name Printed or Stamped:

STATE OF FLORIDA
COUNTY OF ORANGE

The aforesaid instrument was acknowledged before me on the 12th day of May, 2017 by Board Chairman or Board Representative of Habitat for Humanity of Seminole County and Greater Apopka, Inc., a Florida not-for-profit corporation, on behalf of the corporation. He/she is personally known to me or has produced _____, as identification.



KELLY L. PISCIOTTA
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF163557
Expires 1/15/2019

Kelly L. Pisciotta
Signature of Notary Public
Kelly L. Pisciotta
Name Printed or Stamped:

**EXHIBIT A
SCOPE OF WORK**

The project consists of land acquisition for construction of 22 affordable housing units by the end of 2021. The project site, generally located east of Washington Avenue, west of Marvin C. Zanders Avenue, between West 12st Street and West 13th Street, in Apopka, FL 32703, was previously an apartment complex that was demolished in 2006. The site has remained vacant since.

The land acquisition will include purchase of twenty-two (22) lots, which are ready for vertical construction, with all necessary infrastructure in place at the time of acquisition.

Physical Street Address: S. Washington Avenue, Apopka, FL 32703

Parcel ID #: 09-21-28-0196-90-300

Property Description: TOWN OF APOPKA A/109 LOTS 30 31 32 36 37 & 38 BLK I
(HAWTHORNE VILLAGE)

Total Land Area: 5.02 acres (+/-)

EXHIBIT B
APPLICABLE FEDERAL LAWS

The parties shall comply with the following laws and regulations in the performance of this Agreement:

1. Employment Opportunities for Businesses and Lower-Income People (24 CFR Part 135, Section 3 Clause) requiring that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work, connected with the Project, be awarded to business concerns located in, or owned in substantial part by persons residing in, the area(s) of the project.
2. Civil Rights Act of 1964, Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and the Executive Order 11246 as amended by Executive Orders 11375 and 12086.
3. Flood Disaster Protection Act of 1973 (Pt. 93-2234) for compliance in regard to the sale, lease, or other transfer of land acquired, cleared or improved under the terms of this Agreement.
4. Lead Based Paint regulations for any construction or rehabilitation of residential structures with assistance under this Agreement shall be subject to HUD Lead Based Paint regulations at 24 CFR 570.608, and 24 CFR Part 35 and in particular Sub-Part B thereof. These regulations require notification to all owners, prospective owners; tenants of properties constructed prior to 1978 of hazards of lead-based paint and explain symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning.
5. Debarred, suspended or ineligible contractors. 2CFR part 200 appendix II
6. Clean Air Act, as amended (42 U.S.C., 1857, et seq.)
7. Water Pollution Control Act, as amended, 33 U.S.C. 1251, and et. seq., as amended 1318 relating to the inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued there under.
8. HUD Environmental Procedures (24 CFR, Part 58), Environmental Protection Agency Regulations pursuant to 40 CFR, Part 50, as amended and National Environmental Policy Act of 1969.
9. Labor Standards (29 CFR Parts 3.5 and 5a) pertaining to contracts and applicable requirements of the regulations of the Division of Labor.
10. Drug Free Workplace Act of 1988.
11. Public Law 101-144, Section 519: The 1990 HUD Appropriation Act
12. National Historic Preservation Act of 1966, as amended (16 U.S.C. 470).
13. Minority and Women Business Opportunities to afford minority and women-owned businesses the opportunity to participate in the performance of this Agreement.

14. 2CFR §200.327 Financial reporting.

Unless otherwise approved by OMB, the Federal awarding agency may solicit only the standard, OMB-approved government-wide data elements for collection of financial information (at time of publication the Federal Financial Report or such future collections as may be approved by OMB and listed on the OMB Web site). This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting.

15. 2 CFR §200.328 Monitoring and reporting program performance.

(a) **Monitoring by the non-Federal entity.** The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also §200.331 Requirements for pass-through entities.

(b) **Non-construction performance reports.** The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).

(1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 90 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.

(2) The non-Federal entity must submit performance reports using OMB-approved government-wide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:

(i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.

(ii) The reasons why established goals were not met, if appropriate.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) Construction performance reports. For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.

(d) Significant developments. Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

(e) The Federal awarding agency may make site visits as warranted by program needs.

(f) The Federal awarding agency may waive any performance report required by this part if not needed.

16. 2 CFR §200.331 Requirements for pass-through entities.

All pass-through entities must:

(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

- (1) Federal Award Identification.
 - (i) Subrecipient name (which must match the name associated with its unique entity identifier);
 - (ii) Subrecipient's unique entity identifier (currently known as DUNS number – Data Universal Numbering System (DUNS) number);
 - (iii) Federal Award Identification Number (FAIN);
 - (iv) Federal Award Date (see §200.39 Federal award date);
 - (v) Subaward Period of Performance Start and End Date;
 - (vi) Amount of Federal Funds Obligated by this action;
 - (vii) Total Amount of Federal Funds Obligated to the subrecipient;
 - (viii) Total Amount of the Federal Award;
 - (ix) Federal award project description, as required to be responsive to the federal Funding Accountability and Transparency Act (FFATA);

- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official;
 - (xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;
 - (xii) Identification of whether the award is R&D; and
 - (xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).
- (2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award.
- (3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;
- (4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this Part), or a de minimis indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (b) of this Part.
- (5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this section, §§200.300 Statutory and national policy requirements through 200.309 Period of performance, and Subpart F-Audit Requirements of this Part; and
- (6) Appropriate terms and conditions concerning closeout of the subaward.
- (b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraph (e) of this section, which may include consideration of such factors as:
- (1) The subrecipient's prior experience with the same or similar subawards;
 - (2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this Part, and the extent to which the same or similar subaward has been audited as a major program;
 - (3) Whether the subrecipient has new personnel or new or substantially changed systems; and
 - (4) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).
- (c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in §200.207 Specific conditions.

- (d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:
- (1) Reviewing financial and programmatic reports required by the pass-through entity.
 - (2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.
 - (3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521 Management decision.
- (e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:
- (1) Providing subrecipients with training and technical assistance on program-related matters; and
 - (2) Performing on-site reviews of the subrecipient's program operations;
 - (3) Arranging for agreed-upon-procedures engagements as described in §200.425 Audit services.
- (f) Verify that every subrecipient is audited as required by Subpart F—Audit Requirements of this Part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.
- (g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.
- (h) Consider taking enforcement action against noncompliant subrecipients as described in §200.338 Remedies for noncompliance of this Part and in program regulations.

17. 2 CFR §200.333 Retention requirements for records.

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of five years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

- (a) If any litigation, claim, or audit is started before the expiration of the 5-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

(c) Records for real property and equipment acquired with Federal funds must be retained for 5 years after final disposition.

(d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 5-year retention requirement is not applicable to the non-Federal entity.

(e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 5-year retention period for its supporting records starts from the date of such submission.

(2) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 5-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

18. 2 CFR §200.336 Access to records.

(a) Records of non-Federal entities. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

(b) Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-Federal entity and the Federal awarding agency. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the Federal awarding agency or delegate.

(c) Expiration of right of access. The rights of access in this section are not limited to the required retention period but last as long as the records are retained. Federal awarding agencies and pass-through entities must not impose any other access requirements upon non-Federal entities.

19. 2 CFR §200.337 Restrictions on public access to records.

No Federal awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the non-Federal entity pertinent to a Federal award, except for protected personally identifiable information (PII) or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's control except as required under §200.315 Intangible property. Unless required by Federal, state, or local statute, non-Federal entities are not required to permit public access to their records. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

20. 2 CFR §200.338 Remedies for noncompliance.

If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in §200.207 Specific conditions. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

- (a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.
- (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- (c) Wholly or partly suspend or terminate the Federal award.
- (d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
- (e) Withhold further Federal awards for the project or program.
- (f) Take other remedies that may be legally available.

21. 2 CFR §200.339 Termination.

(a) The Federal award may be terminated in whole or in part as follows:

- (1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;
- (2) By the Federal awarding agency or pass-through entity for cause;

(3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or

(4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety.

(b) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in §§200.343 Closeout and 200.344 Post-closeout adjustments and continuing responsibilities.

22. 2 CFR §200.340 Notification of termination requirement.

(a) The Federal agency or pass-through entity must provide to the non-Federal entity a notice of termination.

(b) If the Federal award is terminated for the non-Federal entity's failure to comply with the Federal statutes, regulations, or terms and conditions of the Federal award, the notification must state that the termination decision may be considered in evaluating future applications received from the non-Federal entity.

(c) Upon termination of a Federal award, the Federal awarding agency must provide the information required under FFATA to the Federal Web site established to fulfill the requirements of FFATA, and update or notify any other relevant government-wide systems or entities of any indications of poor performance as required by 41 U.S.C. 417b and 31 U.S.C. 3321 and implementing guidance at 2 CFR part 77. See also the requirements for Suspension and Debarment at 2 CFR Part 180.

23. 2 CFR §200.341 Opportunities to object, hearings and appeals.

Upon taking any remedy for non-compliance, the Federal awarding agency must provide the non-Federal entity an opportunity to object and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures published by the Federal awarding agency. The Federal awarding agency or pass-through entity must comply with any requirements for hearings, appeals or other administrative proceedings which the non-Federal entity is entitled under any statute or regulation applicable to the action involved.

24. 2 CFR §200.342 Effects of suspension and termination.

Costs to the non-Federal entity resulting from obligations incurred by the non-Federal entity during a suspension or after termination of a Federal award or subaward are not allowable unless the Federal awarding agency or pass-through entity expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:

(a) The costs result from obligations which were properly incurred by the non-Federal entity before the effective date of suspension or termination, are not in anticipation of it; and

(b) The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

25. 2 CFR §200.344 Post-closeout adjustments and continuing responsibilities.

(a) The closeout of a Federal award does not affect any of the following:

(1) The right of the Federal awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.

(2) The obligation of the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.

(3) Audit requirements in Subpart F—Audit Requirements of this Part.

(4) Property management and disposition requirements in Subpart D—Post Federal Award Requirements of this Part, §§200.310 Insurance Coverage through 200.316 Property trust relationship.

(5) Records retention as required in Subpart D—Post Federal Award Requirements of this Part, §§200.333 Retention requirements for records through 200.337 Restrictions on public access to records.

(b) After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or pass-through entity and the non-Federal entity, provided the responsibilities of the non-Federal entity referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.

26. 2 CFR §200.345 Collection of amounts due.

(a) Any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal Government. If not paid within 90 calendar days after demand, the Federal awarding agency may reduce the debt by:

- (1) Making an administrative offset against other requests for reimbursements;
- (2) Withholding advance payments otherwise due to the non-Federal entity; or
- (3) Other action permitted by Federal statute.

(b) Except where otherwise provided by statutes or regulations, the Federal awarding agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR Parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

**EXHIBIT C
BUDGET**

Land Acquisition (22 lots at \$14,000/per lot)	<u>\$308,000.00</u>
TOTAL CDBG FUNDS	\$308,000.00

**EXHIBIT D
PAYMENT REQUEST**

REQUEST NUMBER _____ MONTH _____

Name of Agency: _____

Grant Name/Project: _____

Bill to:

Orange County Manager, Housing and Community Development 525 E. South Street Orlando, FL 32801

DESCRIPTION	AMOUNT BILLED
TOTAL	

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or omission of any material fact, may subject me to criminal, civil, or administrative penalties for fraud, false statements, false claims or otherwise.

Signature of Preparer: _____ Date: _____

Title: _____

Authorized Signature: _____ Date: _____

Title: _____

**EXHIBIT E
ANNUAL PROGRAMMATIC REPORT**

Agency: _____ Year Ending: _____

Contact Person: _____ Phone: _____ E-mail: _____

SECTION 1: Total Program Participants served at the Project	<u>Year-to-Date</u> Program Participants (Unduplicated)
Extremely Low Income	
Very Low Income	
Low Income	
Moderate Income	
TOTAL (s/b same as below)	
Female Headed Households	
Homeless	
Orange County Residents	

SECTION 2: Race and Ethnicity of Participants	<u>Year-to-Date</u> Program Participants (Unduplicated)	
	Hispanic or Latino	Not Hispanic or Latino
White		
Black/African American		
Asian		
American Indian/Alaska Native		
Native Hawaiian/other Pacific Islander		
Amer. Indian/Alaska Native and White		
Asian and White		
Black / African American and White		
American Indian/Alaska Native and Black / African American		
Other Multi-Racial		
TOTAL (s/b same as above)		

SECTION 3: (Attach a Narrative of Accomplishments for the year)

**EXHIBIT F
CERTIFICATION REGARDING
DRUG-FREE WORKPLACE REQUIREMENTS**

The certification set out below is a material representation upon which reliance is placed by Orange County, Florida and the U.S. Department of Housing and Urban Development (“HUD”) in awarding the grant funds. If it is later determined that the Habitat for Humanity of Seminole County and Greater Apopka, Inc. knowingly rendered a false certification or otherwise violates the requirements of the Drug-Free Workplace Act, the County Housing and Community Development Department and/or the HUD, in addition to any other remedies available to the federal government, may take action authorized under the Drug-Free Workplace Act. The Habitat for Humanity of Seminole County and Greater Apopka, Inc. will comply with the other provisions of the Act and with other applicable laws.

CERTIFICATION

A. Habitat for Humanity of Seminole County and Greater Apopka, Inc. certifies that it will provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Habitat for Humanity of Seminole County and Greater Apopka, Inc.’s workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1. The dangers of drug abuse in the workplace;
2. Habitat for Humanity of Seminole County and Greater Apopka, Inc.’s policy of maintaining a drug-free workplace;
3. Any available drug counseling, rehabilitation and employee assistance programs; and
4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

C. Making it a requirement that each employee be engaged in the performance of the grant is given a copy of the statement required by paragraph (A).

D. Notifying the employee in the statement required by paragraph (A) that, as a condition of employment under the Loan, the employee will:

1. Abide by the terms of the statement; and
2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.

- E. Notify the County's Housing and Community Development Department and/or the HUD in writing within ten (10) calendar days after receiving notice under subparagraph (D)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.
- F. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (D)(2), with respect to any employee who is so convicted:
 - 1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement or other appropriate agency.
- G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E) and (F).

**PLACE OF PERFORMANCE
FOR CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

HABITAT FOR HUMANITY OF SEMINOLE COUNTY AND GREATER APOPKA, INC.

[Corporate Seal]

By: 

Date: 5/12/17

EXHIBIT G
CERTIFICATION REGARDING POLICY
PROHIBITING USE OF EXCESSIVE FORCE

In accordance with section 519 of Public Law 101-144 (the 1990 HUD Appropriations Act), the Orange County, Florida certifies that:

It has adopted and is enforcing:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.

NOTE: This certification does not require the Habitat for Humanity of Seminole County and Greater Apopka, Inc. to adopt a policy regarding excessive force. It is included for informational purposes only.

**EXHIBIT H
CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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.

(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 Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grant and contracts under grants, and cooperative agreements) and that the Habitat for Humanity of Seminole County and Greater Apopka, Inc. 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 31 U.S.C. §1352. Any person who fails to file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

HABITAT FOR HUMANITY OF SEMINOLE COUNTY AND GREATER APOPKA, INC.

[Corporate Seal]

By: 

Date: 5/12/17

EXHIBIT I
SECTION 3 CLAUSE

A. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development (“HUD”) and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. §1701. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the Project Area and contracts for work in connection with the Project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the Project.

B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this Agreement certify and agree that they are under no contractual agreement or other disability which would prevent them from complying with these requirements.

C. The Habitat for Humanity of Seminole County and Greater Apopka, Inc. will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers’ representative of his commitments under this Section 3 Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship, and training positions, the qualifications for each, the name and location of the persons taking applications for each of the positions, and the anticipated date the work shall begin.

D. The Habitat for Humanity of Seminole County and Greater Apopka, Inc. will include this Section 3 Clause in every subcontract for work in connection with the Project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the Habitat for Humanity of Seminole County and Greater Apopka, Inc. is in violation of the regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Habitat for Humanity of Seminole County and Greater Apopka, Inc. will not subcontract with any agency where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135, and will not let any subcontract unless the agency has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract shall be a condition of the Federal financial assistance provided to the Project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its sub-recipients, and its successors, and assigns to those sanctions specified by the Loan Agreement or contract through which Federal assistance is

provided, and to such sanctions as are specified by 24 CFR Part 135, which include termination of this Agreement for default and debarment and suspension from future HUD-assisted contracts.

EXHIBIT B SCOPE OF WORK

The County consents to the Assignor assigning the obligation to construct ten (10) of the twenty-two (22) affordable housing units contracted for under the Agreement to the Assignee. Assignee shall construct ten (10) affordable housing units by the end of 2021 (the "Project"). Assignee shall construct each affordable housing unit on a lot described in the "Legal Description" attached to this Consent as **Exhibit "C."** Assignee shall construct only one (1) affordable housing unit per lot. A map of the ten (10) lots is provided in the "Property Location Map" attached to this Consent as **Exhibit "D."**

The lots described in the Legal Description and demonstrated in the Property Location Map (the "Project Site") are generally located east of Washington Avenue, west of Marvin C. Zanders Avenue, and between West 12th Street and West 13th Street in Apopka, Florida 32703. The Project Site was previously acquired by Assignor in accordance with the Agreement. The Project Site has the necessary infrastructure in place and is ready for vertical construction.

**EXHIBIT C
LEGAL DESCRIPTION**

Property Address: 131, 137, 143, 149 West 13th Street, Apopka, FL 32703
&
1169, 1175, 1181, 1187, 1193, 1199 South Washington Avenue, Apopka,
FL 32703

Parcel IDs: 16-21-28-5909-00-350
16-21-28-5909-00-360
16-21-28-5909-00-370
16-21-28-5909-00-380
16-21-28-5909-00-510
16-21-28-5909-00-520
16-21-28-5909-00-530
16-21-28-5909-00-540
16-21-28-5909-00-550
16-21-28-5909-00-560

Acreage: 1.88 acres (+/-)

Legal Description:

NEW HORIZONS 94/63 LOT 35, LOT 36, LOT 37, LOT 38

&

NEW HORIZONS 94/63 LOT 51, LOT 52, LOT 53, LOT 54, LOT 55, LOT 56

EXHIBIT D PROPERTY LOCATION MAP

New Horizons Project Subject Property



Legend		
	Subject Property	
	Hydrology	
	Roads Base	
	Parcels	
	Jurisdictions	
	Apopka	
	Bay Lake	
	Belle Isle	
	Eatonville	
	Edgewood	
	Lake Buena Vista	
	Maitland	
	Oakland	
	Ocoee	
	Orlando	
	Windermere	
	Winter Garden	
	Winter Park	