



Interoffice Memorandum

**AGENDA ITEM**

December 19, 2018

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: January 15, 2019 – Consent Item  
First Amendment to INVEST Program Agreement

On February 21, 2017, the Board approved an Agreement between Orange County and Homes in Partnership, Inc. (HIP). The County partnered with HIP to develop an affordable, single-family subdivision known as New Horizon located in the South Apopka area. The Agreement provided HIP with \$724,000 in INVEST funds to be utilized for construction activities related to site development. Two other non-profits, Habitat for Humanity of Greater Orlando, Inc. and Habitat for Humanity of Seminole County and Greater Apopka, Inc., have joined HIP to construct 56 homes for low-income families on the project site.

During the construction of the site development, HIP experienced some cost increases that have been documented and submitted to Orange County for payment. The cost increases were in soft cost (engineering, inspection fees) and in construction costs. We have reviewed the cost increases and determined that they are reasonable. We are requesting an amendment to the agreement to increase the overall project budget by \$85,000, for a total project cost of \$809,000, as indicated in the agreement's budget. We are also requesting to extend the completion date to December 31, 2018. The amendment has been reviewed by the County Attorney's Office as to form.

**ACTION REQUESTED: Approval and execution of First Amendment to INVEST Program Agreement for affordable housing between Orange County, Florida and Homes In Partnership, Inc. to increase the project budget by \$85,000 for additional site development costs and to extend the completion date to December 31, 2018. District 2**

JVW:MG  
Attachment

BCC Mtg. Date: January 15, 2019

**FIRST AMENDMENT TO  
INVEST PROGRAM AGREEMENT  
FOR AFFORDABLE HOUSING  
Between  
ORANGE COUNTY, FLORIDA AND  
HOMES IN PARTNERSHIP, INC.,**

**THIS FIRST AMENDMENT TO AGREEMENT** amends and modifies that certain Agreement ("Agreement"), dated as of February 21, 2017, made and entered into by and between Orange County, Florida, a charter county and political subdivision of the State of Florida (hereinafter "County" or "Grantee") and Homes in Partnership, Inc., a qualified not-for-profit corporation registered under the laws of the State of Florida (hereinafter "Agency").

**RECITALS**

**WHEREAS**, the County and the Agency have entered into the Agreement relating to the development of a certain tract of property located in South Apopka for the construction of an affordable housing subdivision called New Horizons; and

**WHEREAS**, the Agency desired to act as the developer of New Horizons and to complete the site development work required to have fifty six (56) buildable lots (the "Project"); and

**WHEREAS**, during the course of the Project completion, the Agency has incurred unexpected expenses related to the site development work; and

**WHEREAS**, the parties now desire to amend Section 3 of the Agreement related to payments and use of funds and Section 4. of the Agreement related to the completion of improvements; and

**WHEREAS**, the parties desire to revise **Exhibit B** ("Project Budget") of the original agreement to increase the overall budget for the project and reflect additional site development costs incurred by the Agency; and

**WHEREAS**, the parties also desire to amend Section 9 of the Agreement related to the term of the Agreement; and

**WHEREAS**, pursuant to Section 13 of the Agreement, no amendment or modification of this Agreement shall be valid unless in writing and executed by the legally authorized representatives of the parties; and

**WHEREAS**, each of the parties agree to such modification as set forth herein.

**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 the County and the Agency agree as follows:

1. **Recitals; Defined Terms; Form of Amendments.** The recitals set forth above are incorporated herein and made a part of this First Amendment. Any capitalized terms not otherwise defined herein shall have the meanings assigned to such terms in the Agreement. Throughout this First Amendment, additions to the original language of the Agreement are shown with underline and

deletions are shown with ~~strikethrough~~. Section of the Agreement not modified herein shall remain unchanged.

2. **Representations, Warranties and Covenants.** The County, and the Agency each hereby affirm and declare that all representations and warranties contained in the Agreement, and as modified herein, remain true and correct as of the date hereof and that each of them have been and remain in compliance with all covenants set forth in the Agreement.

3. **Amendment to Section 3. Payments and Use of Funds.**

- A. The County has designated from its INVEST Program a total not to exceed ~~Seven Hundred Twenty Four Thousand Dollars (\$724,000)~~ Eight Hundred Nine Thousand Dollars (\$809,000) solely for the cost of construction activities related to site development of the Property described in **Revised Exhibit B**. HIP will act as sole developer and adhere to the construction budget outlined in **Revised Exhibit B**. HIP may with written consent of the County's Housing and Community Development Division Manager, modify the Budget Line Items in **Revised Exhibit B**. The County shall have no obligation to make any payment from any source other than INVEST funds.

4. **Amendment to Section 3. Completion of Improvements.**

- A. Commencement and Completion. HIP shall obtain all necessary governmental permits and approvals and shall complete the Improvements, as defined in this Agreement, to begin no later than six (6) months after the date of execution of this Agreement and only after the recording of the Notice of Commencement, and shall cause such construction to be prosecuted with diligence and dispatch so that the construction of the Improvements is completed in accordance with the Final Plans on or before ~~September 30, 2017~~ December 31, 2018 (the "Completion Date"). The parties agree that no later than the Completion Date, the Property shall be free and clear of all liens or claims for materials, labor, services, or other items provided in the completion of the Improvements, and in full compliance with all building, zoning and other applicable local, state and federal laws, ordinances, rules and regulations. In the event that HIP is unable to complete the Improvements by the established Completion Date, an extension may be requested. Any such request shall be in writing and shall describe in detail the reason for the extension request. All such requests for extension shall be submitted to the Manager of the Housing and Community Development Division no less than (90) days prior to the Completion Date for approval. Approval shall be granted at the sole discretion of the Housing and Community Development Division and such decision shall be final.

5. **Amendment to Section 9. Term and Termination.**

- A. ~~This Agreement shall take effect upon execution by all Parties and shall terminate five (5) years from the date that it was executed by the last party. This Agreement shall be effective on October 1, 2016 and shall terminate on September 30, 2021.~~

6. **Agreement.** Other than as expressly set forth herein, the Agreement shall remain in full force and effect and no modifications are made thereto.

7. **No Waiver.** Nothing contained in this First Amendment waives any covenant or other default or any event that would become a default with the passage of time or the giving of notice, under the Agreement.

8. **Severability.** The provisions of this First Amendment are declared by the parties to be severable. However, the material provisions of this Agreement are dependent upon one another, and such interdependence is a material inducement for the parties to enter into this Agreement. Therefore, should any material term, provision, covenant or condition of this Agreement 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 the holding.

9. **Execution in Counterparts.** This First Amendment may be executed in separate counterparts, all of which taken together shall be deemed to constitute on and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by their duly authorized officials on the dates set forth below.



**ORANGE COUNTY, FLORIDA**

By: Board of County Commissioners

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

Date: 15 January 2019

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

BY: *Katie Smith*  
Deputy Clerk

Date: JAN 15 2019

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[REMAINING SIGNATURES ON THE FOLLOWING PAGES]

HOMES IN PARTNERSHIP, INC.

BY: Toby Best  
Toby Best, Executive Director

Date: 12/11/18

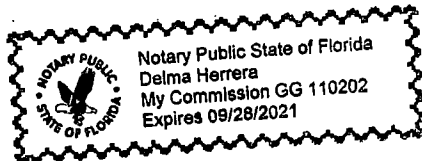
STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 11TH day of DECEMBER, 20018 by Toby Best, Executive Director of Homes In Partnership, Inc., a Florida non-profit corporation on behalf of the corporation. He is personally known to me or has produced as identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 11TH day of DECEMBER, 20018.

Delma Herrera  
Notary Public  
My Commission Expires: **09/28/2021**



**REVISED EXHIBIT B**  
**HOMES IN PARTNERSHIP, INC.**  
**PROJECT BUDGET**

|                         |   |
|-------------------------|---|
| <b>Soft Cost</b>        | <del>\$ 47,000</del> <u>\$78,200</u>      |
| Engineering             |   |
| Surveying               |   |
| Recording               |   |
| Plat Fees               |   |
| <br><b>Construction</b> | <br><del>\$643,000</del> <u>\$722,200</u> |
| Site Work               |   |
| Utilities               |   |
| Roadway                 |   |
| <br><b>Contingency</b>  | <br><del>\$ 34,000</del> <u>\$8,600</u>   |
| <br><b>TOTAL BUDGET</b> | <br><del>\$724,000</del> <u>\$809,000</u> |