

AGREEMENT

**BETWEEN
THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PENSACOLA
AND
THE EMERALD COAST REGIONAL COUNCIL**

Implementation of Community Redevelopment Area Residential Property Improvement Program

This agreement entered into on this the _____ day of _____, 2020 by and between the Community Redevelopment Agency of the City of Pensacola, a public body corporate and politic of the State of Florida (hereinafter referred to as the CRA), and the Emerald Coast Regional Council, a multi-purpose regional entity recognized by the State of Florida (hereinafter referred to as the ECRC).

RECITALS

The CRA was created pursuant to Chapter 163 F.S. to eliminate blight and to implement programs in support of affordable housing.

The CRA has developed the Residential Property Improvement Program (“Program”) in order to carry out its statutory duties in the designated community redevelopment districts.

The CRA is authorized by Chapter 163 F.S to employ technical experts and other agents as it requires to carry out its community redevelopment purposes.

The CRA requires specific professional staff services relating to the implementation of the Program.

ECRC possesses the necessary qualifications and expertise to perform the services related to implementation of the Program.

The CRA wishes to engage the services of ECRC and ECRC wishes to perform the services relating to the implementation of the Program for the CRA.

It is hereby declared to be in the public interest and the purpose of this Agreement that the CRA and the ECRC jointly pledge their intention to cooperatively seek to implement the Program in the target neighborhood(s) of the designated community redevelopment areas of the City of Pensacola.

NOW, THEREFORE, in consideration of the work to be performed and the payment for the performance of the work, and of the mutual covenants herein contained, the ECRC and the CRA do agree as follows:

1. ECRC SERVICES

- A. The ECRC will provide professional staff and support services in support of the CRA Residential Property Improvement projects in matters pertaining to the CRA’s target neighborhood area(s).

ECRC staff will advertise/market the program to target area property owners, certify eligible applicants and verify applicant income by third party verification, submit to the CRA eligible property improvement projects that have met the program guidelines, inspect applicant properties, prepare improvement or rehabilitation work write-ups, develop specifications and cost estimates, bid the work for construction, select and monitor the construction contractor, participate in contract reviews, approve pay requests, perform final inspections and program close-out for all units assisted under this program. ECRC agrees that all applications are subject to final approval by the CRA Administrator. Program documents including program guidelines, agreements and forms, as enumerated in Exhibit "A" of this Agreement, shall be used in the administration of the CRA Residential Property Improvement Program, as directed by the CRA Administrator.

- B. This Agreement shall solely encompass Services as specifically described herein.
- C. ECRC agrees and understands that any additional services beyond those specifically described herein, are not covered by this Agreement, and shall not be performed without an extension or amendment of this Agreement being authorized and approved by the CRA.
- D. ECRC represents and warrants to CRA that: (i) it possesses the qualifications, expertise and experience required for the performance of the Services; (ii) it is not delinquent in the payment of any sums due CRA, including payment of permit fees, occupational licenses, etc., nor in the performance of any obligations to CRA; (iii) the personnel assigned to perform Services are and shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; and (iv) Services will be performed in the manner described herein.
- E. Standard of Care: In providing services under this Agreement, the ECRC shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality.

2. TERM AND RENEWALS

This agreement shall commence on the date written above and shall remain in effect for three years, subject to the availability of program funds. This agreement may be renewed upon the mutual consent of the parties for up to three (3) three (3) year renewal term (Renewal Term), subject to the availability of program funds.

3. COMPENSATION

- A. Compensation to the ECRC for all services, including marketing, outreach, application processing, third party income verification, construction monitoring, closeout and documentation shall be nine percent (9%) of the total construction cost of each completed rehabilitation project according to the procedure in Section 4 below. There will be an additional fee paid by CRA to ECRC of \$300.00 for write-up and inspection that will be invoiced to the CRA per rehabilitation project according to the procedure in Section 4 below.

- B. Absent an amendment or extension of this Agreement, compensation for any additional services beyond those specifically described herein, are not included in this compensation and shall only be provided upon a written amendment entered into by CRA and ECRC.
- C. Payment shall be made within thirty (30) days after receipt of ECRC's invoice, unless otherwise specifically provided herein, which shall be accompanied by sufficient supporting documentation and shall contain sufficient detail, to allow a proper audit of expenditures, should CRA require one to be performed.

4. PAYMENT PROCEDURE

A. Payment to Contractor

- 1. Lump Sum Payment: Construction contracts not exceeding \$5,000 will be paid in lump sum upon written notice to CRA from ECRC of satisfactory completion of all contract requirements as specified herein.
- 2. Progress Payments: Construction contracts over \$5,000 will be paid in two draws by the CRA to the contractor as follows: 1) 50% will be paid upon written notice to CRA from ECRC of satisfactory completion of 60% of work, and 2) the remaining 50% will be paid upon written notice to CRA from ECRC of satisfactory completion of all construction contract requirements as stipulated herein, including approval of the City of Pensacola (or Escambia County) Building Inspections and the CRA.

The CRA shall, issue a check by the 10th of each month for certified invoices received by the 30th of the prior month for the completed rehabilitation work. Checks shall be made payable to the approved contractor and the check shall be mailed directly to the contractor.

B. Payment to ECRC

At the time a written notice to CRA from ECRC of an approved draw is submitted to the CRA by the ECRC for the contractor, an invoice will also be submitted by ECRC to the CRA for nine percent (9%) of the construction draw amount as payment due to ECRC. The final payment request submitted to the CRA by the ECRC will include a \$300 fee for project write- up and inspection of each constructed project.

The CRA shall, issue a check by the 10th of each month for certified invoices received by the 30th of the prior month. Checks shall be made payable to the ECRC.

5. METHOD OF PAYMENT

The ECRC will adhere to the following procedures in requesting payment for its services under this Agreement:

- A. If the Agreement is terminated by either the ECRC or the CRA, the ECRC shall submit an invoice for any monies due the ECRC through the date of termination.
- B. The invoice will be signed by the Chief Finance Officer of the ECRC as to its correctness.

- C. The invoice will be accompanied by a progress report, address and owner of each property assisted, specific tasks performed for each property, the estimated property improvement project cost, date of bid and bid award, actual project cost, name of selected contractor and such other documentation as may be required by the CRA.
- D. The CRA may withhold payment of invoices until questions of accuracy and correctness are cleared up to the satisfaction of the CRA or until any omitted reports are received.
- E. All payments for the property improvement work shall be paid by the CRA directly to the contractor following review, written notice of approval and certification of an invoice by the ECRC. The ECRC will not be a party to any construction contract, the ECRC will have no liability for any payment to any contractor, and the CRA will have sole responsibility for payment to the Contractor.

6. OWNERSHIP OF DOCUMENTS

ECRC understands and agrees that any information, document, report or any other material whatsoever which is given by CRA to ECRC or which is otherwise obtained or prepared by ECRC pursuant to or under the terms of this Agreement is and shall at all times remain the property of CRA. ECRC agrees not to use any such information, document, report or material for any other purpose whatsoever without the written consent of CRA, which may be withheld or conditioned by CRA in its sole discretion.

7. AUDIT AND INSPECTION RIGHTS

- A. CRA may, at reasonable times, and for a period of up to three (3) years following the date of final payment by CRA to ECRC under this Agreement, audit, or cause to be audited, those books and records of ECRC which are related to ECRC's performance under this Agreement. ECRC agrees to maintain all such books and records at its principal place of business for a period of three (3) years after final invoice is submitted under this Agreement.
- B. CRA may, at reasonable times during the term hereof, inspect ECRC's work to determine whether the services required to be provided by ECRC under this Agreement conform to the terms hereof. ECRC shall make available to CRA all reasonable access to facilitate the performance of tests or inspections by CRA representatives.

8. AWARD OF AGREEMENT

ECRC represents and warrants to CRA that it has not employed or retained any person or company employed by CRA to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

9. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

ECRC understands that Agreements between private entities and local governments are subject to certain laws and regulations, including laws pertaining to public records, conflict of interest, record keeping, etcetera. CRA and ECRC agree to comply with and observe all applicable laws, codes and ordinances as they may be amended from time to time.

10. INDEMNIFICATION

ECRC agrees, to the fullest extent permitted by law, to indemnify, defend and hold harmless the City of Pensacola (“City”) and the CRA, their officials, and employees (collectively referred to as “Indemnitees”) from and against all loss, costs, penalties, fines, damages, claims, expenses (including reasonable attorney’s fees) or liabilities (collectively referred to as “Liabilities”) by reason of any injury to or death of person(s) or damage to or destruction or loss of any property arising out of, resulting from, or in connection with but only to the extent caused by (i) the performance or non-performance of the services contemplated by this Agreement which are caused, in whole or in part, by any acts or omissions, of ECRC or its employees, or sub-contractors (collectively referred to as “ECRC”), or (ii) the failure of ECRC to comply with the paragraphs herein or the failure of ECRC to conform to applicable statutes, ordinances, or other regulations or requirements of applicable governmental authority, federal or state, in connection with the performance of this Agreement. ECRC expressly agrees to indemnify and hold harmless the Indemnitees, from and against liabilities which may be asserted by an employee or former employee of ECRC, or any of its sub-contractors, as provided above, for which ECRC’s liability to such employee or former employee would otherwise be limited to payments under state Workers’ Compensation or similar laws.

11. DEFAULT

If ECRC fails to comply with the terms or conditions of this Agreement, or fails to perform its obligations hereunder in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality, then ECRC shall be in default. Upon the occurrence of a default hereunder CRA, in addition to all remedies available to it by law, may terminate this Agreement by giving written notice to ECRC at least five (5) business days prior to the effective date of such termination. ECRC understands and agrees that termination of this Agreement under this section shall not release ECRC from any obligation accruing prior to the effective date of termination.

12. INSURANCE

City may, upon reasonable notice, increase or change the required insurance hereunder, in which event ECRC shall obtain such required insurance within thirty (30) days prior to the date on which the requirements shall take effect. Should the ECRC fail or refuse to satisfy the requirement of changed coverage, this Agreement may be terminated at the sole discretion of the City.

Before starting and until termination of work for, or on behalf of, the CRA, the ECRC shall procure and maintain insurance of the types and to the limits specified. The term “City” as used in this section of the Contract is defined to mean the City of Pensacola itself, any subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives and agents. Insurance shall be issued by an insurer whose business reputation; financial stability and claims payment reputation is satisfactory to the

City, for the City's and the CRA's protection only. Unless otherwise agreed, the amounts, form and type of insurance shall conform to the following minimum requirements:

A. Worker's Compensation

The ECRC shall purchase and maintain Worker's Compensation Insurance Coverage for all Workers' Compensation obligations required by law. Additionally, the policy, or separately obtained policy, must include Employers Liability Coverage of at least **\$100,000** each person -accident, **\$100,000** each person - disease, **\$500,000** aggregate - disease.

B. Commercial General and Automobile Liability Coverage

The ECRC shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability policy filed by the Insurance Services Office. The City and CRA shall be an Additional Insured and such coverage shall be at least as broad as that provided to the Named Insured under the policy for the terms and conditions of this Agreement.

The City and CRA shall not be considered liable for premium payment, entitled to any premium return or dividend and shall not be considered a member of any mutual or reciprocal company. Minimum limits of **\$1,000,000** per occurrence, and per accident, combined single limit for liability must be provided, with umbrella insurance coverage making up any difference between the policy limits of underlying policies coverage and the total amount of coverage required.

Commercial General Liability coverage must be provided, including bodily injury and property damage liability for premises, operations, products and completed operations, contractual liability, and independent contractors. The coverage shall be written on occurrence-type basis.

Automobile Liability coverage must be provided which includes bodily injury and property damage arising out of the operation, maintenance or use of owned, non-owned and hired automobiles. Minimum limits of \$300,000 combined single limit must be provided.

C. Certificates of Insurance

Required insurance shall be documented in the Certificates of Insurance that provide that the City of Pensacola shall be notified at least thirty (30) days in advance of cancellation, nonrenewal or adverse change or restriction in coverage. If required by the City, the ECRC shall furnish copies of the ECRC's insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "Certificate of Insurance" form equal to, as determined by the City an ACORD 25. The ECRC shall replace any canceled, adversely changed, restricted or non- renewed policies with new policies acceptable to the City and shall file with the City Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner acceptable to the City, the ECRC shall, upon instructions of the City, cease all operations under the Contract until directed by the City, in writing, to resume operations. The "Certificate Holder" address should read: City of Pensacola, Risk Management, Post Office Box 12910, Pensacola, FL 32521

D. Insurance of the ECRC Primary

The ECRC's required coverage shall be considered primary, and all other insurance shall be considered as excess, over and above the ECRC's coverage. The ECRC's policies of coverage will be considered primary as relates to all provisions of the Agreement.

13. NO DISCRIMINATION

ECRC shall not discriminate on the basis of race, creed, color, national origin, sex, age, or disability, in the performance of this Agreement.

14. ASSIGNMENT

This Agreement shall not be assigned by ECRC, in whole or in part, without the prior written consent of CRA, which may be withheld or conditioned, in CRA's sole discretion.

15. NOTICES

All notices or other communications required under this Agreement shall be in writing and shall be given by hand-delivery or by registered or certified U.S. Mail, return receipt requested, addressed to the other party at the address indicated herein or to such other address as a party may designate by notice given as herein provided. Notice shall be deemed given on the day on which personally delivered; or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

TO CRA

M. Helen Gibson, Administrator
Community Redevelopment Agency
City of Pensacola
222 W. Main Street
Pensacola, FL 32502

TO ECRC

Austin Mount
Executive Director
Emerald Coast Regional Council
4081 E. Olive Road
Pensacola, FL 32502

16. MISCELLANEOUS PROVISIONS

- A. **Governing Law.** This Agreement is governed and construed in accordance with the laws of the State of Florida. The law of the State of Florida shall be the law applied in the resolution of any claim, actions or proceedings arising out of this Contract.
- B. **Venue.** Venue for any claim, actions or proceedings arising out of this Contract shall be Escambia County, Florida.
- C. **No Waiver.** No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

- D. **Severability.** Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida or City of Pensacola, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.
- E. **No Other Agreements.** The Parties agree the Contracting Documents contain all the terms and conditions agreed upon by the Parties. No other agreements, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind either Party.
- F. **Necessary Approvals.** ECRC shall document procurement by the construction contractor(s) of all permits, licenses, and certificates, or any approvals in performance and completion of this Contract as may be required by federal, state, and local laws, ordinances, rules, and regulations, and in accordance with the Contracting Documents.

17. INDEPENDENT CONTRACTOR

ECRC has been procured and is being engaged to provide services to CRA as an independent contractor, and not as an agent or employee of CRA. Accordingly, ECRC shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of CRA, nor any rights generally afforded classified or unclassified employees. ECRC further understands that Florida Workers' Compensation benefits available to employees of CRA are not available to ECRC, and agrees to provide workers' compensation insurance for any employee or agent of ECRC rendering services to CRA under this Agreement.

18. DOCUMENTS OF INCORPORATION

This Agreement is expressly made subject to all exhibits hereto, to the exhibits, provisions, requirements, applicable federal, state and local laws, rules and regulations as of the effective date herein, and to applicable requirements, whether federal, state or local, verbal or written, placed upon CRA. All of the foregoing are hereby made a part of this Agreement and incorporated herein by reference as if fully set out herein.

19. ENTIRE AGREEMENT

This instrument and its exhibits constitute the sole and only Agreement of the parties relating to the subject matter hereof and correctly set forth the rights, duties, and obligations of each to the other as of its date. Any prior Agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

20. COUNTERPARTS

Attachment "A"

PUBLIC RECORDS: Consultant/Contractor/Vendor shall comply with Chapter 119, Florida Statutes. Specifically, Consultant/ Contractor/Vendor shall:

- A. Keep and maintain public records required by the City to perform the service.
- B. Upon request from the City's custodian of public records, provide the City with a copy 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 in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following the completion of the Agreement if Consultant/ Contractor/Vendor does not transfer the records to the City.
- D. Upon completion of the Agreement, transfer, at no cost, to City, all public records in possession of Consultant/Contractor/Vendor or keep and maintain public records required by the City to perform the service. If Consultant/Contractor/Vendor transfers all public records to City upon completion of the Agreement, Consultant/ Contractor/Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant/Contractor/Vendor keeps and maintains public records upon completion of the Agreement, Consultant/Contractor/Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request of the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

Failure by Consultant/Contractor/Vendor to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Agreement by City.

IF CONSULTANT/CONTRACTOR/VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE PUBLIC RECORDS COORDINATOR AT: THE OFFICE OF THE CITY CLERK, (850) 435-1715, PUBLICRECORDS@CITYOFPENSACOLA.COM, 222 WEST MAIN STREET, PENSACOLA, FL 32502.

EXHIBIT “A”

PROGRAM DOCUMENTS

Community Redevelopment Area Residential Property Improvement Program
Program Documents List

(This list is including but not limited to the list of program documents)

Program Guidelines
Application
Program Funding agreement
Authorization for Release of Information
Applicants’ Hold Harmless
Applicant Affidavit
Eligibility for Rehab Assistance Letter
Lien Agreement
Truth in Lending Disclosure
Right of Recession
Award of Housing Rehab Contract
Contract for Housing Rehab Services
Contractor Liability Agreement
Contractor Affidavit
Notice of Commencement
Contractor’s Notice to Proceed
Final Inspection form