

**PINELLAS COUNTY COMMUNITY DEVELOPMENT  
SPECIFIC PERFORMANCE AGREEMENT**

THIS AGREEMENT, ("Agreement") made and entered into this 8<sup>th</sup> day of April 2009, by and between Pinellas County, having its principal office at 315 Court Street, Clearwater, Florida 33756, a political subdivision of the State of Florida ("County") and the **Housing Finance Authority of Pinellas County** ("Authority"), a public body corporate and politic, organized and existing under Chapter 159, Part IV of the Florida Statutes and Pinellas County Code Section 2-386:

**WITNESSETH:**

WHEREAS, Pinellas County's long term Community Development goal is to develop livable communities by providing decent housing, a suitable living environment and expanded economic opportunities, principally for persons of low and moderate income, and to aid in the prevention and elimination of slums and blight; and

WHEREAS, Pinellas County has recognized the need to preserve and rehabilitate housing for low and moderate income households; and

WHEREAS, Pinellas County wishes to enable entities to rehabilitate foreclosed and abandoned housing to benefit eligible families; and,

WHEREAS, the Board of County Commissioners in Resolution 08-121 approved the 2008-09 Action Plan furthering the County's Community Development goal; and

WHEREAS, the Board of County Commissioners in Resolution 08-199 approved an amendment to the 2008-2009 Action Plan for the purpose of receiving Neighborhood Stabilization Program funding, a component of the Community Development Block Grant Program; and

WHEREAS, the 2008-09 Action Plan certifies the County's compliance with Community Development Block Grant ("CDBG"), HOME Investment Partnership Program ("HOME"), and Emergency Shelter Grant ("ESG") regulations and specifies projects to be funded under those grants; and

WHEREAS, the Pinellas County Community Development Department ("Department") administers the CDBG program on behalf of County; and

WHEREAS, the Neighborhood Stabilization Program (NSP), authorized under Title III of Division B of the Housing and Economic Recovery Act of 2008 (HERA), is a special allocation of CDBG funds targeted at acquisition, rehabilitation and resale of foreclosed and abandoned properties in eligible neighborhoods; and

WHEREAS, the Neighborhood Stabilization Program was approved in the Amended Action Plan; and

WHEREAS, the Housing Finance Authority of Pinellas County desires to provide certain Neighborhood Stabilization Program implementation services to effectively meet the public purposes of the program and provide housing to income-eligible households; and

WHEREAS, it is necessary for the County and the Authority to enter into an Agreement for the implementation of the Neighborhood Stabilization Program; and

NOW, THEREFORE, in consideration of the mutual performance of the promises and covenants contained herein, the County and the Agency agree as follows:

**A. SCOPE OF SERVICES**

1. Authority shall utilize Neighborhood Stabilization Program (NSP) funding for purchase and rehabilitation of foreclosed and abandoned properties for resale to qualified buyers at affordable prices and provide project management and oversight services for certain aspects of the NSP, hereinafter referred to as "Project".

2. Authority will negotiate a discounted purchase price for certain identified abandoned, foreclosed, and/or blighted residential properties from lenders/property owners in accordance with NSP guidelines, and shall perform due diligence to insure that all properties acquired have clear marketable title.
3. Upon receipt of NSP funds, the County will provide Authority said funds for NSP-eligible costs and fees involved in acquiring eligible properties.
4. NSP eligible expenses include, but are not limited to, the cost of acquisition, rehabilitation, demolition, maintenance, and sale of properties purchased under this Agreement.
5. Properties purchased, sold and/or leased under this Agreement may only be used to benefit income-eligible households, as defined by the NSP.
6. Authority shall carry out the Project under this Agreement in accordance with the guidelines and regulations of the Neighborhood Stabilization Program as authorized under Title III of Division B of the Housing and Economic Recovery Act of 2008 (HERA).
7. The scope of services outlined above shall not be altered without written approval of the County through Department.

#### B. FUNDING

1. The County, through Department, shall pay Authority for eligible costs and services performed under the terms of this Agreement. Funds shall be provided from a pool of funds reserved by Department. The total amount available through the pool may vary depending upon program income generated but is estimated to be up to **\$7,250,000.00** (Seven Million Two Hundred Fifty Thousand and No/100 Dollars). Department shall notify Authority if it determines that the pool of funds may be exhausted prior to the end of the term of this Agreement. However, the County assumes no liability or responsibility for loans processed or invoices delivered after the pool of funds is depleted.
2. The County agrees to pay the Authority a Developer Fee equal to 10% of NSP program-eligible costs and/or services solely performed by the Authority under the terms of this Agreement and other eligible expenses as may be incurred by the Authority on behalf of the program will be reimbursed upon receipt of documented requests. Payment will be made in accordance with the Prompt Payment Act, Section 218.70 et. seq., Florida Statutes.
3. Notwithstanding the above, whenever practical, the County may, in its discretion, remit directly to a payee other than the Authority, for invoiced and documented eligible expenses attributable to each NSP property.
4. With each request for payment, Authority shall submit supporting documentation for payment of actual costs incurred by Authority in carrying out the Project as described in Section A above, as well as any documentation necessary to demonstrate NSP eligibility and compliance. All requests must be approved by the County, through the Department, prior to payment.
5. Authority acknowledges that the entire Project is subject to Davis Bacon and related Acts and agrees to take necessary actions to enforce, or assist in enforcing, applicable regulations, including obtaining Department Davis Bacon Contract Administrator's approval prior to disbursing all the Project's construction payments to contractors.

6. Should the Authority fail to submit adequate supporting documentation with each request for payment as required by the County, the County through the Department may disapprove the request.
7. The source of funding from the County for payment of services performed under this Agreement is a grant provided to the County by the U.S. Department of Housing and Urban Development ("HUD") CFDA #14.218. The Authority agrees that in the event that any grant is reduced or withheld by HUD, the County shall not be liable for payment of contracted services remaining unfunded by said reduced or withheld grant. In the event that HUD determines that the Authority has not fulfilled its obligations in accordance with the requirements applicable to the grant and/or requests reimbursement of expenses paid under this Agreement, the Authority shall provide said reimbursement from non-federal sources within ten days of said notice from the County.

### C. MONITORING

1. County shall have the right to monitor and evaluate all aspects of activities carried out by Authority. Such evaluation will be effected by the submission of information by Authority, by monitoring site visits by the Department, if applicable, or by other means appropriate to the project.
2. All records pertaining to this Agreement, including but not limited to financial, statistical, property and programmatic records shall be retained for five (5) years from ending date of the County's fiscal year (October 1 through September 30) in which this Agreement is terminated. All records, however, that are subject to audit findings shall be retained for five (5) years in the manner prescribed above or until such audit findings have been resolved, whichever is later. Nothing herein shall be construed to allow destruction of records that may be required to be retained longer by the Statutes of the State of Florida.
3. If the Authority receives more than \$500,000 a year in Federal awards, Authority shall have a single or program-specific audit conducted for that year in accordance with OMB Circular A-133. Audit report shall be submitted to the Department within the earlier of 30 days after receipt of the auditor's report(s), or 9 months after the end of the audit period, unless the Authority and the Department agree to a longer period in advance. Authority shall be responsible for the costs associated with this audit. Authority shall submit any additional documentation requested by the County to substantiate compliance to this provision if necessary.
4. The Authority shall at any time during normal business hours and as often as the County and/or the Comptroller General of the United States and/or the U.S. Department of Housing and Urban Development and/or any of their duly authorized representatives may deem necessary make available for examination all of Authority's records, books, documents, papers, and data with respect to all matters covered by this Agreement and shall permit the County and/or its designated authorized representative to audit and examine all books, documents, papers, records and data related to this Agreement.

### D. TERM OF AGREEMENT

1. The term of performance under this Agreement for the services described in Section A above shall commence upon execution of this Agreement and shall end upon 1) the exhaustion of funds; 2) withholding or reduction of grant funds; 3) the violation of any of the provisions herein; or 4) termination by either party.
2. County may suspend, withhold payments, or terminate this Agreement and all payment to the Authority in whole or in part for cause upon seven (7) calendar days notice in writing to the Authority. Cause, which shall

be determined by County, includes but is not limited to a) improper use of Project funds, b) failure to comply with the terms and conditions of the Agreement, c) refusal to accept conditions imposed by HUD pertaining to activities covered by this Agreement, d) submittal to County of documentation which is incorrect or incomplete in any material respect, or e) changes in Federal or State law or the availability of grant funds, as identified in Section B of this Agreement, which render the project impossible or infeasible.

3. In the event of default, lack of compliance or failure to perform on the part of Authority, County reserves the right to exercise corrective or remedial actions, to include, but not necessarily be limited to requesting additional information from Authority to determine reasons for or extent of noncompliance or lack of performance; issue a written warning advising Authority of deficiency and advising Authority that more serious sanctions may be taken if situation is not remedied; advise Authority to suspend, discontinue or not incur costs for activities in question; withhold payment for services provided; or advise Authority to reimburse County for amount of costs incurred for any items determined ineligible.
4. In the event of a natural disaster, this Agreement may be suspended or terminated and funds transferred to recovery activities as determined by the County. Funds subject to this provision shall be those that are not contractually committed for construction, design or other such third party private vendors.
5. This Agreement may be terminated in whole or in part for convenience by either party upon thirty (30) days written notification to the other. Termination for convenience shall not apply to provisions in this Agreement that require compliance with laws, regulations or ordinances, records retention or to the provision of service to low and moderate income persons or other specified beneficiaries.

#### E. INDEMNIFICATION AND INSURANCE

1. The County and the Authority agree to be fully responsible for their own acts of negligence, or their respective agents' acts of negligence when acting within the scope of their employment, to the extent permitted by §768.28 Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by either the County or the Authority. Nothing herein shall be construed as consent by the County or the Authority to be sued by third parties in any manner arising out of this Agreement.

#### F. REPORTING

1. Authority shall furnish Department with all additional information, records, reports and data as may be required by HUD or County pertaining to matters of this Agreement. Failure of the Authority to provide any additional documentation requested by the County within thirty (30) business days of same shall constitute a default of this Agreement and County may elect to terminate the Agreement accordingly.

#### G. OTHER REQUIREMENTS

1. In carrying out this Agreement, the Authority or any contractor shall not exclude from participation in, deny benefits to, or otherwise discriminate against, any person because of race, color, religion, sex, age, national origin, family status or handicap.

2. In carrying out this Agreement, the Authority or any subcontractor shall not discriminate in the sale, rental, use or occupancy of housing; in the sale or rental of land to be developed for housing; in the financing of housing or the provision of brokerage services; including otherwise making unavailable or denying a dwelling to a person, because of race, color, religion, sex, national origin, handicap or familial status. Authority and any subcontractor agree to affirmatively further fair housing.
3. The Authority will comply with applicable uniform administrative requirements as described in 24 CFR 570.502 and will carry out the project in compliance with all federal laws and regulations described in Subpart K of the Community Development Block Grant regulations, except that the Authority shall not assume County's environmental responsibilities described at Sec.570.604; and Authority shall not assume County's responsibility for initiating the review process under the provisions of 24 CFR Part 52. County will provide Authority with copies of all applicable regulations. Further, the Authority will comply with all terms of the Community Development Block Grant Agreement and County requirements. Since County is responsible for its Community Development Block Grant program, the Authority will provide Department with the opportunity to review all plans, all contracts and other pertinent documentation prior to the commitment of funds in order to confirm compliance with the above federal and local requirements.
4. The Authority certifies and discloses that, to the best of the Authority's knowledge and belief:
  - a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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; and that
  - b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member 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, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
5. Program income, as defined in Community Development Block Grant regulations, including but not limited to proceeds, received by the Authority shall be returned to the County in quarterly payments and shall commence with the execution date of said contract.
6. The Authority shall not assign any interest in this Agreement or otherwise transfer interest in this Agreement nor enter into any subcontract pursuant to this Agreement without the prior written approval of the County of the proposed subcontract. All requirements of this Agreement shall be applicable to any subcontracts entered into under this Agreement and it shall be Authority's responsibility to ensure that all requirements are included in said subcontracts and all subcontractors abide by said requirements.
7. No forbearance on the part of either party shall constitute a waiver of any item requiring performance by the other party hereunder. A waiver by one party of the other party's performance shall not constitute a waiver of any subsequent performance required by such other party. No waiver shall be valid unless it is in writing and signed by authorized representatives of both parties.
8. Any news release or other type of publicity pertaining to this Project must recognize Pinellas County and the funding source for this Agreement as sponsors.

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

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

\*Note: Two witnesses are required\*

ATTEST:

HOUSING FINANCE AUTHORITY  
OF PINELLAS COUNTY, FLORIDA

By: \_\_\_\_\_

Rodney S. Fischer, Chairman

Deborah Hunt Halstead  
Witness #1 Signature

Deborah Hunt Halstead  
Print or Type Name

Tamela Bell  
Witness #2 Signature

TAMELA BELL  
Print or Type Name

ATTEST:

KEN BURKE, CLERK

PINELLAS COUNTY, FLORIDA  
a political subdivision, by and through its  
Board of County Commissioners

By: \_\_\_\_\_

Calvin D. Harris, Chairman

By: Cynthia N. Hauman  
Witness #1 Signature

Cynthia N. Hauman  
Print or Type Name

\_\_\_\_\_  
Witness #2 Signature

\_\_\_\_\_  
Print or Type Name

APPROVED AS TO FORM  
OFFICE OF COUNTY ATTORNEY

By: \_\_\_\_\_

Michael A. Zas

Senior Assistant County Attorney