

## **AGREEMENT**

THIS AGREEMENT is entered into on the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between Racine Revitalization Partnership (“RRP”), a Community Development Corporation, and the City of Racine Redevelopment Authority (“RDA”), and the City of Racine “City”).

## **RECITALS**

WHEREAS, RRP desires to continue to build a better Racine through the social, physical, and economic revitalization of its neighborhoods; and

WHEREAS, RRP is a nonprofit Community Development Corporation (“CDC”) designated as a Community Housing Development Organization (“CHDO”) that will continue to provide additional opportunities for private fundraising, grant, and tax credit programs that the City of Racine (“City”) cannot enjoy because it does not have a CHDO or CDC operating within its boundaries; and

WHEREAS, RRP requires funds for staffing and administrative costs to continue its revitalization efforts; and

WHEREAS, the Common Council of the City of Racine, through the adoption of Resolution 0224-16 on the 21<sup>st</sup> day of June, 2016, allocated funds from the Uptown Tax Increment Finance District Plan (hereinafter referred to as “TID 19”);

NOW THEREFORE, the parties hereby agree to the following:

### **I. DUTIES**

RRP’s operations shall have the primary function of working on the items listed and identified in the Project Plan for the Creation of Tax Incremental District No. 19 (“TID 19 Project Plan”), including but not limited to:

- i. Acquisition and rehabilitation of rental housing;
- ii. New construction of rental housing;
- iii. Acquisition and/or rehabilitation of homebuyer properties;
- iv. New construction of homebuyer properties; and
- v. Direct financial assistance to purchasers of housing constructed with HUD financing

And also listed in the Racine Revitalization Partnership Scope of Services, attached hereto as Appendix A (collectively referred to as “the services”).

### **II. TIME PERIOD**

This Agreement shall cover the period from March 1, 2018 through June 30, 2019. Any extension beyond June 30, 2019 shall require an amendment to the Agreement signed by both parties.

### **III. FUNDING**

RDA agrees to grant, subject to the contingencies herein, and RRP agrees to accept for the satisfactory performance of the services under this Agreement the maximum sum of **\$100,000.00** inclusive of all expenses, incurred after March 1, 2018. The funds to be paid shall come out of the increment generated from by TID 19, if any. If TID 19 has not produced sufficient increment to pay for the full sum of this Agreement, funds shall be paid from the Intergovernmental Revenue Sharing Fund until increment generated by TID 19 is sufficient to reimburse the Intergovernmental Revenue Sharing Fund.

#### **IV. PERFORMANCE MONITORING**

RDA will monitor the performance of RRP against Performance Standards and Scope of Services described in Appendix A. RDA and the City of Racine reserve the right to, at least annually, review all records with respect to all matters covered by this Agreement. Records shall be made available during normal business hours as often as the RDA, City of Racine, or if federal and/or state regulatory oversight applies, as the appropriate federal or state agency may deem necessary. During such records review, the RRP will provide all records with respect to all matters covered by this Agreement and will permit the RDA and/or such federal or state agency and/or representatives of the Comptroller General to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

Substandard performance as determined by RDA or City will constitute noncompliance with this Agreement. If noncompliance is determined, enforcement activities will be pursued set forth in Section XI of this Agreement.

#### **V. TIME OF PERFORMANCE**

The services to be performed under the terms and conditions of this Agreement shall be in force and shall commence upon execution of this Agreement by all parties of interest, and shall be undertaken and completed in such sequence as to assure its expeditious completion in light of the purposes of this Agreement, but in any event, all of the services required hereunder shall be completed no later than June 30, 2019, which is the termination date of this Agreement. In addition to all other remedies incurring to RDA and City, should the Agreement not be completed by the date specified in accordance with all of its terms, requirements and conditions therein set forth, RRP shall continue to be obligated thereafter to fulfill RRP's responsibility to amend, modify, change, correct, or expand thereon until the Agreement is fully completed.

In the event that RRP cannot complete projects within the time period of this Agreement, then RRP is solely responsible for immediately advising RDA and City of its pending obligations and taking all reasonable steps to bring said project to its conclusion. Failure to keep RDA and City apprised of such matters constitutes default under this Agreement.

#### **VI. CONDITIONS OF PERFORMANCE AND COMPENSATION**

A. Performance

RRP agrees that the performance of RRP's work, services, and the results herefrom, pursuant to the terms, conditions, and agreements of this Agreement, shall conform to such recognized high professional standards as are prevalent in this field of endeavor and like services.

B. Place of Performance

RRP shall conduct RRP's services as required under the terms and conditions of this Agreement at such place or places as is necessary, which will enable RRP to fulfill RRP's obligations under this Agreement.

C. Additional Fringe or Employee Benefits

RRP acknowledges that it is not a City entity, nor are any of RRP's employees, contractors, or subcontractors employees of the RDA or City. No RRP employee, contractor, or subcontractor shall receive or be eligible for any salary or fringe benefits or any other payments or benefits to which City employees are entitled to or are receiving.

D. Personnel

1. RRP represents that it has or will secure all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with RDA or City.
2. All of the services required hereunder will be performed by RRP or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.
3. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of RDA. If any work or services are subcontracted, it shall be specified in a written contract or agreement and shall be subject to each provision of this Agreement. RRP shall be as fully responsible to the RDA for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by RRP, as RRP is for the acts and omissions of persons directly employed by RRP.
4. If in the performance of this Agreement there is any underpayment of salaries by RRP or by any contractor or subcontractor thereunder, RDA shall withhold from RRP payments due to RRP, an amount sufficient to pay to employees underpaid the difference between the salaries required hereby to be paid and the wages or salaries actually paid such employees for the total number of hours worked. The amounts withheld shall be disbursed by RDA for and on account of RRP, contractor or subcontractor, if any, to the respective employees to whom they are owed.
5. Claims and disputes pertaining to salary rates or to classifications, if any, performing work under the Agreement shall be promptly reported in writing by RRP to RDA for the latter's decision, which shall be final with respect thereto.

E. Allowable Expenses

Under this Agreement, RRP may seek reimbursement for the following items:

- i. Salaries;
- ii. Fringe benefits;
- iii. Rent;
- iv. Internet connection;
- v. Telephone;
- vi. Office supplies;

- vii. Printing/ photocopying;
- viii. Professional services;
- ix. Furniture and equipment;
- x. Predevelopment expenses. (Project planning/ pre-construction activities towards housing development) These include legal fees, architectural/engineering fees, appraisals, and loan or grant application fees.

No specific expenses may be reimbursed under this Agreement which have been reimbursed, or approved for reimbursement, under any other funding source.

**F. Insurance**

RRP must obtain and maintain in force during the term of this agreement:

**1. General Liability**

One million dollars (\$1,000,000) per occurrence (\$2,000,000 aggregate if applicable) for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503 or ISO CG 2504, or insurer's equivalent endorsement provided to RDA) or the general aggregate including project-completed operations aggregate limit shall be twice the required occurrence limit.

**2. Workers Compensation**

RRP shall cover or insure under the applicable labor laws relating to worker's compensation insurance, all of their employees in accordance with the law in the State of Wisconsin. RRP shall supply statutory coverage for the work related injuries and employer's liability insurance with limits of \$1,000,000 each accident, \$1,000,000 disease policy limit, and \$1,000,000 disease each employee.

**3. Fidelity Bonding**

RRP shall obtain sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage. RRP shall purchase a blanket fidelity bond covering all employees in the amount equivalent to the allocated to the RRP divided by the number of months in this Agreement.

Such coverage shall be evidenced by a Certification of Insurance, to be submitted to RDA within 30 days of commencement date of this Agreement. It shall provide that no cancellation, termination, or material changes thereto shall be made without at least 30 days advance notice to RDA. RDA shall be listed as "additional insured." Coverage shall be for the duration of the Agreement period.

**VII. PAYMENT POLICIES AND PROCEDURES**

**A. Payment**

The RDA agrees to compensate RRP for those services taken and completed in furtherance of the goals and objectives stated herein and described in Appendix A.

RRP shall be issued funds on a reimbursement basis; no advance of funds will be authorized. Project funds will be disbursed on a monthly basis over the term of this Agreement in a manner

that reflects expenditures on a cash or accrual basis for the month. To obtain payment RRP must adhere to the following procedures:

- a) A project draw request submitted by RRP shall consist of a budget report and such documents and financial reports considered necessary by RDA and to support said requisition for reimbursement as to expenditure incurred by RRP in performance of this Agreement and claimed to constitute allowable costs. Project draws shall be submitted no later than 20 days after the end of the month. Project draws for the preceding year's expenses will not be honored after February 15 of the current year.
- b) RDA shall make payment under this Agreement upon presentation of an appropriate requisition for reimbursement by the RRP.

Periodically, the City of Racine Finance Director/ Treasurer may request RRP to submit, in such form and detail as required by the City Finance Director/Treasurer, additional documents and financial reports considered necessary to monitor or document expenditures incurred by RRP in the performance of this Agreement and claimed to constitute allowable costs.

B. Method of Payment

RDA agrees that subsequent to the satisfactory performance of the services in this Agreement and in accordance with Appendix A, to pay the amount or amounts as hereinafter set forth. In the event of a dispute as to the services performed or the compensation to be paid, the decision of the RDA shall prevail. The conditions of payment are as follows: compensation for services required under this Agreement shall be contingent upon each activity being reviewed for approval by RDA or designee thereof and subsequently approved for payment.

C. Costs Incurred

If not otherwise restricted by Federal, State, or local laws, rules, regulations, ordinances or procedures, RRP may incur costs for the services described in Appendix A, provided such costs are allowable under the applicable City of Racine procedures or as may be prescribed by the City of Racine Finance Director/Treasurer.

D. Program Income

All program income shall be reported to RDA by RRP on a monthly basis. "Program income" means gross income received by RRP directly generated from the use of TID19 or Intergovernmental Revenue Sharing Fund monies. When such income is generated by an activity that is assisted with such funds, it shall be retained by RRP and used only for activities included in the scope of work make part of this Agreement. By way of further limitations, RDA shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned by RRP to RDA at the end of the Agreement period or at the time that this Agreement is terminated, whichever is earlier.

E. Other Sources of Income

Any funds received as return of costs or as income generated from activities funded by this Agreement are the property of RDA and are to be transmitted to RDA promptly unless otherwise agreed upon.

F. Use and Reversion of Assets and Funds

1. All funds not expended or funds incurred by RRP pursuant to this Agreement and approved by RDA and City of Racine Finance Director/Treasurer for the services described in

Appendix A shall automatically revert to RDA and shall not accumulate as project funds unless specifically authorized by RDA.

2. Upon expiration of this Agreement, RRP shall transfer to RDA any TID19 or Intergovernmental Funds on hand at the time of expiration of said Agreement and any accounts receivable attributable to the use of such funds.
3. Any real property acquired or improved by RRP in whole or in part with TID19 or Intergovernmental Funds under this Agreement shall be:
  - a) Transferred to RDA for disposition; or
  - b) Disposed of in a manner that results in RDA reimbursement in the amount of the current fair market value of the property less any portion of the value attributed to expenditures of third-party funds (non-TID19 or non-Intergovernmental funds) for acquisition of, or improvement to, the property; or
  - c) Subject to the provisions of a separate agreement between the RRP and RDA, if such an agreement exists.

## **VIII. ADMINISTRATIVE REQUIREMENTS**

### **A. Financial Management**

#### **1. Accounting Standards**

RRP shall maintain a full set of books on a double-entry basis in accordance with generally accepted accounting principles, procedures, and regulations. Such records shall be maintained by qualified personnel and in a timely manner. RRP further agrees to provide access to all books, documents, papers, and records related to this Agreement with RDA and City for the purpose of reviewing, making audits, examinations, excerpts, and transcriptions therefrom. If Federal or State funds are involved, RRP shall provide the same access for the same purposes to the State of Wisconsin and to the Comptroller General of the United States or any of their duly authorized representatives.

### **B. Documentation and Record Keeping**

#### **1. Records to be Maintained**

RRP shall maintain all records with respect to all matters and activities covered by this Agreement. Such records shall include, but are not limited to:

- a) Records providing a full description of each activity undertaken;
- b) Records required to document the acquisition, improvement, use, or disposition of real property acquired or improved;
- c) Financial records.

RRP shall maintain sufficient segregation of accounting records for this Agreement separate from other contracts, projects, and programs.

RRP understands that it may be subject to the requirements of the Wisconsin Public Records Law and agrees to act in accordance with that law. RRP further agrees to cooperate fully with RDA and City in the event a records request is made under the Wisconsin Public Records Law.

#### **2. Records Retention**

RRP shall retain all financial records, supporting documents, statistical records, and all other records pertinent to this Agreement for a period of not less than seven (7) years. If

there are litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the seven-year period, then such records must be retained until completion of the actions and resolutions or the expiration of the seven-year period, whichever occurs later.

3. Documentation of Costs

All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing, in proper detail, the nature and propriety of other accounting documents pertaining in whole or in part to this Agreement and shall be clearly identified and readily accessible.

All reimbursement will be issued by RDA.

**IX. NOTICES**

Any and all notices shall be in writing and deemed served upon depositing same with the United States Postal Services as "Certified Mail, Return Receipt Requested", addressed to the RDA at:

Racine Redevelopment Authority  
Attn: Executive Director  
730 Washington Ave Rm. 102  
Racine, Wisconsin 53403

And the RRP at the address listed below:

Racine Revitalization Partnership  
1402 Washington Ave  
Racine, Wisconsin 53403

**X. DEFAULT**

RRP shall be in default if it:

- i. Fails to adhere to any Federal, State, or local laws, rules, or regulations;
- ii. Fails to provide required reports in a timely manner;
- iii. Fails to permit inspections or audits of RRP's records in accordance with this Agreement;
- iv. Fails to meet any terms or conditions of this Agreement; or
- v. Expends funds on unauthorized or disallowed items or services.

In the event of a dispute as to whether RRP is in default of any portion of this Agreement, RDA has the final decision-making authority to determine whether RRP has defaulted. In the event of default, then this Agreement shall be terminated, and all unused funds shall be immediately returned to RDA.

**XI. ENFORCEMENT**

#### A. Remedies for Noncompliance

If RRP materially fails to comply with any term of this Agreement, RDA shall thereupon have the right to terminate or suspend this Agreement. RDA may take one or more of the following actions, as appropriate in the circumstances:

1. Temporarily withhold cash payments pending correction of the deficiency by the RRP or more severe enforcement action by RDA.
2. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance.
3. Wholly or partly suspend or terminate this Agreement.
4. Withhold further awards for the program described in this Agreement.
5. Take other remedies that may be legally available.

If the Agreement is suspended, RDA will provide a course of action in writing that RDA must complete prior to having the Agreement re-activated (and allowing RRP to continue with the remainder of the Agreement). RRP must cure all deficiencies noted within 10 days of the date of written notice from the RDA or City. Should the Agreement be re-activated, pursuant to RDA satisfaction of deficiencies, it shall not alter the requirements set forth within said Agreement and all other terms and conditions herein shall remain the same.

#### B. Effects of Suspension and Termination

Costs of RRP resulting from obligations incurred by RRP during a suspension or after termination of this Agreement are not allowable unless expressly authorized by RDA. Other RRP costs during suspension or after termination that are necessary and not reasonably avoidable are allowable if:

1. The costs result from obligations which were properly incurred by RRP before the effective date of suspension or termination, are not in anticipation of it, and, in the case of termination, are non-cancellable, and,
2. The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

### **XII. TERMINATION**

Either party may terminate this Agreement, in whole or in part, with or without cause, with a thirty (30) day written notice of termination. Such notice shall be given in writing to the other party and shall be sent via certified or registered mail with return receipt requested to the address listed in Section IX. All unexpended funds and program income shall be returned to the RDA before the date of final termination.

### **XIII. CONDUCT**

RRP agrees to comply with all of the requirements of all federal, state, or local laws, rules, regulations, and ordinances, including, but not limited to, non-discrimination, wage and hour laws, fair employment, ethics, public records, and nepotism.

#### **XIV. INDEMNIFICATION**

RRP shall indemnify, defend, and hold harmless the RDA and City and its elected officials, officers, commissioners, employees, agents, representatives, departments, agencies, and contractors from and against any and all claims, costs, expenses (including reasonable attorney's fees and other costs and expenses of litigation), demands, penalties, losses, damages, fines, actions, or causes of action, which may be asserted against or incurred by RDA or City or for which RDA or City may be held liable, which arise from the negligence, willful misconduct, or other fault of RRP or its employees, agents, contractors or their subcontractors, in the performance of this Agreement or subsequent agreements, except to the extent such claims, costs, expenses, losses, demands, actions or causes of action are caused by the negligence or willful misconduct of RDA or City, RDA or City's elected officials, officers, commissioners, employees, agents, representatives, departments, agencies, and contractors. RRP's indemnification obligations under this Section shall not be limited by deductible amounts under any insurance policy RRP may have in place.

#### **XV. ASSIGNABILITY**

RRP shall not assign any interest in this Agreement and shall not transfer any interest in same (whether by assignment, novation or any other manner), without the prior written consent of RDA. Provided, however, that claims for money due or to become due RRP from RDA under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notices of any such assignment or transfer shall be furnished promptly to RDA.

#### **XVI. CONTINUATION OF AGREEMENT**

This Agreement is binding on the successor and assigns of the parties hereto.

#### **XVII. CHANGES AND AMENDMENTS**

No changes and/or amendments to this Agreement with respect to its form, content, intent. Scope of work, or funding, which substantially alter this Agreement, may be implemented without mutual agreement by and between RDA and RRP. Changes and/or amendments shall be incorporated in a written amendment to the Agreement and approved by RDA.

#### **XVIII. OTHER PROVISIONS**

##### **A. Amendment/Waiver**

This Agreement cannot be amended, modified, or revised unless done in writing and signed by RRP and RDA. No provision may be waived except in a writing signed by both Parties. The failure by a Party to enforce any provision of this Agreement or to require

performance by the other Party will not be construed to be a waiver, or in any way affect the right of either Party to enforce such provision thereafter.

B. Limitation of Liability

Except for the indemnity obligations set forth in this Agreement, RRP and RDA each waives any claims that each may have against the other with respect to punitive or other special damages, however caused, which may arise out of the Agreement. In addition, neither Party shall be liable to the other for any lost revenue, lost profits, or loss of technology.

C. Governing Law

This Agreement will be governed by the laws of the state of Wisconsin, without regard to conflicts of law.

D. Appendix

The appendix attached hereto is hereby incorporated into the Agreement as if the terms therein were fully stated within the body of the Agreement, and shall be considered part of this Agreement.

E. Severability

If any provision of this Agreement is held invalid, illegal, or unenforceable by a court or agency of competent jurisdiction, (a) the validity, legality, and enforceability of the remaining provisions of this Agreement are not affected or impaired in any way if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired; and (b) the Parties shall negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be invalid, illegal, or otherwise unenforceable) that is valid, legal, and enforceable and carries out the Parties' intentions to the greatest lawful extent. If any such action or determination renders the overall performance of this Agreement impossible or materially impairs the original purpose, intent, or consideration of this Agreement, and the Parties are, despite the good faith efforts of each, unable to amend this Agreement to retain the original purpose, intent, and consideration in compliance with that court or agency determination, either Party may terminate this Agreement upon sixty (60) days' prior written notice to the other Party.

F. No Limitation on Authority

Nothing contained in this Agreement shall limit or interfere with or be construed to limit or interfere with any of RDA's or City's rights or powers, including City's authority in enforcement of its municipal ordinances, including its zoning code.

(SIGNATURE PAGE TO FOLLOW)

**IN WITNESS WHEREOF**, the Racine Revitalization Partnership and the Racine Redevelopment Authority and the City of Racine have cause this Agreement to be executed for and on their respective behalf as of the date hereinbefore set forth.

**RACINE REVITALIZATION PARTNERSHIP**

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

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

Witnessed by: \_\_\_\_\_

Title: \_\_\_\_\_

**RACINE REDEVELOPMENT AUTHORITY**

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

Print Name: Amy Connolly

Title: Executive Director

**CITY OF RACINE**

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

Print Name: Cory Mason

Title: Mayor

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

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

Title: City Clerk-Treasurer

Provisions have been made to pay the liabilities that will accrue under this Agreement

\_\_\_\_\_  
David Brown, City of Racine Finance Director

Approved as to form:

\_\_\_\_\_  
Scott Letteney, City Attorney

## Appendix A

### **SCOPE OF SERVICES**

RRP will, within the Time of Performance:

1. Annually complete targeted property acquisition and rehabilitation, and/or property acquisition and new construction, of a minimum of 5 single-family houses for sale to owner-occupants within the Greater Uptown Area as defined in the HUD-approved Greater Uptown Neighborhood Revitalization Strategy Area (“NRSA”).
2. Coordinate/host no less than two public meetings during each calendar year to communicate housing efforts to area residents with any of: Uptown Business Improvement District (BID), YMCA Bray Center, Knapp Community School, Salvation Army, or any other community organization within the Greater Uptown NRSA.
3. Maintain the legal structure, organizational structure, and capacity/experience of paid staff members as required of Community Housing Development Organizations (CHDOs) as defined by 24 CFR § 92.2.
4. Engage in capacity-building training for development and/or partnership with another CHDO for at least one housing project. Capacity-building training should include paid RRP staff and be conducted by Community Development Corporation or housing development organizations such as Local Initiatives Support Corporation (LISC), Enterprise Community Partners, National Development Council, or NeighborWorks America.
5. Development of an annual fundraising plan (capital campaign).
6. Development of plan for access to development capital.
7. As part of strategic planning or capital planning process, utilize a “logic model” or “theory of change” that illustrates how RRP activities affect measurable outcomes.
8. Match funds in Agreement on a 1:1 basis. Matching funds may be in the form of:
  - a. Private cash on hand
  - b. Developer fees
  - c. Deferred developer fees
  - d. Donations
  - e. In-kind administrative donations (e.g. Legal services, finance, rent, etc)
  - f. In-kind development donations from private commercial, non-profit, or individual contractor sources. (e.g. Materials, construction labor, land, real estate services, architectural services, accounting, etc)