

**AGREEMENT BETWEEN THE CITY OF MYRTLE BEACH AND HABITAT FOR HUMANITY OF  
HORRY COUNTY FOR MANAGEMENT OF THE CITY'S WORKFORCE HOUSING PROGRAM**

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Myrtle Beach, South Carolina (the "City"), a body politic, and Habitat for Humanity of Horry County, Inc. ("Habitat"). In consideration of Habitat's promise to deliver or perform the services outlined herein and to satisfy the terms and conditions of this Agreement, the City agrees to disburse the funds as described in Section 2. Habitat hereby expressly agrees to the terms and conditions outlined in this Agreement.

**1. SCOPE OF SERVICES.** Habitat agrees to provide management and oversight services related to implementation of the City's Workforce Housing Strategic Plan as outlined in City resolution R2023-XXX, and as further enumerated in Attachment 1 ("Scope of Services").

**2. FUNDING.** In compensation for the services listed in Attachment 1 and satisfaction of the other terms and conditions of this Agreement, the City agrees to pay Habitat the sum of \$302,061.00 (the "City Funds") for the period March 1, 2023 through August 31, 2024. The City Funds shall be used for such valid public purposes under South Carolina law as are expressly identified in Attachment 2 of this Agreement ("Sources and Uses of Funds"), the City's approved fiscal year budgets, and any subsequent amendments thereto. The City Funds will be disbursed beginning on March 1, 2023 as follows:

- March 1, 2023 - \$67,124.67
- July 1, 2023 - \$50,343.50
- October 1, 2023 - \$50,343.50
- January 1, 2024 - \$50,343.50
- April 1, 2024 - \$50,343.50
- July 1, 2024 - \$33,562.33

City Funds not expended prior to the end of the term of this Agreement shall be retained by Habitat and used to fund a subsequent Agreement with the City, if any, or returned to the City at the City's sole discretion. City Funds not expended prior to the date of any early termination pursuant to Section 4 shall be returned to the City.

**3. WORK PLAN AND BUDGET FOR WORKFORCE HOUSING PROGRAM.** Before the distribution of City Funds each City fiscal year, which commences July 1 and ends June 30, Habitat shall submit for approval by the City Council a Detailed Plan and Budget to implement the Workforce Housing Strategic Plan. The Detailed Plan shall specifically indicate the goals of the Workforce Housing Strategic Plan and the strategies proposed to achieve those goals for the City fiscal year. The Budget shall describe the uses and amounts of the funds anticipated to be received for this purpose during each City fiscal year. Both the Detailed Plan and the Budget shall be the product of cooperative meetings between the parties to establish what shall be the effective use of said City Funds.

**4. TERM AND TERMINATION.** Unless otherwise provided herein, the term of this Agreement

shall commence as of March 1, 2023 and shall continue, unless terminated earlier, until August 31, 2024. The parties may enter into a new Agreement contingent on approval and appropriation of funding by City Council, and approval by Habitat's Board of Directors. The City may terminate this Agreement upon thirty (30) days written notice to Habitat and no additional payment of City Funds shall be required after the date of the notice of termination. If this Agreement is terminated, Habitat shall provide an accounting of expenditures through the date of termination. If it is later determined that the City Funds disbursed hereunder were not spent in compliance with this Agreement, Habitat shall, upon the City's demand, repay all or such portion of the City Funds received hereunder as the City may reasonably determine not to have been spent appropriately.

**5. ACCOUNTING, REPORTING AND TRANSPARENCY REQUIREMENTS.** The City Funds shall be accounted for in a separate fund according to Generally Accepted Accounting Principles for governmental and non-profit reporting entities. The City Funds may not be commingled with any other funds of Habitat except for any other grants, donations, gifts, etc., used exclusively for the Workforce Housing Strategic Plan. The Budget shall be a public document available from the City and Habitat, and shall be available on the media platforms of both Parties.

Records with respect to the Workforce Housing Strategic Plan are to be maintained in such a manner that the names of payees and the purpose of each payment are readily available to and can be easily discerned by the public. To that end, Habitat shall provide the following reports to the City:

#### Special Purpose Reports

Every other month beginning in April 2023, Habitat shall provide the City Manager with a written update on expenditures to accomplish budgetary objectives. Upon the City's receipt, the update shall be a public document and shall be available from the City and Habitat on the media platforms of both Parties. The updates shall include, at a minimum:

A narrative report on the results achieved toward the goals indicated in the Detailed Plan.

A budget vs. actual report of Habitat's expenditures showing the budgeted expenditures by line-item along with expenditures for the period, expenditures for the year-to-date, and variances.

A detailed expense ledger report showing itemized expenditures with vendor name and check number, grouped by line-item in a format approved by the Chief Financial Officer of the City.

Other metrics as may be agreed upon by the Parties based upon the approved Detailed Plan and Budget.

#### General Purpose Reports

In addition to the special purpose reports described above, Habitat shall render certain general purpose financial reports at the end of the City's fiscal year as follows:

No later than September 30, Habitat shall provide the City Manager with an accounting of the expenditures from the City Funds and Workforce Housing Strategic Plan results for the prior City fiscal year. After receipt by the City Manager, Habitat shall present the accounting to City Council in public session. Upon the City's receipt of the report, the presentation of the accounting shall be a public document available from the City and Habitat, and shall be available on the media

platforms of both Parties.

An annual independent audit performed according to Generally Accepted Government Auditing Standards shall be performed on the Habitat's use of the City Funds, and the results shall be provided to the City by January 31 and thereafter made available on the media platforms of both Parties. The report, which shall include the auditor's opinion letter, may be incorporated into Habitat's Comprehensive Annual Financial Report, provided that it presents, by fund type, a full set of financial statements for the Workforce Housing Funds consisting of a Balance Sheet, and a Statement of Revenues, Expenditures, and Changes in Fund Balances.

In addition to the audits and financial reviews conducted by Habitat, the City may at any point inspect, or cause to be inspected, any or all of the records pertaining to the City Funds. Habitat shall cooperate in the inspections and any ensuing reports related to such inspections.

Habitat shall allow City representatives, including but not limited to public accountants, access to such financial records at the location where Habitat's records are customarily maintained. The City shall be entitled to access Habitat's financial records after forty-eight (48) hour written notice to Habitat of the City's intent to review such records.

**6. CERTIFICATE OF INSURANCE.** Habitat shall provide a Certificate of Insurance that satisfies the City's insurance requirements as provided in Attachment 3 ("City of Myrtle Beach Insurance Requirements").

**7. INDEMNIFICATION AND HOLD HARMLESS.** Habitat agrees to defend and indemnify the City, its officials, employees, agents and volunteers and hold them harmless from and against any and all causes of action, claims, and demands which may arise out of the course of the disbursement and use of the City Funds and/or in connection with Habitat's management and oversight of the City's Workforce Housing Strategic Plan, to include reasonable attorney's fees and costs.

**8. JOINTLY DRAFTED.** The City and Habitat agree that all parties participated in negotiating and drafting this Agreement and that no rule of construction shall apply to this Agreement which construes any language, whether ambiguous, unclear or otherwise, in favor of, or against any party by reason of that party's role in drafting this Agreement.

**9. SEVERABILITY.** Should any portion of this Agreement be declared to be determined by a court or agency of competent jurisdiction to be illegal, invalid or unenforceable, then the remaining parts, terms, or provisions shall not be affected thereby and said illegal, invalid, or unenforceable part, term, or provision shall be deemed to be fully severed from this Agreement, and said decision shall not affect the validity of the remaining portions hereof.

**10. APPLICABLE LAW AND VENUE.** This Agreement shall interpreted, governed, and enforced in accordance with the laws of the State of South Carolina and/or any applicable federal laws and that any actions between the parties relating to this Agreement shall be brought in the Horry County Court of Common Pleas or, if jurisdiction exists, in the United States District Court for the District of South Carolina, Florence Division.

**11. CAPTIONS.** The section captions and/or headings in this Agreement are for convenience

and reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

12. **AMENDMENTS/MODIFICATIONS.** This Agreement may be amended, modified and/or supplements, but only by a written instrument signed by all of the parties hereto expressly stating that such instrument is intended to amend, modify or supplement this Agreement.

13. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all which together shall constitute one and the same instrument.

14. **NOTICES.** Notices given pursuant to this Agreement shall be in writing and addressed as follows:

To the City:

City of Myrtle Beach  
Attn: City Manager  
P.O. Box 2468  
Myrtle Beach, SC 29578

To Habitat:

Habitat for Humanity of Horry County, Inc.  
Attn: Executive Director  
165 Co-Op Road  
Myrtle Beach, SC 29588

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper, duly authorized corporate officers, all as of the day and year first above set forth.

CITY OF MYRTLE BEACH:

By: \_\_\_\_\_  
Jonathan "Fox" Simons  
City Manager

Date: \_\_\_\_\_

HABITAT FOR HUMANITY OF HORRY COUNTY, INC.:

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

Date: \_\_\_\_\_

## Attachment 1

### Scope of Services to be Performed by Habitat - Workforce Housing Strategic Plan

- Task 1 – Implement Local Housing Trust Fund
  - **Note: Fees and services associated with establishing the legal and operational structure for the local housing trust fund are not included in the Agreement and shall not be paid by Habitat. Funding commitments are not included in the contract value and shall not be funded by Habitat.**
  
- Task 2 – Establish a density bonus for workforce housing
  
- Task 3 – Create a Community Land Trust and a Land Bank.
  - **Note: Fees and services associated with establishing the legal and operational structure for the Community Land Trust and/or Land Bank are not included in the Agreement and shall not be paid by Habitat.**
  
- Task 4 – Partner on a home linking/home sharing program
  - **Note: Fees and services associated with building the software program (up to \$20,000) are included in the Agreement and shall be paid by Habitat.**

## Attachment 2

### **Sources and Uses of Funds - Workforce Housing Strategic Plan**

Sources of Funds Made Available to Habitat: The source of the City Funds shall be allocations from the City's Workforce Housing Fund, as appropriated and made available by the Myrtle Beach City Council, plus any other funds as directed by City Council.

Uses of Funds by Habitat:

From March 1, 2023 through August 31, 2024:

Salary & Benefits (retirement match, health, dental, vision, FICA) - \$237,003.00 (3 FTE)

Facilities / Utilities - \$13,306.50

Insurance - \$2,272.50

Marketing Materials - \$5,250.00

Overhead - \$41,025.00

Accounting / Audit - \$3,204.00

Total (during term of contract) - \$302,061.00.

### **Attachment 3**

#### **CITY OF MYRTLE BEACH INSURANCE REQUIREMENTS**

##### **COMPREHENSIVE GENERAL LIABILITY AND PROPERTY DAMAGE**

Habitat shall purchase and thereafter maintain for the term of this Agreement, and any subsequent extensions hereto, comprehensive general liability insurance to protect Habitat from claims for bodily injury and/or property damage which may result from its performance of this Agreement. The policy shall provide a combined single limit of liability of at least \$1,000,000.00 per occurrence for bodily injury and property damage with an aggregate limit of not less than \$1,000,000.00.

##### **AUTOMOBILE LIABILITY**

Habitat shall purchase and thereafter maintain for the term of this Agreement and any subsequent extensions hereto, comprehensive automobile liability insurance to protect Habitat from claims for bodily injury and property damage which may arise from Habitat's use of motor vehicles in the performance of this Agreement, whether owned or non-owned. The policy shall provide for a combined single limit of at least \$1,000,000.00 per occurrence for bodily injury and property damage.

##### **WORKERS' COMPENSATION INSURANCE**

Prior to beginning the work, Habitat shall obtain workers' compensation insurance coverage for all persons which may be employed directly or indirectly in the performance of this Agreement, and covering Habitat's statutory obligation under the laws of the State of South Carolina. The policy must provide Employers Liability coverage in the amount of \$500,000.00 each accident; \$500,000.00 bodily injury by disease each employee, and \$500,000.00 bodily injury by disease policy limit and shall be maintained in full force and effect during the term of this Agreement and any subsequent extensions hereto.

##### **EXCESS LIABILITY POLICY**

At the option of Habitat, the limits of the primary general liability, automobile liability and employer's liability policies may be less than stipulated herein, so long as the additional coverage amounts necessary to meet the limits required by this Agreement are provided by an excess insurance policy. This form of coverage must be approved by the City and will only be acceptable when both the primary and excess policies include the coverages and endorsements required herein.

##### **POLICY ENDORSEMENTS**

The following requirements shall apply to the policy(ies) indicated below:

- A. Comprehensive General Liability and Automobile Liability

These policies shall be endorsed to provide that the City of Myrtle Beach, its officials, agents, volunteers and employees are additional named insureds and will be provided thirty (30) days written notice by registered mail of non-renewal, exhaustion of aggregate limit, modification of coverage or cancellation for any reason. These policies shall further provide that failure of the insurance company to provide the required notice shall cause the coverage to continue in force for the benefit of the City, its officials, agents, volunteers and employees until proper notification, as required herein, is provided, the provisions of the policy or any Certificate of Insurance to the contrary notwithstanding.

#### B. Workers' Compensation

This policy shall provide that the City of Myrtle Beach will be provided thirty (30) days written notice via certified mail, return receipt required, in the event of coverage cancellation.

#### NOTIFICATION OF INSURANCE COMPANIES

It is the responsibility of Habitat to notify all insurance companies to familiarize themselves with all the terms and conditions of this Agreement. The insurance companies shall waive their right of notification by the City of any change or modification of this contract, or of decreased or increased work, or of the cancellation of this Agreement or of any other acts by the City or its authorized employees or agents under the terms of this Agreement. The waiver by the insurance companies shall in no way relieve them of their obligations under this Agreement.

#### CERTIFICATES OF INSURANCE

Habitat shall file submit to the City Manager a Certificate of Insurance evidencing the above coverages and, with respect to the general liability and automobile liability policies, naming the City of Myrtle Beach, its officials, agents, volunteers and employees as an additional named insured which shall be approved by the City prior to the inception of any work. Renewal certificates shall be sent to the City thirty (30) days prior to any expiration date.

#### INSURER LICENSING AND RATING

All insurance companies providing coverage to Habitat and the City, shall be licensed to do business in the State of South Carolina and have an A.M. Best rating of "A-" or better.

#### INSURANCE COVERAGE ADJUSTMENTS

In response to changing circumstance of loss exposures, the City reserves the right to modify the insurance coverage, limits of liability, policy endorsements and policy terms required in this Agreement. The City will provide written notice to Habitat outlining such changes and allow Habitat a reasonable period of time in which to comply with the new requirements. However, in no event shall the compliance period be longer than thirty (30) days.

#### COVERAGE CANCELLATION OR UNSATISFACTORY COVERAGE



If at any time any of the foregoing policies shall be or become unsatisfactory to the City, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the City, Habitat shall, upon notice to that effect from the City, promptly obtain a new policy and submit the same for approval to the City. Upon failure of Habitat to furnish, deliver and maintain the insurance coverage's required herein, this Agreement, at the sole discretion of the City, may be forthwith declared suspended, discontinued or terminated. Failure of Habitat to take out and/or maintain any required insurance shall not relieve Habitat from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of Habitat concerning indemnifying the City.