

**AGREEMENT BETWEEN
CITY OF PALM COAST, FLORIDA, AND
MID-FLORIDA HOUSING PARTNERSHIP, INC.
FOR THE NEIGHBORHOOD STABILIZATION PROGRAM 3 RENTAL SERVICES
(RFP-CD-ED-11-02)**

This is an Agreement between the City of Palm Coast, Florida (City), a Florida municipal corporation, of 160 Cypress Point Parkway, Suite B-106, Palm Coast, FL 32164, hereinafter referred to as the City, and Mid-Florida Housing Partnership, Inc., (Developer), a Florida (non-profit or for-profit corporation), of Daytona Beach, and its successors and assigns.

Recitals

WHEREAS, the City has publicly submitted a Request for Proposal (“RFP”), RFP-CD-ED-11-02, to retain one or more developers that are qualified and have capacity to acquire, supervise repair and rehabilitation of foreclosed properties and manage the continued lease of those properties for the implementation of the Neighborhood Stabilization Program 3 (the “Program” or “NSP3”); and

WHEREAS, Developer desires to perform such services subject to the terms of this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, understandings, conditions, promises, covenants, and payment hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

Article 1. Recitals

1.1 The foregoing recitals are true and correct and incorporated herein by reference.

Article 2. Purpose

2.1 The purpose of this Agreement is for Developer to acquire, supervise repair and rehabilitation of foreclosed and abandoned properties (the “Properties,” “Property” or “Units”) and manage the continued lease of those Properties for the implementation of the NSP3.

Article 3. Scope of Services

3.1 **Terms and Conditions.** On the terms and conditions set forth in this Agreement, the City hereby engages Developer to perform the services more specifically detailed in **Exhibit A**, Scope of Services (the “Scope of Services”), attached hereto and incorporated herein by this reference.

3.1.1 **General Requirements.** Developer shall comply with all requirements provided in the following:
A. HUD Funding Approval and Grant Agreement for NSP3 Funds
B. City of Palm Coast NSP3 Abbreviated Action Plan
C. City of Palm Coast Housing Assistance Plan (HAP)
D. RFP-CD-ED-11-02

3.1.2 **Certifications.** Developer shall execute the Certifications as attached in **Exhibit B**, attached hereto and incorporated herein by this reference.

3.1.3 **Other Requirements.** Developer shall comply with all other applicable Federal, State and City requirements, including but not limited to all requirements listed in **Exhibit B**, all requirements of the

legislation and agreements listed in 3.1.1, City purchasing procedures, the City Code of Ordinances (the “Code”), City and Florida residential building codes, and any and all related City NSP3 Program guide forms and procedures.

3.2 Eligible Acquisition, Rehabilitation, and Disposition Costs. The Developer costs incurred during the acquisition, rehabilitation, and disposition in carrying out the Scope of Services are eligible for reimbursement from the City if pre-approved by the City before such costs are incurred. Such costs eligible for reimbursement may include the following:

- A. Acquisition Costs-the “Acquisition Costs,” which include the purchase price of unit, closing fees, appraisal fees, land survey fees, title insurance, documentary stamp tax, recording fees, taxes, insurance;
- B. Rehabilitation Costs-the “Rehabilitation Costs”, which include housing repairs consistent with Housing Assistance Plan;
- C. Holding Costs-the “Holding Costs”, which include property maintenance, utility fees, and taxes as applicable.

The Developer is cautioned to follow all guidance and forms provided by the City. The City will require documentation and make written approvals at each of the above stages before costs are incurred by the Developer and before any expenses are deemed eligible for reimbursement through the NSP3 Program. Failure to follow these steps and failure to use City forms or failure to obtain City approvals in advance will lead to disqualification of any incurred cost. Refer to subsection 4.1 for further information on payments.

3.3 Developer Fee. The Developer Fee (the “Fee”) shall be the Developer’s time and expense for delivering the Unit to an eligible tenant (“Eligible Tenant”) who has been approved by the City in accordance with the NSP3 Program above the costs listed in subsection 3.2. The Fee shall be determined for each Unit as part of the mutually agreed upon payment schedule and milestones as described in subsection 4.1 and shall not exceed 10% of the sum of the initial purchase price and repair costs which are approved by the City. The Fee shall not be paid until an Eligible Tenant occupies the Unit and until such time as the Developer provides an Ownership and Encumbrance report that was issued within three (3) days of final occupancy by an Eligible Tenant that reflects clear title and satisfaction and release of any liens. In the event that the Ownership and Encumbrance report reflects that a lien remains on the property, the Developer shall submit proof to the City that the requirements of Section 3.12 of this Agreement have been met.

3.4 NSP3 Program Units Awarded. The Developer shall commit to and have the capacity to acquire, supervise repair and rehabilitation for up to four (4) foreclosed or abandoned properties and manage the continued lease of those properties during the term of this Agreement, with an option for up to three (3) additional properties based upon performance and availability of funds. These units will be selected on a case by case basis. The City will provide a reservation of a number of units with this Agreement, subject to the compliance and performance of the Developer with the program requirements. The City will provide guidance and forms to the Developer for the selection of the Units within 10 working days of the receipt of a fully executed copy of this Agreement. Selection of the Units, as a minimum, but not limited to, shall meet the following requirements: 1) each Unit must be in the City’s Area of Greatest Need (“AGN”) as outlined in the City’s Housing Assistance Plan; 2) each Property must be a foreclosed property (aka REO or real estate owned) with a final judgment or deed-in-lieu of foreclosure or distressed as defined by federal regulations; 3) the repair needs of the Unit must be reviewed by the City before approval and must be minor and feasible; and 4) the City must inspect each Unit and all costs in advance and accept each Unit in writing before costs are incurred or a closing is set.

3.5 Effective Date. This Agreement shall be effective immediately following the date of final execution by the City and shall remain in effect until the completion and closing of the Program occurs, which will be on or about March 9, 2013, also known as the initial term (the “Initial Term”). Prior to, or upon completion of the Initial Term, the City shall have the option to renew this Agreement under the same terms and conditions as provided by the NSP3. Continuation of the Agreement beyond the Initial Term, and any option subsequently exercised, is a City prerogative and not a right of the Developer. This prerogative may be exercised only when such continuation is clearly in the best interest of the City.

3.6 Time of the Essence. Developer acknowledges that time is of the essence in carrying out Developer’s responsibilities under this Agreement. Specifically, Developer shall propose NSP3 eligible Units for City, approval and enter into contracts for the initial purchase of the awarded NSP3 units not later than September 9, 2012. Repairs and lease of all Units to Eligible Tenants shall be completed by December 9, 2012.

3.7 Other Consultants. The Developer shall coordinate and work with any other consultants retained by the City. Developer acknowledges that nothing herein shall be deemed to preclude the City from retaining the services of other persons or entities undertaking the same or similar services as those undertaken by the Developer or from independently developing or acquiring materials or programs that are similar to, or competitive with, the services provided under this Agreement.

3.8 Acceptance by City. The services rendered pursuant to this Agreement shall not be deemed complete until accepted by the City and shall be in compliance with the terms herein, fully in accord with the specifications and of the highest quality. In the event that the service does not conform to the specifications, the City reserves the right to terminate the Agreement and will not be responsible for payment for any such service.

3.9 Reversion. In the event that a Unit is not leased to an Eligible Tenant, approved by the City in accordance with the NSP3 Program, by ninety days before the expiration of the Initial Term, (March 9, 2013) the Developer shall immediately transfer ownership to the City. If such event occurs, the Developer will not be eligible for a Developer Fee.

3.10 Affordability Mechanisms. Developer agrees that the deed conveyed at Closing shall contain a deed restriction (the “Deed Restriction”) that states that the Property may only be leased to an Eligible Tenant, approved by the City in accordance with the NSP3 Program. The Deed Restriction will also include requirements for a maintenance and repair reserve, a maintenance schedule, annual recheck of tenant income, annual reporting, commitment to maintain Fair Market Rents as determined annually by HUD, requirement to maintain the property in accordance with local codes and reimbursement of any program income. Developer acknowledges that a lien shall be placed on the Property in favor of the City for the amount of City funds used by the Developer to purchase and improve the Property for the entire affordability period outlined in the City’s NSP3 Abbreviated Action Plan and NSP Local Housing Assistance Plan. The City shall determine and issue the required language for the deed restriction and the lien.

3.11 Maintenance of Properties. The Developer is notified that the City requires all properties to be maintained and operated in a Code compliant and safe, healthy manner throughout the life of the deed restriction and lien. All Units shall be repaired to Code standards and the Unit and Property shall be maintained in good condition, including but not limited to lawn maintenance, removal of debris and nuisances in the yard, noise management and other appropriate measures to keep the Unit and Property compliant with all Code requirements as a part of a stable, attractive neighborhood. Default on this requirement may mean forfeiture of Developer Fees as determined by the City Manager.

3.12 Lien Security. Developer agrees that in the event a lien is placed on the Property by the contractor or a subcontractor, Developer will immediately transfer the lien to a security as provided in Section 713.24, Florida Statutes, and provide notice to the City of compliance with this requirement.

3.13 Notices to Owner. Developer agrees to transmit all Notices to Owner to the City immediately upon receipt.

3.14 Names of Contractor, Subcontractor and Laborers. Developer agrees to require the contractor to provide the City with the names of all subcontractors, laborers, and suppliers of materials related to the repair and rehabilitation of the property.

Article 4. Payment

4.1 Payment Schedule and Milestones. Payments to Developer of the costs listed in subsection 3.2 and the Fee listed in subsection 3.3 shall be paid by the City in accordance with a mutually agreed upon schedule and milestones determined in advance of the closing (“Closing”). Typically, the schedule and milestones will including the following:

- A. Closing (Acquisition Costs Payment)
- B. Certificate of Occupancy or equivalent City approval of occupancy (Rehabilitation Costs Payment)
- C. Executed Tenant Lease
- D. Final Occupancy (Developer Fee Payment)

Payments for costs and fees incurred are subject to the requirements listed in subsections 3.2 and 3.3. Developer will be eligible for payment of costs and fees contingent upon meeting all NSP3 Program criteria as determined by the City and monitoring of compliance with the NSP3 program requirements prior to payments being made. Any costs or fees incurred without City approval in writing are fully at the Developer’s risk.

4.2 Florida Prompt Payment Act. The City shall make payment in accordance with the Florida Prompt Payment Act, Part VII, Chapter 218, Florida Statutes.

4.3 Federal Funding Contingency. Developer agrees and recognizes that this Agreement is being funded with federal money under the Wall Street Reform and Consumer Protection Act of 2010 and the Housing and Economic Recovery Act of 2008. As such, pursuant to section 218.77, Florida Statutes, the Developer is hereby notified that payment is contingent upon receipt of such federal funding. The Developer hereby agrees to comply with all requirements of the funding entity applicable to the use of the monies, and acknowledge that no payment will be sent by City until all required forms are completed and submitted. A copy of the requirements shall be supplied to the Developer by the City upon request.

Article 5. City Responsibilities

5.1 City shall promptly review the services performed by Developer and provide direction to Developer as needed. City shall designate a City staff member to act as City’s Project Administrator.

5.2 City shall make payment in accordance with the provisions set forth in this Agreement.

5.3 City will provide to the Developer all necessary and available data in the possession of City that would be useful to Developer in the completion of the required services.

Article 6. Special Terms and Conditions

6.1 Corporate Representations by Developer. Developer hereby represents and warrants to the City the following:

A. Developer is duly registered and licensed to do business in the State of Florida and is in good standing under the laws of Florida, and is duly qualified and authorized to carry on the functions and operations set forth in this Agreement.

B. The undersigned signatory for Developer has the power, authority, and the legal right to enter into and perform the obligations set forth in this Agreement and all applicable exhibits thereto, and the execution, delivery, and performance hereof by Developer has been duly authorized by the board of directors and/or president of Developer. In support of said representation, Developer agrees to provide a copy to the City of a corporate certificate of good standing provided by the State of Florida prior to the execution of this Agreement.

C. Developer is duly licensed under all local, state and federal laws to provide the work stated in the Detailed Scope of Services attached hereto as Exhibit A. In support of said representation, Developer agrees to provide a copy of all said licenses to the City prior to the execution of this Agreement.

6.2 Federal Requirements. In compliance with 24 C.F.R Section 85.36(i), the following provisions apply:

6.2.1 Termination.

A. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate party prior to termination.

B. This Agreement may be terminated in whole or in part in writing by the City for its convenience, provided that the other party is afforded the same notice and consultation opportunity specified in subsection (A) above. If termination for convenience is effected by the City, the equitable adjustment shall include a reasonable profit for services or other work performed for which profit has not already been included in an invoice.

C. If termination for default is effected by the City, an equitable adjustment in the price shall be made, but: (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the Developer at the time of termination may be adjusted to cover any additional costs to the City because of the Developer's default.

D. For any termination, the equitable adjustment shall provide for payment to the Developer for services rendered and expenses incurred prior to receipt of the notice of intent to terminate, in addition to termination settlement costs reasonably incurred by the Developer relating to commitments (e.g., suppliers, subcontractors) which had become firm prior to receipt of the notice of intent to terminate.

E. Upon receipt of a termination action under subsections (A) or (B) above, the Developer shall: (1) promptly discontinue all affected work (unless the notice directs otherwise) and (2) deliver or otherwise make available to the City all data, drawings, reports, specifications, summaries and other such information, as may have been accumulated by the Developer in performing this Agreement, whether completed or in process.

F. Upon termination, the City may take over the work and may award another party a contract to complete the work described in the Scope of Services.

G. If, after termination for failure of the Developer to fulfill contractual obligations, it is determined that the Developer had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the City. In such event, adjustment of the contract price shall be made as provided in (B) above.

6.2.2 Remedies. Unless otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between the City and the Developer, arising out of or relating to this Agreement, or the breach of it, will be decided by arbitration if the parties mutually agree or in a Florida court of competent jurisdiction.

6.2.3 Access to Records. The City, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Developer which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.

6.2.4 Retention of Records. The Developer shall retain all records relating to this Agreement for six (6) years after the City makes final payment and all other pending matters are closed.

6.2.5 Environmental Compliance. If this Agreement exceeds One Hundred Thousand and 00/100 Dollars (\$100,000), the Developer shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and U.S. Environmental Protection Agency regulations (40 C.F.R. part 15). The Developer shall include this clause in any subcontracts over One Hundred Thousand Dollars (\$100,000.00).

6.2.6 Energy Efficiency. The Developer shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

6.2.7 Conflicts with Other Clauses. If this Agreement contains any clauses which conflict with the above provisions, then this Agreement will be governed by the clause(s) in this Section 6.2.

6.3 Subletting of Agreement. This Agreement shall not be sublet except with the written consent of the City's Purchasing Manager. No such consent shall be construed as making the City a party to the subcontract or subjecting the City to liability of any kind to any subcontractor. No subcontract shall under any circumstances relieve the Developer of liability and obligations under this Agreement and all transactions with the City must be through the Developer.

6.4 Insurance. The Developer shall purchase and maintain, at its expense from a company or companies authorized to do business in the State of Florida, and which are acceptable to the City, insurance policies containing the following selected types of coverage and minimum limits of liability protecting from claims which may arise out of or result from the performance or non-performance of

services under this contract by the Developer or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable:

6.4.1 Developer shall not commence work under the Agreement until City has received an acceptable certificate or certificates of insurance evidencing the required insurance, which is as follows: General Liability insurance on forms no more restrictive than the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

Each Occurrence/General Aggregate	\$1,000,000/2,000,000
Products-Completed Operations	\$2,000,000
Personal & Adv. Injury	\$1,000,000
Fire Damage	\$50,000
Medical Expense	\$5,000
Contractual Liability	Included

6.4.2 Automobile liability insurance, including owned, non-owned, and hired autos with the following minimum limits and coverage:

Combined Single Limit	\$1,000,000
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6.4.3 Workers' compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, Florida Statutes, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc.). If not required by law to maintain workers compensation insurance, the Developer must provide a notarized statement that if he or she is injured, he or she will not hold the City responsible for any payment or compensation.

6.4.4 Employers Liability with the following minimum limits and coverage:

Each Accident	\$1,000,000
Disease-Each Employer	\$1,000,000
Disease-Policy Limit	\$1,000,000

6.4.5 Professional Liability and/or specialty insurance (medical malpractice, engineers, architect, consultant, environmental, pollution, errors and omissions, etc.) as applicable with minimum limits of \$1,000,000 and annual aggregate of \$2,000,000.

6.4.6 The City of Palm Coast, a Political Subdivision of the State of Florida, and the City Council, shall be named as additional insured as their interest may appear on all applicable policies.

6.4.7 Certificate(s) of insurance shall provide for a minimum of sixty (60) days prior written notice to the City of any change, cancellation, or nonrenewal of the required insurance.

6.4.8 Certificate(s) of insurance shall identify the contract number in the Description of Operations section of the Certificate.

6.4.9 Certificate of insurance shall evidence a waiver of subrogation in favor of the City, that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the City. Certificate holder shall be:

City OF PALM COAST, FLORIDA
160 CYPRESS POINT PARKWAY, SUITE B-106
PALM COAST, FL 32164

6.4.10 All self-insured retentions shall appear on the certificate(s) and shall be subject to approval by the City. At the option of the City, the insurer shall reduce or eliminate such self-insured retentions; or the Developer shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

6.4.11 The City shall be exempt from, and in no way liable for, any sums of money, which may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of the Developer and/or subcontractor providing such insurance.

6.4.12 The Developer shall be responsible for subcontractors and their insurance. Subcontractors are to provide Certificates of Insurance to the City evidencing coverage and terms in accordance with the Developer's requirements.

6.4.13 Failure to obtain and maintain such insurance as set out above will be considered a breach of contract and may result in termination of the contract for default.

6.4.14 Neither approval by the City of any insurance supplied by the Developer, nor a failure to disapprove that insurance, shall relieve the Developer of full responsibility of liability, damages, and accidents as set forth herein.

6.5 Indemnity.

A. Developer shall indemnify, defend and hold harmless the City from and against all claims, losses, damages, and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance or provision of services required under this Agreement, including damage to persons or property, provided that same is caused in whole or in part by the error, omission, negligent act, failure to act, malfeasance, misfeasance, or misconduct of Developer, its agents, servants, officers, officials, employees or subcontractors.

B. The indemnification provided above shall obligate the Developer to defend at its own expense or to provide for such defense, at the option of the City, as the case may be, of any and all claims of liability and all suits and actions of every name and description that may be brought against the City or its officers, employees, and City attorneys which may covered by this indemnification. In all events the City and its officers, employees, and City attorneys shall be permitted to choose legal counsel of its sole choice, the fees for which shall be reasonable and subject to and included with this indemnification provided herein.

C. Nothing herein shall be deemed to affect the rights, privileges, and immunities of the City as set forth in Section 768.28, Florida Statutes.

D. In claims against any person or entity indemnified under this Section by an employee of the Developer or its agents or subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Developer or its agents or subcontractors, under Workers Compensation acts, disability benefits acts, or other employee benefit acts.

E. The execution of this Contract by the Developer shall obligate the Developer to comply with the indemnification provision in this Contract; however, the Developer must also comply with the provisions of this Contract relating to insurance coverages.

6.6 Independent Contractor. The Developer agrees that it shall be acting as an independent contractor and shall not be considered or deemed to be an agent, employee, joint venture or partner of the City. The Developer shall have no authority to contract for or bind the City in any manner and shall not represent itself as an agent of the City or as otherwise authorized to act for or on behalf of the City. Additionally, the Developer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Developer to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Developer any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

6.7 Acceptance of Services. Any service(s) procured as a result of this Agreement may be evaluated for compliance with specifications. In the event that the service is found to be defective or does not conform to the specifications, the City reserves the right to require corrective action as appropriate which may include, but is not limited to, ordering re-performance of service or the termination of the Agreement for default. The City will not be responsible for paying for any service that does not conform to the Agreement specifications.

6.8 Public Records / Copyrights.

A. All electronic files, audio and/or video recordings, and all papers pertaining to any activity performed by the Developer for or on behalf of the City shall be the property of the City and will be turned over to the City upon request without charge. In accordance with Florida "Public Records" law, Chapter 119, Florida Statutes, each file and all papers pertaining to any activities performed for or on behalf of the City are public records available for inspection by any person even if the file or paper resides in the Developer's office or facility. The Developer shall maintain the files and papers for not less than six (6) complete calendar years after the project has been completed or terminated, or in accordance with the federal and state requirements, whichever is longer.

B. Any copyright derived from any agreement derived from this Agreement shall belong to the author. The author and the Developer shall expressly assign to the City nonexclusive, royalty free rights to use any and all information provided by the Developer in any deliverable and/or report for the City's use which may include publishing in City documents and distribution as the City deems to be in the City's best interests. If anything included in any deliverable limits the rights of the City to use the information, the deliverable shall be considered defective and not acceptable and the Developer will not be eligible for any compensation.

6.9 Right to Audit. The City reserves the right to require Developer to submit to an audit by any auditor of the City's choosing. Developer shall provide access to all of its records, which relate directly or indirectly to this Agreement at its place of business during regular business hours. Developer shall retain all records pertaining to this Agreement and upon request make them available to the City for six (6) years following expiration of the Agreement. Developer agrees to provide such assistance as may be necessary to facilitate the review or audit by the City to ensure compliance with applicable accounting and financial standards.

6.10 Codes and Regulations. All work completed under this Agreement shall conform to all applicable federal, state and local statutes, codes, regulations and ordinances.

6.11 Public Entity Crimes. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

6.12 Prohibition Against Contingent Fees. The Developer warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the Developer to solicit or secure this Agreement and that they have not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Developer, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

Article 7. General Conditions

7.1 Governing Law and Venue. This Agreement is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of Florida. Venue for any legal action resulting from this Agreement shall lie in Flagler County, Florida.

7.2 Assignment. Neither Party may assign any rights or obligations under this Agreement to any other party unless specific written permission from the other party is obtained.

7.3 Captions. The captions utilized in this Agreement are for the purposes of identification only and do not control or affect the meaning or construction of any of the provisions hereof.

7.4 Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of each of the parties and of their respective successors and permitted assigns.

7.5 Amendment. This Agreement may not be amended, released, discharged, rescinded or abandoned, except by a written instrument duly executed by each of the parties hereto.

7.6 Waiver. The failure of any party hereto at any time to enforce any of the provisions of this Agreement will in no way constitute or be construed as a waiver of such provision or of any other provision hereof, nor in any way affect the validity of, or the right thereafter to enforce, each and every provision of this Agreement.

7.7 Compliance with Civil Rights Act. During the term of this Agreement the Developer assures the City that it is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Civil Rights Act of 1992, in that the Developer does not on the grounds of race, color, national origin, religion, sex, age, disability or marital status, discrimination in any form or manner against the Developer employees or applicants for employment. The Developer understands and agrees that this Agreement is conditioned upon the veracity of this statement of assurance.

7.8 Compliance with Laws. The Developer shall at all times comply with all Federal, State and local laws, rules and regulations.

7.9 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

7.10 Notice. Wherever provision is made in this Agreement for the giving, service or delivery of any notice, statement or other instrument, such notice shall be in writing and shall be deemed to have been duly given, served and delivered, if delivered by hand or mailed by United States registered or certified mail or sent by facsimile, addressed as follows:

If to Developer:

Francine Gordon
Executive Director
Mid-Florida Housing Partnership, Inc.
1834 Mason Avenue
Daytona Beach, FL 32117
Telephone: (386) 274-4441 ext. 308
Fax: (386) 274-1415

If to City:

Beau Falgout
Senior Planner
Community Development Department
160 Cypress Point Parkway, Suite B-106
Palm Coast, FL 32164
Telephone: (386) 986-3796
Fax: (386) 986-2590

Each party hereto may change its mailing address by giving to the other party hereto, by hand delivery, United States registered or certified mail notice of election to change such address.

7.11 Safety. Developer shall be solely and absolutely responsible and assume all liability for the safety and supervision of its principals, employees, contractors and agents while performing work provided hereunder.

7.12 Sovereign Immunity. Notwithstanding any other provision set forth in this Contract, nothing contained in this Agreement shall be construed as a waiver of the City's right to sovereign immunity under Section 768.28, or other limitations imposed on the City's potential liability under state or federal law. As such, the City shall not be liable, under this Agreement, for punitive damages or interest for the period before judgment. Further, the City shall not be liable for any claim or judgment, or portion thereof, to any one person for more than Two Hundred Thousand and 00/100 Dollars (\$200,000.00), or any claim or judgment, or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds the sum of Three Hundred Thousand and 00/ 100 Dollars (\$300,000.00).

7.13 Drafting. City and Developer each represent that they have both shared equally in drafting this Agreement and no party shall be favored or disfavored regarding the interpretation of this Agreement in the event of a dispute between the parties.

7.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document.

Article 8. Scope of Agreement

8.1 This Agreement is intended by the parties hereto to be the final expression of their Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: City through its City Council, signing by and through its Mayor, authorized to execute same by Council Action on the _____ day of _____, 2011 and by Developer through its duly authorized representative.

WITNESSES:

Mid-Florida Housing Partnership, Inc.

By: _____

(print name)

Print name: _____

Title: _____

(print name)

ATTEST:

**CITY OF PALM COAST, through its
CITY COUNCIL**

Virginia A. Smith, City Clerk

Jon Netts, Mayor

This _____ day of _____, 2011.

Approved as to form and legality:

William E. Reischmann, Jr., Esq.
City Attorney

EXHIBIT A: SCOPE OF SERVICES

Developer SHALL FOLLOW THE FOLLOWING STEPS IN ORDER TO RECEIVE PAYMENTS FOR COSTS AND FEES FOR SERVICES RENDERED:

Step 1: Desktop Due Diligence and Initial Visit – The City shall provide the Developer with contact information of Eligible Buyers and completed applications approved by the City to coordinate with Eligible Buyers during property identification. Developer shall identify an eligible Real Estate Owned (REO) property. The Developer shall use the City’s approved REO checklist and Property Submission Package (PSP) forms as guidance for submissions of eligible REO’s for City approval. The Developer shall submit the following documents to the City for review: street map with location of property identified, aerial map with location of property identified, flood zone map with location of property identified, verification that the property has been vacant for 90 days, initial review of any “walk-away” issues (age of property, lead based paint, swimming pool, current tenant, signs of mold, etc.), proof that property is foreclosed, initial work write up and costs of needed repairs, as determined by a qualified individual, such as a home inspector or licensed contractor, (the “Work Write-Up”), and full color photos of all four sides and interior (before any rehabilitation). The submission may be submitted electronically to **bfalgout@palmcoastgov.com**. The City reserves the right to request additional information and/or request to conduct a site visit of the property with the Developer to verify the submitted information. The City must review the submission and approve the Developer to proceed to the next step. If the Developer proceeds to the next step without City approval, any costs incurred by the Developer are at the Developer’s own risk and may not be reimbursed by the City.

Step 2: Due Diligence – After City approval to proceed to this step 2, the Developer has the authority to sign a Purchase and Sale Agreement on the property subject to the following conditions: final NSP3 Program and City approval. The Developer shall submit the following documents to the City for review: appraisal by a Florida Certified Appraiser, Purchase and Sales Agreement (purchase price must be at least 1% below appraised value), title search, wood destroying organism inspection report, and “Notice of Voluntary Sell” signed by the Seller. The City reserves the right to request additional information and/or request consent to conduct a site visit of the property with the Developer to verify the submitted information. The City must review the submission and provide approval for the Developer to proceed to the next step. If the City reviews and approves the acquisition of the property, the City shall provide the Developer a letter stating that the property is eligible for the NSP3 Program. If the Developer proceeds to the next step without City approval, any costs incurred by the Developer are at the Developer’s own risk and may not be reimbursed by the City.

Step 3: After Due Diligence – After City approval to proceed to this step, Developer may schedule a closing date. The Developer shall submit the following documents to the City for review: documentation of all closing cost and fees to be paid in advance and all related third party verification of all costs to close on the property. The City must review the submission and provide approval for the Developer to proceed to the next step. The City shall also review the offer of contract for compliance. Any offer of contract must have a contingency that the transaction is subject to approval by the City of Palm Coast and of NSP3 eligibility, including a site specific review. All binders (if required) to be reimbursed with NSP3 funds must be refundable. If the City reviews and approves, the City shall provide the Developer electronic notice to proceed to the closing. If the Developer proceeds to the next step without City approval, any costs incurred by the Developer are at the Developer’s own risk and may not be reimbursed by the City.

Step 4: Closing – After City approval to proceed to this step 4, Developer will set up, coordinate the date and time with the City, and attend the closing with the City in attendance. The Deed Restriction must be included in the deed and the Notice of Lien for the purchase price must be recorded. After final verifications, the City shall issue a check at the closing to the title/closing agency.

Step 5: Rehabilitation Work Awarded – After the previous step is complete, the Developer shall submit to the City for review and approval the final Work Write-Up. The City reserves the right to request additional information and/or request consent to conduct a site visit of the property with the Developer to verify the submitted information. After final approval of the Work Write-Up and costs, the Developer may utilize the City’s procurement process already in place or take bids following the City’s procurement process to retain a licensed contractor (the “CONTRACTOR”) to complete the rehabilitation work. The City shall approve the contract between the Developer and the CONTRACTOR. Said contract shall include a provision stating that the CONTRACTOR is required to provide the City with a list of the names of all subcontractors, laborers and suppliers of materials related to the project. Developer is responsible for making payment to the CONTRACTOR for the rehabilitation work. In the event that a lien is placed on the Property related to rehabilitation work, the Developer shall comply with the requirements of Section 3.12 of this Agreement. The City, with notification to the Developer, shall be allowed to conduct a site visit of the property at any time during the rehabilitation process to ensure compliance with the NSP3 Program requirements. Developer is responsible to ensure that repair and rehabilitation work is completed in accordance with the work write-up, bid, and contract. For repairs over Ten Thousand Dollars (\$10,000), the City, at its discretion, may allow payment draws to cover the costs of the rehabilitation. Otherwise, the City shall provide payment after the completion of the rehabilitation work.

Step 6: Rehabilitation Work Completed – After the rehabilitation work is completed, the City shall conduct a site visit of the property to determine if the work has been completed in accordance with the NSP3 Program requirements, the work write-up, bid, and contract. If the City approves, the City shall provide a final payment for the completion of the rehabilitation work once the second Notice of Lien for the amount of the rehabilitation work is recorded in the Public Records of Flagler County. The Developer shall submit to the City color photos of property exterior and interior following completion of the rehabilitation work.

Step 7: City Approved Rental Tenant –The Developer shall identify and submit potential tenant(s) completed applications to the City for review and approval. If the Developer proceeds to the next step without City approval, the Developer’s fee may be forfeited. Holding Costs will be reviewed and may be eligible for reimbursement if all City and NSP3 requirements have been followed. If any payments to subcontractors or vendors remain outstanding or liens remain on the property and the requirements of Section 3.12 of this Agreement have not been met, the City may deny NSP3 funding for Holding Costs in part or in whole to address such outstanding claims for payments or liens.

Step 8: Tenant Occupancy- If all NSP3 Program requirements have been satisfied, including the satisfaction of any liens on the property, the City shall within 10 days following the occupancy by the tenant, provide the Developer with payment of the Developer fees. Before release of the Developer Fee, Developer shall provide an Ownership and Encumbrance report from a title agency that was issued within three (3) days of final occupancy by the tenant and that demonstrates clear title and satisfaction and release of any liens. In the event that the Ownership and Encumbrance report reflects that a lien remains on the property, the Developer shall submit proof that the requirements of Section 3.12 of this Agreement have been met. If the Developer has not met the requirements of Section 3.12, the Developer Fee will be reduced by the amount required to satisfy said lien.

EXHIBIT B: CERTIFICATIONS

(1) Affirmatively furthering fair housing. The Developer will affirmatively further fair housing, which means that it will comply with the City of Palm Coast Fair Housing Ordinance and take all action to ensure fair housing choice during the work and maintain records reflecting the actions in this regard.

(2) Anti-displacement and relocation plan. The Developer will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended (42 U.S.C. 4601), and implementing regulations at 49 CFR part 24; and it has in effect and is following a residential anti-displacement and relocation assistance plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in connection with any activity assisted with funding under NSP3.

(3) Drug Free Workplace. The Developer will become or will continue to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing an ongoing drug-free awareness program to inform employees about:
 - (a) The dangers of drug abuse in the workplace;
 - (b) The grantee's policy of maintaining a drug-free workplace;
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment under the grant, the employee will:
 - (a) Abide by the terms of the statement; and
 - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
5. Notifying the agency in writing, within ten (10) calendar days after receiving notice under subparagraph 4(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 4(b), with respect to any employee who is so convicted:
 - (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5 and 6.

(4) Anti-lobbying. To the best of the Developer's knowledge and belief:

1. 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;

2. 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; and
3. It will require that the language of paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

(5) Consistency with Plan. The housing activities to be undertaken with NSP3 funds are consistent with the HUD Funding Approval and Grant Agreement for NSP3 Funds, the City of Palm Coast NSP3 Abbreviated Action Plan, and the City of Palm Coast NSP Local Housing Assistance Plan.

(6) Section 3. The Developer will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

(7) Community development plan. The Developer certifies that it will comply with the City of Palm Coast community development plan and housing assistance plan that identify housing, community development and neighborhood stabilization needs that have been developed in accordance with the NSP3 program.

(8) Use of funds. The Developer will comply with the City's NSP3 activities so as to give the maximum feasible priority to activities that will benefit LMMI families:

1. **Maximum Feasible Priority.** With respect to activities expected to be assisted with NSP3 funds, Developer certifies that it will comply with the requirements that the City has developed in its Action Plan so as to give maximum feasible priority to activities which benefit LMMI income families or aid in the prevention or elimination of slums or blight. The Action Plan may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available);
2. **Special Assessments.** The Developer will not attempt to recover any capital costs of public improvements assisted with NSP3 funds by assessing any amount against properties owned and occupied by persons of VLI including any fee charged or assessment made as a condition of obtaining access to such public improvements. However, if NSP3 funds are used to pay the proportion of a fee or assessment attributable to the capital costs of public improvements (assisted in part with NSP3 funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than NSP3 funds. The City will not attempt to recover any capital costs of public improvements assisted with NSP3 funds, unless NSP3 funds are used to pay the proportion of fee or assessment attributable to the capital costs of public improvements financed from other revenue sources. In this case, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than NSP3 funds. In addition, with respect to properties owned and occupied by middle-income (but not VLI) families, an assessment or charge may be made against the property with respect to the public improvements

financed by a source other than NSP3 funds if the jurisdiction certifies that it lacks NSP3 to cover the assessment.

(9) Compliance with anti-discrimination laws. The NSP3 grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601-3619), and implementing regulations.

(10) Compliance with lead-based paint procedures. The activities concerning lead-based paint will comply with the requirements of part 35, subparts A, B, J, K, and R of this title.

(11) Compliance with laws. The Developer will comply with applicable laws.

(12) 100% of NSP3 for LMML. The aggregate use of NS3P funds shall principally benefit persons of low to middle income (LMML/120% AMI) in a manner that ensures that all grant funds is expended for activities that benefit such persons over the life of the NSP3 grant. VLI set aside funds must benefit those households of 50% AMI or less.

(13) Program Income. The Developer will comply with the program income requirements stated in 24 CFR part 570.504 (a) regarding the recording of program income when utilizing NSP3 funds. All program income must be returned to the City upon receipt.

(14) Audit. The Developer will comply with the jurisdiction's audit requirements stated in its current Consolidated Plan and the federal requirements stated in Circular No. A-133 issued pursuant to the Single Audit Act of 1984, P.L 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156 (pertaining to the management of records, receipts, timesheets, complaints and conflicts of interest).

(15) Acquisition. The Developer will comply with the acquisition/rehabilitation requirements outlined by the HERA, URA and Real Property Acquisition Policies within 49 CFR Part 24 and adopted by the jurisdiction when utilizing NSP3 funds.

1. **Appraisal of Acquired Properties.** The Developer will comply with federal requirements outlined by the Uniform Relocation Act located in 49 CFR 24.103 that states all appraisals must be done by a licensed appraiser and be consistent with the Uniform Standards of Professional Appraisal Practice. Appraisals must be completed 60 days to final offer.
2. **Discount.** The Developer will comply with discount requirements created by the Department of Housing and Urban Development, relative to the HERA 2301 (d) (1) that states a single foreclosed property must be purchased at a minimum discount of 1%.

(16) Continued Affordability. When acquiring a property with the use of NSP3 funds, the Developer will comply with all affordability requirements stated in the Housing and Economic Recovery Act §2301 (f) (3) (B) and adopted by the jurisdiction.

(11) Davis-Bacon Wage Decisions. The Developer will comply with Davis-Bacon wage decision (where applicable) requirements stated in 29 CFR Section 1.6 pertaining to competitive bidding with NSP3 funds.

(18) Section 504 and Civil Rights Policies. The Developer will comply with Section 504 and Civil Rights policies located in Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) as it pertains to the prohibition of discrimination of the sale, rental, and financing of dwellings based on race, color, religion, sex or national origin. The Developer must also comply with Section 504 regulations which require dwelling units purchased with NSP3 funds to be defined as accessible according to the technical criteria in the Uniform Federal Accessibility Standards (UFAS).

(19) Environmental Issues. The Developer must comply with the regulations stated in 24 CFR Part 58 when acquiring and supervising the rehabilitation of the Units with NSP3 funds.

(20) Conflicts of Interest. All potential conflicts of interest must be disclosed prior to any expenditure of funds. Procurement conflicts of interest cannot be waived and are not allowed. The Developer cannot also be a contractor, realtor, appraiser, or other closing service vendor on the same NSP3 unit. Any conflict of interest where the Developer is involved in the selection of the vendor or contractor or has a supervising role cannot be waived and the Developer will be solely responsible for any funds expended under such circumstances. It is possible that other conflicts of interest might be waived by City, but only through full disclosure in advance of the conflict and by approval in writing. Full disclosure is required, even if a conflict is only suspected. The Developer certifies they will disclose any apparent conflict of interest between the Developer and applicant or between the Developer, a closing service provider and a City employee or City Council member, or any other possible conflict of interest involving decision making authority or monetary benefit.

(21) Prevention of Fraud and Abuse. The Developer acknowledges that NSP3 requires expeditious, appropriate, and compliant use of grant funds, as well as monitoring the program to prevent fraud, waste, and abuse of funds in cooperation with the monitoring requirements from HUD. The Developer will follow all training and forms provided by the City, as well as submit to any City or HUD monitoring or audit request during the NSP3 program so as to ensure compliance. Inspection of all work in compliance with NS3P requirements will be required before any payments may be issued. The Developer will report to the City any suspicious activity which may be a result of fraud or abuse of program funds.

(22) Regulations in General. The Developer partnered with the jurisdiction will comply with all related City, State and Federal regulations as well as all relevant HERA requirements.

(23) Grant Application and Grant Ward Agreement. The Developer will comply with the conditions set forth by the jurisdiction's NSP3 Abbreviated Action Plan and Grant Award Agreement with the State/Federal governing entity.

WITNESSES:

(print name)

(print name)

Mid-Florida Housing Partnership, Inc.

By: _____

Print name: _____

Title: _____

Date: _____