

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (“Agreement”), is made and entered into on ____ day of _____, 2025, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government pursuant to KRS Chapter 67A, and located at 200 East Main Street, Lexington, Fayette County, Kentucky 40507 (hereinafter referred to as "GOVERNMENT"), **LHH TRANSFORMATION HOUSING AFFORDABILITY, LLC**, a Kentucky limited liability company, whose principal address is 700 East Loudon Avenue, Lexington, Kentucky 40505 (hereinafter referred to as "SUBCONTRACTOR") and **LEXINGTON HABITAT FOR HUMANITY, INC.**, a Kentucky non-profit corporation, whose principal address is 700 East Loudon Avenue, Lexington, Kentucky 40505 (hereinafter referred to as "DEVELOPER");

WHEREAS, the GOVERNMENT has previously been awarded \$10,000,000.00 in Commonwealth of Kentucky funds through the Department for Local Government for the purpose of funding an affordable housing development initiated by the Lexington Transformational Housing Affordability Partnership;

WHEREAS, DEVELOPER has requested that funding be provided directly to **SUBCONTRACTOR** to facilitate this affordable housing initiative so that **SUBCONTRACTOR**, a wholly owned subsidiary of DEVELOPER, may acquire land for the development of affordable housing on behalf of the Lexington Transformational Housing Affordability Partnership;

WHEREAS, the GOVERNMENT has determined that providing funding directly to the **SUBCONTRACTOR** will expedite and facilitate the development of this affordable housing initiative;

WHEREAS, the GOVERNMENT'S responsibility for ensuring compliance with all grant requirements necessitates a written agreement with the **SUBCONTRACTOR**;

WHEREAS, the GOVERNMENT also needs written assurance of **SUBCONTRACTOR**'s ability to comply with all requirements specified by the Department for Local Government, and DEVELOPER has agreed to offer that guaranty of **SUBCONTRACTOR**'s compliance;

WHEREAS, both the DEVELOPER and **SUBCONTRACTOR** understand, acknowledge and agree that the DEVELOPER's guaranty is a material fact upon which GOVERNMENT relied in agreeing to provide the funding to **SUBCONTRACTOR**;

NOW, THEREFORE, in consideration of the foregoing and mutually agreed upon promises, conditions and covenants hereinafter set forth, the parties hereto agree as follows:

I. SCOPE OF AGREEMENT

A. Incorporation of Recitals

The aforementioned recitals are hereby incorporated into this Agreement and expressly made a part hereof. The parties to this Agreement also acknowledge and agree that such recitals are true and correct.

B. Representations

Each and every party to this Agreement is duly organized under the laws of the Commonwealth of Kentucky, and validly exists in good standing, and has all requisite corporate power and authority to enter into and fully perform the Agreement.

C. Performance Obligations

The SUBCONTRACTOR understands and agrees that grant funds provided under this Agreement will be in an amount not to exceed TEN MILLION DOLLARS (\$10,000,000.00) (“Funds”). The Funds may only be used to pay the costs identified in the CONTRACTOR’S Memorandum of Agreement (“MOA”) with the Commonwealth of Kentucky Department for Local Government, attached hereto as **Exhibit A** and incorporated herein by reference (“Eligible Expenses”) and in compliance with the agreed budget, attached hereto as **Exhibit B** and incorporated herein by reference. The Eligible Expenses must be related to the development of affordable housing for residents of Fayette County, located at 495 Radcliffe Road, Lexington, Ky 40505 (“Project”) Project. Eligible Expenses may include administrative costs, so long as the total administrative costs do not exceed ONE HUNDRED THOUSAND DOLLARS \$100,000.00. The SUBCONTRACTOR’S timely expenditure of Funds for Eligible Expenses on the Project, in compliance with the terms and conditions of the MOA, attached as **Exhibit A**, during the Agreement’s Term, as defined herein, along with SUBCONTRACTOR’S satisfactory performance of all obligations set forth in Article IV of this Agreement, titled “Additional Obligations of the Subcontractor,” are hereinafter collectively referred to as the “Performance Obligations.”

The SUBCONTRACTOR understands and agrees that no other uses of the Funds are permitted unless agreed to by the parties in a written amendment to this Agreement. The SUBCONTRACTOR is prohibited from charging to the subaward the costs of ineligible activities and from using any Funds provided herein or personnel employed in the administration of activities under this Agreement for political activities, inherently religious activities, or lobbying.

D. Schedule – Time of Performance

The term of this Agreement shall be from August 1, 2025, until May 31, 2027 (“Term”).

E. Payment

In order to facilitate acquisition of the land needed for the Project, the GOVERNMENT shall advance to the SUBCONTRACTOR a lump sum out of the total Funds toward the cost of the acquisition (“Acquisition Funds”). The amount of the lump sum advanced by the GOVERNMENT shall equal the purchase price of the land, which shall be documented with a written purchase contract between the SUBCONTRACTOR and the seller, and the stated purchase price shall be supported by an independent third-party appraisal. Each of the foregoing shall be forwarded to the GOVERNMENT. In no case shall the amount of the lump sum paid by the GOVERNMENT for the acquisition of land exceed the fair market value for that land.

GOVERNMENT shall disburse payment to cover all remaining Eligible Expenses in the following manner, subject to all contingencies and mutual obligations as stated herein:

1. Monthly Disbursements

With exception to the initial draw for land acquisition, the GOVERNMENT shall pay the SUBCONTRACTOR on the first day of each month during the Term of this Agreement (“Monthly Payment”) until the Funds are fully disbursed, provided that SUBCONTRACTOR shall first submit satisfactory documentation, which may include but shall not be limited to invoices, purchase orders, copies of competitive quotations and any related bid documents, contracts, and any other documentation requested by GOVERNMENT, at least seven (7) calendar days prior to the first day of each month. The SUBCONTRACTOR must submit satisfactory documentation each month before the GOVERNMENT is obligated to disburse the respective monthly draw. The amount of each Monthly Payment shall not exceed the total of Eligible Expenses reflected in the documentation submitted by SUBCONTRACTOR. The total amount paid through Monthly Payments during the Term shall not exceed the balance of the Funds that remains after payment of the Acquisition Funds.

2. Reconciliation

No later than thirty (30) days before the date this Agreement terminates, the SUBCONTRACTOR shall provide a final invoice reconciling all amounts paid by GOVERNMENT with the amount of Eligible Expenses incurred by SUBCONTRACTOR. The final invoice must include copies of any additional documentation and/or revised documentation other than what was produced prior to each monthly disbursement, including but not limited to invoices, purchase orders, copies of competitive quotations, bid documents, or contracts, to account for all expenses paid with the Funds.

3. Refund

If the reconciliation reveals that the SUBCONTRACTOR has not fully expended the Funds, then SUBCONTRACTOR agrees to pay the balance to GOVERNMENT within thirty (30) days of the termination of this Agreement.

SUBCONTRACTOR understands that all the Funds must be expended on or before June 30, 2027. If it becomes apparent to SUBCONTRACTOR that it will be unable to complete the Project either in the manner or for the amount described in this Agreement, then the SUBCONTRACTOR must provide written notice to the GOVERNMENT with a complete and detailed written explanation of its inability to comply with the terms of the Agreement, any proposed changes, and the reasons for those changes. The GOVERNMENT, may at its sole discretion and absolute discretion, amend this Agreement to address any changes or waivers requested by the SUBCONTRACTOR.

II. ADDITIONAL OBLIGATIONS OF THE GOVERNMENT

A. Monitoring

The GOVERNMENT shall monitor the SUBCONTRACTOR as necessary to ensure SUBCONTRACTOR complies with all the requirements of this Agreement. Substandard performance as reasonably determined by the GOVERNMENT will constitute noncompliance with this Agreement.

III. ADDITIONAL OBLIGATIONS OF DEVELOPER

A. Guaranty of Indemnity

The DEVELOPER joins in the execution of this Agreement to guaranty the satisfactory performance of all Performance Obligations owed by SUBCONTRACTOR to GOVERNMENT under this Agreement. This guaranty of the Performance Obligations extends explicitly and without reservation to the SUBCONTRACTOR's obligation to indemnify the GOVERNMENT, as set forth in this Agreement. To the extent this guaranty is interpreted as obligating the DEVELOPER to satisfy any indebtedness that the SUBCONTRACTOR owes to the GOVERNMENT, then pursuant to KRS 371.065, the GOVERNMENT acknowledges that the maximum aggregate liability of this guaranty shall not exceed the original balance of the Funds (\$10,000,000.00), exclusive of interest, legal fees, costs, fines, or other penalties that could be assessed by a tribunal; and further, this guaranty shall terminate upon satisfactory completion of the final Performance Obligation, as determined by the GOVERNMENT. The foregoing guaranty of indemnity is exclusive to and for the benefit of the GOVERNMENT and does not accrue to the benefit of any other party.

B. Guaranty of Performance

The DEVELOPER joins in the execution of this Agreement to guaranty the performance of all obligations specified herein, and to ensure that SUBCONTRACTOR remains in satisfactory compliance with all of the terms and conditions set forth in the GOVERNMENT's MOA, attached hereto as Exhibit A. The foregoing guaranty of performance is exclusive to and for the benefit of the GOVERNMENT and does not accrue to the benefit of any other party.

IV. ADDITIONAL OBLIGATIONS OF THE SUBCONTRACTOR

A. Reporting

The SUBCONTRACTOR shall submit to the GOVERNMENT quarterly reports for each quarter during the Term. Quarterly reports are due on the 10th day of the month. Specifically, quarterly reports shall provide information required by the Department of Local Government and the GOVERNMENT.

B. Audits, Inspections and Monitoring

The SUBCONTRACTOR shall be audited as required by 2 CFR part 200, subpart F, as applicable and unless otherwise exempt by statute. SUBCONTRACTOR shall submit a

copy of the audit report to the Department of Local Government within 30 days after receipt of the audit report, but not later than eighteen (18) months after the end of the fiscal year. The audit report shall include a certification of compliance that the Funds were expended for the purpose intended. Concurrently with the submission of the audit report to the federal Audit Clearinghouse, SUBCONTRACTOR shall submit a copy of the audit report to the GOVERNMENT'S Division of Grants and Special Programs.

C. Access to Records

The SUBCONTRACTOR shall furnish and cause each of its own subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by GOVERNMENT and the Department of Local Government, or its agent, for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein. The SUBCONTRACTOR shall comply at all times with KRS 45A.150.

F. Procurement

The SUBCONTRACTOR shall comply with procurement standards set forth in applicable state and local laws for the purchase of goods or services related to the Project.

G. Permitting and Approvals

The SUBCONTRACTOR shall obtain all necessary permits, licenses, and approvals for completion of the Project from the appropriate governmental entities. The SUBCONTRACTOR shall also comply with all applicable federal and state statutes, local ordinances, executive orders, regulatory requirements, and policies.

H. Civil Rights, Nondiscrimination and Equal Opportunity in Participation

The SUBCONTRACTOR agrees to comply with the Equal Employment Opportunity Act of 1978. The SUBCONTRACTOR shall not discriminate against any participant on the ground of race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familial status, sexual orientation, or any other basis prohibited by applicable law. The SUBCONTRACTOR shall, through affirmative outreach, make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis. The SUBCONTRACTOR must take appropriate steps to ensure effective communication with persons with disabilities.

I. Required Disclosures

Pursuant to KRS 45A.485, the SUBCONTRACTOR shall reveal any final determination of a violation by the SUBCONTRACTOR within the previous five (5) year period of the provisions of KRS chapter 136, 139, 141, 337, 338, 341, and 342. These statutes relate to corporate and utility tax law, sale and use tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively. Disclosure of any violations is required prior to the award of any contract that utilizes Commonwealth of Kentucky funds and throughout the duration of the contract. Failure to disclose shall be grounds for termination of this

Agreement and recoupment of funds. To comply with KRS 45A.485, the SUBCONTRACTOR shall report any final determination(s) of any violation(s) within the previous five (5) years by providing a list of the following information regarding any violation(s): 1) specific KRS violated; 2) date of any final determination of a violation; and, 3) state agency which issued a final determination.

A list of any disclosures made prior to entry of this Agreement shall be provided to the GOVERNMENT for inclusion in its records. If no list is provided, then by executing this Agreement, the SUBCONTRACTOR affirms that it has not violated any of the provisions of the above statutes within the previous five (5) year period, and also affirms that it will communicate the disclosure requirements to any subcontractors and disclose any violations it becomes aware of to the GOVERNMENT.

J. Declaration of Covenants and Restrictions Required

For each and every parcel of land acquired with the Funds and/or developed with the Funds, the GOVERNMENT shall require the execution of a declaration of covenants and restrictions ("Declaration") in a form satisfactory to the GOVERNMENT, which shall limit the use of the newly acquired unit to households at or below eighty percent (80%) of the area median income as defined by HUD, and the SUBCONTRACTOR shall cause that Declaration to be recorded in the Office of the Fayette County Clerk.

K. Risk Management Provisions

SUBCONTRACTOR shall indemnify, save, hold harmless and defend the GOVERNMENT and its elected and appointed officials, employees, agents, volunteers, and successors in interest from and against all liability, damages, and losses, including but not limited to, demands, claims, liens, suits, notices of violation from Governmental agencies, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by SUBCONTRACTOR'S performance or breach of the agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the SUBCONTRACTOR; and (b) not caused solely by the active negligence or willful misconduct of the GOVERNMENT. The parties understand and agree that the SUBCONTRACTOR'S obligation to defend the GOVERNMENT includes the obligation to investigate, handle, respond to, resist, provide a defense for, and defend claims, at SUBCONTRACTOR'S expense, using attorneys approved in writing by GOVERNMENT, which approval shall not be unreasonably withheld. The parties also understand and agree that the SUBCONTRACTOR'S obligation to indemnify includes, but is not limited to: attorney fees and expenses; costs of litigation; court and administrative costs; expert witness fees and expenses, judgments; fines; penalties; interest; all environmental cleanups and remediation costs of whatever kind; and any liability arising from death, injury, or damage of any kind, to any person, including employees and agents of SUBCONTRACTOR and GOVERNMENT, and damage to, or destruction of, any property, including the property of GOVERNMENT.

- i. These Risk Management Provisions shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement.
- ii. These Risk Management Provisions shall be interpreted so that any use of the word "SUBCONTRACTOR" shall include the "DEVELOPER" in any instance wherein the SUBCONTRACTOR's use of any amount of the Funds leads to any demands, claims, liens, suits, or notices of violation; in such case, the DEVELOPER has joint liability with the SUBCONTRACTOR to indemnify, save, hold harmless and defend the GOVERNMENT and its elected and appointed officials, employees, agents, volunteers, and successors from any claims related to the Performance Obligations, in the same manner and to the same extent as the SUBCONTRACTOR.
- iii. GOVERNMENT is a political subdivision of the Commonwealth of Kentucky. SUBCONTRACTOR and DEVELOPER both acknowledge and agree that the GOVERNMENT is unable to provide indemnity or otherwise save, hold harmless, or defend the SUBCONTRACTOR or DEVELOPER in any manner.
- iv. SUBCONTRACTOR understands and agrees that it shall demonstrate the ability to assure compliance with the above indemnity provisions and other risk management provisions prior to final acceptance of its proposal and the commencement of any work or the provision of services.
- v. SUBCONTRACTOR shall procure and maintain for the duration of this Agreement the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to the GOVERNMENT in order to protect the GOVERNMENT against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by the SUBCONTRACTOR. The cost of such insurance shall be included in any bid:

Coverage

Limits

General Liability (Insurance Services Office Form CG 00 01) (or \$2 million combined single limit) (including Products/Completed Operations)	\$1 million per occurrence, \$2 million aggregate
Auto Liability	\$1 million per occurrence
Worker's Compensation	Statutory
Employer's Liability	\$100,000
Excess/Umbrella Liability	\$1 million per occurrence

Professional Liability (E&O)

\$1 million per occurrence

v. Further, the policies above shall contain the following conditions:

- a. All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky (DOI). The GOVERNMENT shall be named as an additional insured in the General Liability Policy using the Kentucky DOI approved forms.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by the GOVERNMENT.
- c. The General Liability Policy shall include Premises and Operations coverage unless it is deemed not to apply by the GOVERNMENT.
- d. The General Liability Policy shall include Employment Practices Liability coverage or an endorsement in a minimum amount of \$1 million unless it is deemed not to apply by GOVERNMENT.
- e. The GOVERNMENT shall be provided at least 30 days' advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.
- f. Said coverage shall be written by insurers acceptable to the GOVERNMENT and shall be in a form acceptable to the GOVERNMENT. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

After insurance has been approved by the GOVERNMENT, evidence of renewal of an expiring policy must be submitted to the GOVERNMENT, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

Self-insurance programs, deductibles, and self-insured retentions in insurance policies are subject to separate approval by the GOVERNMENT, upon review of evidence of SUBCONTRACTOR'S financial capacity to respond to claims. Any such programs or retentions must provide SUBCONTRACTOR with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance coverage. If SUBCONTRACTOR satisfies any portion of the insurance requirements through deductibles, self-insurance programs, or self-insured retentions, SUBCONTRACTOR agrees to provide the GOVERNMENT the following data prior to the final acceptance of bid and the commencement of any work:

- a. Latest audited financial statement, including auditor's notes.
- b. Any records of any self-insured trust fund plan or policy and related accounting statements.

- c. Actuarial funding reports or retained losses.
- d. Risk Management Manual or a description of the self-insurance and risk management program.
- e. A claim loss run summary for the previous five (5) years.
- f. Self-Insured Associations will be considered.

SUBCONTRACTOR agrees to furnish GOVERNMENT with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf prior to final award, and if requested, shall provide the GOVERNMENT copies of all insurance policies, including all endorsements. SUBCONTRACTOR understands and agrees that GOVERNMENT may review, audit and inspect any and all of its records and operations to insure compliance with these Insurance Requirements.

SUBCONTRACTOR shall comply with all applicable federal, state, and local safety standards related to the performance of its works or services under this Agreement and take necessary action to protect the life, health and safety and property of all of its personnel on the job site, the public, and the GOVERNMENT.

SUBCONTRACTOR understands and agrees that the failure to comply with any provision of this Agreement regarding indemnification, insurance, safety, or loss control shall constitute a material breach of this Agreement and that GOVERNMENT may elect at its option any remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging SUBCONTRACTOR for any such insurance premiums purchased, or suspending or terminating the work.

L. Change in Ownership or Control

DEVELOPER is and shall remain the sole owner of one hundred percent of the membership interest in SUBCONTRACTOR with the exclusive right to control and manage the affairs of the SUBCONTRACTOR as its sole member.

V. MISCELLANEOUS CONDITIONS

- A. Either party may terminate this Agreement by providing thirty (30) days written notice to the other party, in which case the Agreement shall terminate on the thirtieth day. This Agreement may be terminated by the GOVERNMENT through the Mayor, or by the Mayor's designee. In the event of termination, the SUBCONTRACTOR shall be entitled to that portion of total compensation due under this Agreement as the services rendered bears to the services required.
- B. The DEVELOPER'S and SUBCONTRACTOR'S sole remedy for a breach of this Agreement by the GOVERNMENT shall be limited to the amount of the Funds provided in this Agreement.
- C. This Agreement, or any part hereof, may be amended from time to time hereafter only in writing executed by the parties.
- D. The SUBCONTRACTOR and DEVELOPER shall not assign or transfer any interest in this Agreement without the prior written consent of the GOVERNMENT. The

SUBCONTRACTOR and DEVELOPER shall not enter into any subcontracts related to the performance of this Agreement without the written consent of the GOVERNMENT prior to the execution of such subcontract.

In addition to the foregoing, the SUBCONTRACTOR shall provide a performance bond for the benefit of the GOVERNMENT, which shall be in an amount equal to \$10,000,000.00. The GOVERNMENT agrees that any remedies herein shall be exercised after exhausting all claims against the performance bond.

- E. The parties each bind themselves and their successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations of the Agreement.
- F. If the SUBCONTRACTOR and/or DEVELOPER breach any term of this Agreement or any addendum hereto, then GOVERNMENT is entitled to pursue legal action against both SUBCONTRACTOR and/or DEVELOPER, to the fullest extent of the law, including but not limited to: termination of the Agreement; disgorgement of all funds provided to SUBCONTRACTOR pursuant to this Agreement; specific performance; injunctive relief; and a civil action for monetary damages. The parties agree that any waiver of a term in this Agreement shall not constitute an ongoing waiver of that term, nor shall it be interpreted as a waiver of any other terms of this Agreement. Further, the GOVERNMENT'S failure to act with respect to a breach does not waive its right to act with respect to subsequent or similar breaches.
- G. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally to the individuals identified below; (ii) upon receipt, when sent by email (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party) to the email addresses identified below; or (iii) when delivered or mailed by certified mail, postage prepaid, or return receipt requested to the addresses set forth below.

Notices required by this Agreement shall be sent to:

Charlie Lanter
Commissioner of Housing Advocacy and Community Development
200 E. Main Street, Lexington, KY 40507
clanter@lexingtonky.gov
CONTACT FOR GOVERNMENT

Darryl Neher
CEO of Lexington Habitat for Humanity, Inc.
700 East Loudon Avenue
Lexington, KY 40505
darryln@lexhabitat.org
CONTACT FOR DEVELOPER AND SUBCONTRACTOR

- H. All headings in this Agreement are for convenience of reference only and are not intended

to qualify the meaning of any provision of this Agreement.

- I. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.
- J. This Agreement constitutes the entire agreement between the parties for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the parties relating to the GOVERNMENT'S allocation of funding to SUBCONTRACTOR.

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SIGNATURE PAGE TO FOLLOW

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EXHIBIT A (MOA)

EXHIBIT B (BUDGET)