

COMMUNITY LAND TRUST AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into as of the last signature date affixed hereto (“Effective Date”) by and between the **CITY OF GAINESVILLE**, a Florida municipal corporation with a mailing address of Post Office Box 490, Station 48, Gainesville, Florida 32627 (“City”), and **BRIGHT COMMUNITY TRUST, INC.**, a Florida not for profit corporation with a principal address of 11923 Oak Trail Way, Suite 111, Port Richey, Florida 34668 (“Contractor”), jointly referred to as the “Parties”.

RECITALS

WHEREAS, the City Commission of the City of Gainesville directed staff to publish a Request for Proposals (“RFP”) to facilitate a partnership with a Community Land Trust organization (“CLT”) to promote and deliver affordable housing throughout the community; and

WHEREAS, accordingly on March 11, 2021, the City issued RFP No. RFP-CAPER-210029-gd-0-2021/GD; and

WHEREAS, the RFP Evaluation Committee, comprised of City staff representing Gainesville Community Reinvestment Area (GCRA), Department of Housing & Community Development (HCD), Department of Sustainable Development (DOSD), and Economic Opportunity and Special Projects Planning, unanimously selected the Contractor to serve as the City’s partnering CLT; and

WHEREAS, on March 17, 2022, the City Commission authorized City staff to negotiate and enter into this Agreement between the City and the Contractor; and

WHEREAS, the Parties recognize that there is a pressing need for more affordable housing opportunities within the City of Gainesville; and

WHEREAS, the Parties are both dedicated to promoting, maintaining, and providing safe, sanitary, and affordable homes to residents of the City of Gainesville; and

WHEREAS, the Parties desire to enter into this Agreement to accomplish the purposes described herein.

NOW, THEREFORE, the Parties do hereby covenant and agree as follows:

1. RECITALS

The recitals above comprise a material part of this Agreement and are hereby incorporated by reference.

2. TERM

This Agreement will become effective on the Effective Date and will remain in effect until the earliest occurrence of the following: 1) September 30, 2025; or 2) this Agreement is terminated as provided herein. This Agreement may be extended by the Parties for two additional three-year terms.

3. AGREEMENT DOCUMENTS

This Agreement consists of the following documents, whether attached to this Agreement or incorporated by reference (collectively the "Agreement Documents"):

- A. This Agreement, including any exhibits or attachments.
- B. City RFP No. RFP-CAPER-210029-gd-0-2021/GD.
- C. Contractor response to City RFP dated May 3, 2021.

The Agreement Documents constitute the entire agreement between the Parties. In the event of conflict or inconsistency between the Agreement Documents, the order of precedence for interpretation will be the order in which the Agreement Documents are listed above. Conflict or inconsistency within a particular Agreement Document will be resolved by having the more specific reference to the matter prevail.

4. SCOPE OF SERVICES

A. In General

- 1) The Contractor shall provide services as a CLT within the City of Gainesville.
- 2) The general purpose of a CLT is to acquire or develop single-family and multi-family units of permanent affordable housing for qualified residents. For purposes of this Agreement, terms are defined as follows:
 - a. "Qualified resident" means a resident that has a satisfactory credit score to qualify for a mortgage or lease and has completed a homebuyer education course or tenant education course as approved by the Contractor.
 - b. "Affordable housing" means units that are affordably priced for households earning no more than 80% of the Gainesville Metropolitan Statistical Area (MSA) Area Median Income (AMI), adjusted for household size, as established by the United States Department of Housing and Urban Development (HUD).
 - c. "Affordably priced" means that no more than 30% of household income is spent on housing expenses.
 - d. "Permanent" means that the affordability requirement must be effective until the development is demolished or converted to uses that do not include any residential dwellings.
- 3) The Contractor shall develop and use in its operation as a CLT any and all City-owned properties conveyed to the Contractor by the City ("City-conveyed property(ies)") for the development of single-family homes for sale as permanent affordable housing to qualified residents or for multi-family projects for rent or sale as permanent affordable housing to qualified residents.
- 4) The Contractor shall ensure that any single-family and multi-family affordable housing developed on a City-conveyed property will remain as permanent affordable housing, with a legal mechanism approved in the sole discretion of the City.

- 5) The Parties will collaboratively identify and explore opportunities to expand, improve, and create affordable housing within the City of Gainesville, Florida.

B. Conveyance of City-Owned Properties

- 1) In accordance with the City's Real Estate Policy Resolution No. 200961 as may be amended, the City shall convey to the Contractor, at no cost excluding closing or transactional costs, for Contractor's use in the CLT and under the terms of this Agreement the following City-owned properties ("Agreement Properties"; which is included within the definition of "City-conveyed property(ies)" as defined in this Agreement):
 - a. Alachua County Parcel No. 13877-000-000.
 - b. Alachua County Parcel No. 13886-000-000.
 - c. Alachua County Parcel No. 14455-000-000.
 - d. Alachua County Parcel No. 13369-000-000.
 - e. Alachua County Parcel No. 12885-000-000.
- 2) Other than the Agreement Properties, the City may convey to the Contractor for use in the CLT a portion of the inventory of its City-owned properties deemed suitable for affordable housing in accordance with the City's Real Estate Policy, Resolution No. 200961, as may be amended from time to time, and in accordance with Florida law.
 - a. The City may periodically share with the Contractor a list of City-owned properties available for development of affordable housing, when available.
 - b. The Contractor may make requests to the City for properties on the list to be conveyed via donation, sale, or property exchange.
 - c. The determination of which City-owned properties are to be conveyed to the Contractor, and whether the conveyance will be by donation, sale, or exchange of property, will be at the sole discretion of the City.
- 3) The City and the Contractor shall enter into a Purchase and Sale/Donation Agreement prior to the conveyance of any City-owned property, including the Agreement Properties, which must include but not be limited to the following provisions:
 - a. The conveyance of any City-owned properties will be by deed pursuant to the City's Real Estate Policy, Resolution No. 200961 as amended, conveying only the interest of the City in such property and shall not be deemed to warrant title or to represent any state of facts concerning the property.
 - b. The City shall not be required to cure any title defects associated with the City's acquisition of the property by tax deed. However, the City may, at the City's sole discretion, collaborate with the Contractor or other third-party to cure any title defects for such properties.
 - c. The consideration for the conveyance of City-owned properties shall include the Contractor's covenant that:
 - i) The housing developed on the City-conveyed property shall be, and remain as, permanent affordable housing, with a legal mechanism approved in the sole

discretion of the City.

- ii) Any subsequent sale of the affordable housing developed on the City-conveyed property to a third-party resident shall separate the cost of the land from the improvements with the use of a 99-year ground lease, the terms of which shall be in substantial conformance with the Model Ground Lease as provided by the Florida Housing Coalition, as may be amended from time to time. Each 99-year ground lease associated with a subsequent sale of a City-conveyed property shall be subject to review and approval by the City prior to execution.
- 4) All City-conveyed property must include a reverter provision in both the Purchase and Sale/Donation Agreement and the conveying deed whereby if the property remains undeveloped for a period of two years or more after such conveyance, the property will, upon written submission of the City, revert back to the City in the form of a Special Warranty Deed from the Contractor. The period of time for such reversion may be extended at the City's sole discretion.
- 5) Any and all City-conveyed properties shall not be used, developed, sold, rented, or otherwise transferred for any purpose, except as provided herein.
- 6) In the event any City-conveyed property is to be used, developed, sold, rented, or otherwise transferred in violation of the provisions of this Agreement, the property shall, upon written request by the City, revert back to the City in the form of a Special Warranty Deed from the Contractor, or, if the Contractor has already conveyed the property to a third party, the City shall be entitled to seek damages from the Contractor in an amount equal to the value of the property at the time of said conveyance plus attorney's fees and costs incurred by the City in seeking such damages.
- 7) Throughout the Term of this Agreement, the number of City-owned properties to be conveyed to the Contractor, and the frequency at which they are conveyed, will be at the sole discretion of the City.

C. Homeowners and Tenants of Conveyed City-owned Properties

- 1) Single-Family Home Development. Any City-conveyed properties developed for single-family homes shall be sold as permanent affordable housing to qualified residents, as those terms are defined in this Agreement.
- 2) Multi-Family Development. Any City-conveyed properties developed for multi-family projects shall provide permanent affordable housing units made available for rent or sale to qualified residents, as those terms are defined in this Agreement.

The Parties acknowledge and agree that such projects may also include units made available for rent at rental rates that exceed the thresholds for affordable housing; provided, however, that the number of such units must be limited to an amount to be determined by the Parties on a case by case basis.

- 3) The Contractor shall require all qualified residents to complete an approved homebuyer education course for CLT homeowners and an approved tenant education course for CLT tenants.
- 4) The City may provide down payment assistance to eligible homeowners that purchase a CLT

home in the incorporated City boundary limits. The funding will be subject to availability through the City's HOME Investment Partnership (HOME), Community Development Block Grant (CDBG), or State Housing Initiative Partnership (SHIP) program and other sources of funding at the sole discretion of the City.

D. Annual Report

- 1) The Contractor shall submit an annual report to the City that details the following at a minimum:
 - a. The number of single-family home developments and multifamily developments built within the past 12 months on properties owned by the Contractor, including properties conveyed by the City.
 - b. The number of City-conveyed properties that remain undeveloped.
 - c. Specific demographic and income data of qualified residents that purchased a single-family home development within the past 12 months on City-conveyed properties.
 - d. Aggregate demographic and income data of qualified residents that rented an apartment unit in a multifamily development within the past 12 months on City-conveyed properties.
 - e. Marketing strategies for homes and apartments on City-conveyed properties.
- 2) The Contractor shall submit to the City the Annual Report by October 1 of each year.

5. COVENANTS AND REPRESENTATIONS

Contractor covenants and represents and warrants to the City that the following are true and correct in all material respects:

- A. Contractor shall timely fulfill all the conditions herein that are in the control of Contractor and are the responsibility of Contractor.
- B. During the period in which the obligations of Contractor pursuant to this Agreement are in effect, Contractor shall cause to occur and to continue to be in effect those instruments, documents, certificates, and events contemplated by this Agreement that are applicable to, and the responsibility of, Contractor.
- C. Contractor is a validly existing legal entity, authorized to do business in the State of Florida. Contractor has all requisite power and authority to carry on its business as now conducted and to enter into and perform its obligations of this Agreement and each instrument required to be executed by Contractor pursuant to this Agreement, and has consented to service of process in the State of Florida.
- D. This Agreement and each document required to be executed by Contractor pursuant to this Agreement has been duly authorized by all necessary action on the part of, and has been or will be duly executed and delivered by, Contractor and neither the execution and delivery nor the compliance with the terms and provisions thereof: (i) requires the approval of any other party, except as has been obtained or noted herein; (ii) contravenes any law, judgment, governmental rule, regulations, or order binding on Contractor; or (iii) results in any default under or creates any lien upon any property of Contractor.

- E. This Agreement and each document to be executed by Contractor pursuant to this Agreement constitutes a legal, valid, and binding obligation of Contractor, enforceable against Contractor, in accordance with the Agreement's terms except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws which affect creditor's rights generally and subject to usual equitable principles if equitable remedies are invoked.
- F. There are no pending or, to the best knowledge of Contractor, threatened actions before any court or administrative agency against Contractor that: (i) question the validity of this Agreement; or (ii) are likely to materially adversely affect this Agreement or the financial condition of Contractor.

6. SUBJECT TO APPROPRIATIONS

The obligations of the City as to any funding required pursuant to this Agreement is limited in any given year to legally available funds, after monies for essential City services have been budgeted and appropriated. Notwithstanding the foregoing, the City may pledge any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Agreement.

7. INSURANCE

Prior to commencement of work to be performed Contractor shall purchase and maintain the following types and amounts of insurance with an insurer rated A- or better by A.M. Best:

- A. Commercial General Liability Insurance coverage in the minimum amount of \$1,000,000.00 for bodily injury (or death), and \$1,000,000.00 property damage.
- B. Professional Liability Insurance in the minimum amount of \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
- C. Full and complete Workers' Compensation Insurance Coverage as required by State of Florida law.
- D. Automobile Liability Insurance coverage in the minimum amount of \$1,000,000.00 per occurrence for BI/PD, including hired/non-owned vehicles regardless of number of passengers transported.
- E. The City must be named as an additional insured on all insurance policies required hereunder, except Worker's Compensation coverage. Contractor shall provide the City with a certificate of insurance evidencing the required coverage and shall furnish City evidence of renewals of each such policy no less than thirty (30) days prior to the expiration of the applicable policy.

8. TERMINATION

- A. Termination for Convenience. The City may terminate this Agreement without cause by giving the Contractor not less than thirty (30) days' prior written notice of its intent to terminate.
 - 1) The City shall not be required to give the Contractor such thirty (30) days' written notice if, in the sole opinion of the City, the Contractor is unable to perform its obligations hereunder, or if in the sole opinion of the City, the services being provided by Contractor are not

satisfactory. In such case, the City may immediately terminate this Agreement by providing a written notice of termination to the Contractor.

- B. Termination for cause. If, through any cause within its reasonable control, the Contractor or the City shall fail to fulfill in a timely manner or otherwise violate any of the covenants, agreements, or stipulations material to this Agreement, either Party may terminate this Agreement for cause. Prior to the exercise of its option to terminate for cause, the terminating Party shall notify the non-terminating Party of its violation of the particular terms of the Agreement and grant the non-terminating Party thirty (30) days to cure such default. If the default remains uncured after thirty (30) days, the terminating Party may terminate this Agreement.
 - 1) In the event of termination, all finished and unfinished documents, data, and other work product prepared by Contractor (and sub-Contractor(s)) shall promptly be delivered to the City.
 - 2) Notwithstanding the foregoing, the Contractor shall not be relieved of liability to the City for damages sustained by it by virtue of a breach of the Agreement by Contractor.
- C. If terminated, Contractor shall cause a reversion to the City in the form of a Special Warranty Deed from the Contractor of all City-conveyed properties that remain undeveloped at the time that this Agreement is terminated. Prior to such reversion, the Contractor shall remedy any and all code violations, liens, or any other encumbrances placed on the property subsequent to the date of conveyance from the City to the Contractor.
- D. Termination of this Agreement for any reason will not affect: (i) any liabilities or obligations of either Party arising before such termination or as a result of the events causing such termination; or (ii) any damages or other remedies to which a Party may be entitled to under this Agreement, at law or in equity, arising out of a breach of this Agreement.

9. INDEMNIFICATION

- A. Contractor shall indemnify, hold harmless, and defend the City, its elected and appointed officials, employees, and agents from and against any and all liability, losses, claims, demands, damages, fines, fees, expenses, penalties, suits, proceedings, actions, and cost of actions, including reasonable attorneys' fees for trial and on appeal, of any kind and nature arising or growing out of or in any way connected with the Contractor's or its agents', employees', partners', or subcontractors' performance of or obligations under this Agreement, whether caused by any act or omission of Contractor or its agents, employees, partners, or subcontractors including the negligence, recklessness, or intentional wrongful conduct of the Contractor or its agents, employees, partners, or subcontractors.
- B. The City may, at its sole option, defend itself or require the Contractor to provide the defense. The Contractor acknowledges that the sum of ten dollars (\$10.00) of the amount paid to the Contractor constitutes sufficient consideration for the Contractor's indemnification of the City, its officials, officers, and employees.
- C. The Contractor shall be liable to the City for any and all reasonable costs incurred by the City to remediate, mitigate, or cure any portion of a City-conveyed property, which reverts back to the City pursuant to this Agreement, that is found to be defective or not in accordance with this

Agreement, as a result and to the extent caused by the negligence, recklessness, or intentionally wrongful conduct on the part of the Contractor or its agents, employees, partners, subcontractors, or any other persons employed or utilized by the Contractor in the performance of this Agreement.

D. This section will survive the termination or expiration of this Agreement.

10. PUBLIC RECORDS

Florida has a very broad public records law and certain records of the Contractor may be subject to the Florida Public Records Act (Chapter 119, Florida Statutes). By entering into this Agreement with the City, the Contractor acknowledges that it will comply with this section and that failure by Contractor to comply with this section is a breach of this Agreement and the City may pursue all available remedies. A request to inspect or copy any public records, as defined in Section 119.011(12), Florida Statutes, relating to this Agreement must be made directly to the City. If the City does not possess the requested public records, the City shall immediately notify the Contractor of the request and the Contractor shall, within a reasonable duration of time, either provide the records to the City or allow the records to be inspected or copied. In addition, the Contractor shall:

- A. Keep and maintain all public records required by the City to perform the service;
- B. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law;
- C. Ensure that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following termination of this Agreement if the Contractor does not transfer the records to the City; and
- D. Upon termination of this Agreement, transfer to the City at no cost to the City all public records in possession of the Contractor or keep and maintain the public records required by the City to perform the service. If the Contractor transfers all public records to the City upon termination of this Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon termination of this Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically shall be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

Shaneka Young
City Clerk's Office
200 East University Avenue, First Floor, 200
Gainesville, FL 32601

clerks@gainesvillefl.gov

11. NOTICE

The Parties designate the following persons as the primary contact point for purposes of the day-to-day management of this Agreement, including without limitation, the receipt of Invoices, scheduling of meetings, and questions regarding this Agreement. The Parties understand and acknowledge that the below persons may not be the persons authorized to bind the Party with respect to this Agreement. For any notice(s) required to be provided pursuant to this Agreement, the parties shall provide such notice to the persons listed below. Any notices required to be given pursuant to this Agreement shall be effective upon being sent by either facsimile, e-mail, hand-delivery, by certified or registered mail (return receipt requested), or via overnight delivery service to the following addresses: All correspondence, documents, records or reports invoices must be submitted electronically to Corey Harris, Director, Department of Housing & Community Development; Harriscj@cityofgainesville.org or submitted to:

To the City: Corey Harris
Director, Department of Housing & Community Development
302 NE 6th Avenue
Gainesville, FL 32601
harriscj@cityofgainesville.org

To the Contractor: Frank Wells
President, Bright Community Trust, Inc.
11923 Oak Trail Way, Suite 111
Port Richey, FL 34668

12. CONTRACT MANAGEMENT

The City's Department of Housing and Community Development shall be and is hereby authorized as the representative of the City, responsible for the day to day operational management of the provisions of the Agreement, unless or until a written notice is provided to the Contractor stating otherwise.

14. MISCELLANEOUS PROVISIONS

A. Relationship: In the performance of this Agreement, Contractor will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venture, or associate of the City. Contractor cannot create any obligation or responsibility on behalf of the City or bind City in any manner. The City cannot create any obligation or responsibility on behalf of Contractor or bind Contractor in any manner. Policies and decisions of the Contractor, which are used in its performance of this Agreement, shall not be construed to be the policies or decisions of the City. Each party is acting for its own account and has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party acknowledges that none of the other parties hereto is acting as a fiduciary for or an

adviser to it in respect of this Agreement or any responsibility or obligation contemplated herein. Contractor further represents and acknowledges that no one was paid a fee, commission, gift, or other consideration by Contractor as an inducement to entering into this Agreement. Contractor shall be considered an independent contractor and as such shall not be entitled to any right or benefit to which City employees are or may be entitled to by reason of employment. Contractor shall be solely responsible for the means, method, techniques, sequences, and procedures used by Contractor in the full performance of this Agreement.

- B. Conflicting Employment: For the duration of this Agreement, the Contractor shall not enter into any other agreements that would ethically conflict with its obligations under this Agreement.
- C. Personal Liability: No provision of this Agreement is intended, nor may any be construed, as a covenant of any official (either elected or appointed), officer, director, manager, employee, or agent of City or Contractor in an individual capacity and neither may any such individuals be subject to personal liability by reason of any covenant or obligation of City or Contractor hereunder.
- D. Licenses: The Contractor shall be responsible for obtaining and maintaining its city occupational license and any licenses required pursuant to the laws Alachua County, the City of Gainesville, or the State of Florida. Should the Contractor, by reason of revocation, failure to renew, or any other reason, fail to maintain its license to operate, the Contractor shall be in default of this Agreement as of the date such license is lost.
- E. Successors and Assigns: The Parties may not assign or transfer any interest in this Agreement without the prior written consent of the other Party. The Parties each bind the others and their respective successors and assigns in all respects to all the terms, conditions, covenants, and provisions of this Agreement.
- F. Bankruptcy: In the event: (a) an order or decree is entered appointing a receiver of Contractor or its assets, which is not appealed (or if appealed is determined adverse to Contractor by such appeal); or (b) a petition is filed by Contractor for relief under federal bankruptcy laws or any other similar law or statute of the United States, which action is not dismissed, vacated, or discharged within ninety (90) days after the filing thereof, such event will not affect the City's rights under this Agreement and the City shall have the right to immediately terminate this Agreement.
- G. Limitation on Liability: The City and Contractor each hereby acknowledges and agrees that it is sophisticated and prudent in business transactions and proceeds at its own risk under advice of its own counsel and advisors and without reliance on the other party. To the fullest extent permitted by law, City shall not be liable to Contractor for any incidental, consequential, punitive, exemplary, or indirect damages, lost profits, revenue, or other business interruption damages.
- H. Monitoring and Right to Audit: The Contractor shall keep accurate and complete records and accounts pertaining to the performance of services under this Agreement, including: 1) Financial records and reports relating to use of funding; 2) Books, records, documents, invoices, and other evidence and accounting procedures and practices such as will permit the Contractor to sufficiently and properly reflect all direct costs of any nature associated with this Agreement; and 3) Records sufficient to document its performance under this Agreement.

The Contractor shall permit persons duly authorized by the City, and Federal auditors pursuant

to 45 CFR, Part 92.36(1)(10), to inspect any records, papers, documents, facilities, goods, and services of the Contractor which are relevant to this Agreement and to interview any clients and employees of the Contractor to assure the City of the Contractor's satisfactory performance of the terms and conditions of this Agreement.

These records shall be subject at all reasonable times to review, inspection, copy, and audit by persons duly authorized by the City. These records shall be kept for a minimum of five (5) years after termination of the Agreement. Records that relate to any litigation, appeals, or settlements of claims arising from performance under this Agreement shall be made available until a final disposition has been made of such litigation, appeals, or claims. This right to audit and inspect includes a right to interview any employees and clients of the Contractor to be assured of satisfactory performance of the terms and conditions of this Agreement.

Upon expiration or termination of the Agreement or at the request of the City, the Contractor shall cooperate with the City to facilitate the duplication and transfer of any said records or documents during the required retention period as specified herein. The City may reproduce any written materials generated as a result of the Contractor's work.

Contractor shall include these aforementioned audit and record keeping requirements in all approved subcontracts and assignments.

- I. Public Entity Crimes Statement: In accordance with Section 287.133, Florida Statutes, Contractor hereby certifies that to the best of Contractor's knowledge and belief neither Contractor nor its affiliates have been convicted of a public entity crime. Contractor and its affiliates shall provide the City with a completed public entity crime statement form no later than January 15 of each year this Agreement is in effect. Violation of this section by the Contractor shall be cause for termination of this Agreement by the City.
- J. E-Verify Requirement: The Contractor shall: 1) utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of this Agreement; and 2) expressly require any subcontractors performing work or providing services pursuant to this Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Agreement. The Contractor agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this Agreement. The City shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for termination of this Agreement by the City.
- K. Living Wage: The definitions, terms, and conditions of the City's living wage requirements set forth in Division 2 of Article IX of Chapter 2 of the City's Code of Ordinances shall apply to this Agreement. These requirements include that the Contractor: shall pay a living wage to each covered employee during the term of this Agreement, including any extension(s) to this Agreement; shall maintain records sufficient to demonstrate compliance with the living wage requirements; shall not discharge, reduce the compensation of, or otherwise retaliate against any covered employee for filing a complaint, participating in any proceedings or otherwise asserting the requirement to pay a living wage; shall cooperate with any City audit or investigation concerning compliance with or a reported violation of the living wage requirements, including providing all requested documentation. The Living Wage is updated every year in October. Contractor shall pay each covered employee the updated rate beginning

on each respective anniversary date of this Agreement. Failure to comply with the City's living wage requirements shall be a material breach of this Agreement, enforceable by the City through all rights and remedies at law and equity.

- L. Non-Waiver: Failure by the City to enforce or insist upon compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement terminated shall not constitute a general waiver or relinquishment of the same, or of any other terms, conditions or acts but the same shall be and remain at all times, in full force and effect.
- M. Amendments, Modifications, and Waiver: This Agreement may only be amended, modified, or waived in writing signed by all the Parties. No course of dealing may be deemed a waiver of rights or a modification of this Agreement. The failure of any party to exercise any right in this Agreement may not be considered a waiver of such right. No waiver of a provision of this Agreement will apply to any other portion of this Agreement. A waiver on one occasion may not be deemed to be a waiver on other occasions.
- N. Applicable Law and Venue; Attorneys' Fees; Waiver of Right to Jury Trial: This Agreement is governed by and must be construed in accordance with the laws of the State of Florida, notwithstanding any Florida conflict of law provision to the contrary. Each party submits to the jurisdiction of the State of Florida, Alachua County and the courts thereof, and to the jurisdiction of the United States District Court for the Northern District of Florida, for the purposes of any suit, action, or other proceeding relating to this Agreement and agrees not to assert by way of a motion or a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts.

In the event of a dispute between the Parties arising under this Agreement, whether or not a lawsuit or other proceeding is filed, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs on trial and appeal, including attorneys' fees and costs incurred in litigating entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of recoverable attorneys' fees and costs. The reasonable costs to which the prevailing Party is entitled shall include costs that are taxable under any applicable statute, rule, or guideline, as well as non-taxable costs, including but not limited to costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, court reporter fees, and mediator fees, regardless of whether such costs are otherwise taxable.

In the event of any civil legal proceedings arising from or related to this Agreement, the Parties hereby waive the right to jury trial.

- O. Compliance with Anti-Discrimination Legislation: Contractor shall not discriminate on the basis of race, color, religion, gender, national origin, marital status, sexual orientation, age, disability, or gender identity, or undertake any other unlawful forms of discrimination in the performance of this Agreement, as such anti-discrimination laws include but are not limited to the Americans with Disabilities Act, the Civil Rights Act of 1964, as amended, the Florida Civil Rights Act of 1992, and any other federal or state law or Alachua County or City ordinance that prohibits discrimination. Contractor understands and agrees that a violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

- S. Lobbying: No funds or resources received from the City in connection with this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or the City of Gainesville.
- T. No Contract Zoning; No Contracting of Policy Powers: Nothing contained in this Agreement may be interpreted or construed as an approval, waiver, or agreement to approve or waive any development order, development permit, rezoning, comprehensive plan amendment, or any other governmental requirement that the City may have jurisdiction over in its regulatory capacity. Nothing contained in this Agreement may be interpreted or construed as contracting away the exercise of the police powers of the City.
- U. Release: No recourse may be had for any damages or claims based upon any representation, obligations, covenant, or agreement in this Agreement against any past, present, or future officer, member, legal counsel, employee, director, or agent of the City, either directly or through the City, under any rule of law or equity, statute, or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of the City and any such officers, members, legal counsels, employees, directors, or agents of the City is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement. This section will survive the termination or expiration of this Agreement.
- V. Headings in this Agreement: The headings in this Agreement are for convenience only, confirm no rights or obligations in either Party, and do not alter any terms of this Agreement.
- W. Severability: If any term of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, then this Agreement, including all of the remaining terms, will be severable and will remain in full force and effect as if such invalid, illegal, or unenforceable term had never been included.
- X. Force Majeure: Delays in any performance due to: fire, flood, earthquake, windstorm, or sinkhole; war, declaration of hostilities, revolt, civil strife, altercation, or commotion; strike or labor dispute; epidemic; archaeological excavation; or because of an act of God are deemed to be events of Force Majeure and such delays are excused in the manner herein provided. If such party is delayed for any of the events of Force Majeure, the date required for actions required will be extended by the number of calendar days equal to the total number of calendar days, if any, that such party is actually delayed. The party seeking excuse for nonperformance on the basis of Force Majeure shall give written notice to the other party specifying the cause of the anticipated delay, giving its actual or anticipated duration, and weekly thereafter, if such delay is continuing, written notice stating whether the condition continues and giving its actual or then anticipated duration. Each party seeking excuse from nonperformance on the basis of Force Majeure shall use its best efforts to rectify conditions causing a delay and will cooperate with the other party, except for the occurrence of unreasonable additional costs and expenses, to overcome any loss of time that has resulted. Notwithstanding anything in this Agreement to the contrary, the term "Force Majeure" does not include or excuse performance under this Agreement for events relating to increased costs associated with fuel, labor, labor disputes, insurance, or other expenses of performing the obligations hereunder.
- Y. Time: In computing time periods of fifteen (15) days or less, Saturdays, Sundays, and state or national legal holidays are excluded. Time periods of more than fifteen (15) days will be computed based on calendar days. Whenever a notice or performance is to be done on a Saturday or Sunday or on a legal holiday observed by the City, it will be postponed to the next

business day.

- Z. Survival of Obligations: Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination.
- AA. Construction: This Agreement may not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by one of the Parties. It is recognized that both Parties have substantially contributed to the preparation of this Agreement.
- BB. Third-Party Beneficiaries: This Agreement does not create any relationship with, or any rights in favor of, any third party.
- CC. Counterparts: This Agreement may be executed by the Parties in any number of separate counterparts, and each executed counterpart shall have the same force and effect as an original instrument and such counterparts shall together constitute but one and the same instrument.
- DD. Sovereign Immunity: Nothing herein shall be construed as a waiver of any rights and privileges afforded the City, as a political subdivision of the State of Florida, under Section 768.28, Florida Statutes, as amended.

WHERETO, the Parties have set their hands and seals and executed this Agreement the date set forth below.

CITY OF GAINESVILLE, FLORIDA

BRIGHT COMMUNITY TRUST, INC.

By: _____
Cynthia Curry
Interim City Manager

By: _____
Frank Wells
President

Date: _____

Date: _____