

## **ATTACHMENT A**

### **CDF Affordable Housing Trust Fund Deployment Structure**

Pursuant to Ordinance Nos. 121-2021 and 122-2021, Council designated the Housing Advisory Board to establish the City's affordable housing policy priorities with respect to the Affordable Housing Trust Fund, designated CDF to oversee the Affordable Housing Trust Fund, and provided the Administration authority to enter into an agreement with CDF to deploy available funding. On May 13, 2022, the City Administration presented to and received feedback from the Housing Advisory Board on a proposed structure for the deployment structure with CDF. Then on August 26, 2022, the City and CDF entered into a *Funding and Management Agreement* for deployment of the City's Affordable Housing Trust Fund. A copy of that agreement is included in this Attachment and a summary of those terms are as follows:

#### **Loan Products:**

- (i) Forgivable Loans – Upon satisfaction with the terms of the loan, the balance will be forgiven, in effect creating grant subsidy to affordable housing projects.
- (ii) Repayable Loans – Low or no-interest loans will be granted to make affordable housing projects financially feasible but will be required to be repaid. Repaid amounts will be recycled and re-lent to additional affordable housing projects.

**Eligible Uses:** Funds may be utilized for acquisition costs, hard construction costs, reasonable soft construction costs. In some more limited circumstances, the funds may be used to refinance debt or to leverage tax credit financing structures.

#### **Amount of Financing:**

- (i) Forgivable Loans – Financing of forgivable loans will be limited to the maximums below, established on a per unit basis and decreasing as the targeted AMI increases. Family-size units can receive additional funding. These amounts are intended to be studied for the first two years and revisited if adjustments are required to better achieve policy goals.

##### **Forgivable Loan Maximums:**

Area Median Income ("AMI") Level for Unit	Maximum Forgivable Loan per 1-2 Bedroom Unit	Maximum Forgivable Loan per 3+ Bedrooms
Up to 60% AMI	\$50,000 per unit	\$60,000 per unit
Up to 80% AMI	\$25,000 per unit	\$30,000 per unit
Up to 100% AMI	\$10,000 per unit	\$20,000 per unit

- (ii) Repayable Loans – Repayable loans may be extended at amounts above these maximums, to the extent necessary to make an affordable project financially feasible.

**Affordability Terms:** All affordability terms will be enforced with a restrictive covenant and will apply for a set term, generally for 15 years. Maximum rent limits for each affordable unit will be capped through a process utilized by HUD and the Ohio Housing Finance Agency. In addition to other requirements for enforcement and reporting on the affordability terms, any property that receives a forgivable loan will be required to grant a right of first refusal for purchase of the property, exercisable in the event of a proposed sale by either a non-profit with a mission focused on preserving affordable housing or a cooperative organization of tenants of the property. This provision is intended to preserve long-term affordability at these properties through ownership.

The Administration is recommending that Council appropriate the \$5 million in funding to the Affordable Housing Trust Fund, to be deployed through the existing contract with CDF, in alignment with the established terms.



## FUNDING AND MANAGEMENT AGREEMENT Affordable Housing Trust Fund

THIS FUNDING AND MANAGEMENT AGREEMENT ("**Agreement**") is made as of the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 ("**City**"), and **CINCINNATI DEVELOPMENT FUND, INC.**, an Ohio nonprofit corporation, the address of which is 1224 Race Street, Cincinnati, Ohio 45202 ("**Service Provider**").

### RECITALS:

**A.** The City desires to engage Service Provider to provide the Services as defined and described herein. The City and Service Provider desire to enter into this Agreement to memorialize the terms and conditions with respect to Service Provider performing the Services.

**B.** The goal of the Services is to increase available financing tools to encourage the production of new housing units and the preservation of existing affordable housing units, and to increase capacity within the development industry for the production of housing units. Service Provider will oversee and deploy the previously appropriated Affordable Housing Trust Fund – Fund 439 and related capital improvement program project accounts (collectively, the "**Affordable Housing Trust Fund**" or "**AHTF**") in accordance with the terms of this Agreement. As further described herein, the businesses receiving such loans shall be referred to, collectively, as the "**Participants**", and each, individually, as a "**Participant**", and such loans, made in accordance with the parameters set forth herein shall be referred to, collectively, as the "**Loans**", and each, individually, a "**Loan**".

**C.** Section 16 of Article VIII of the Ohio Constitution provides that, to enhance the availability of adequate housing in the state and to improve the economic and general welfare of the people of the state, it is in the public interest and a proper public purpose for the state or its political subdivisions, directly or through a public authority, agency, or instrumentality, to provide grants, loans, or other financial assistance for housing in the state, for individuals and families, by the acquisition, financing, construction, leasing, rehabilitation, remodeling, improvement, or equipping of publicly- or privately-owned housing.

**D.** Execution of this Agreement was authorized by Ordinance Nos. 53-2022 and 191-2022, passed by City Council on March 2, 2022 and June 23, 2022, respectively.

**NOW, THEREFORE**, for and in consideration of the promises, covenants and agreements herein contained, the parties mutually agree as follows:

**1. SERVICES.** Subject to the terms of this Agreement, Service Provider shall, in a satisfactory and proper manner as determined by the City Manager of the City, provide the services more fully described in Exhibit A (Scope of Services) ("**Services**") attached hereto. Service Provider does hereby acknowledge and agree that the Services to be performed under this Agreement, and the corresponding compensation provided by the City to effect the same, shall be provided and expended only within the city limits of the City of Cincinnati. To the extent that the terms of Exhibit A may contradict the foregoing in any manner, the provisions of this section shall be controlling.

**2. TERM.** This Agreement shall be effective on the Effective Date and shall continue in effect until the date of final disposition or repayment of all Loans (the "**Term**"), unless this Agreement is sooner terminated as herein provided, *provided that* Service Provider and the City acknowledge that Service Provider has certain reporting requirements as documented on Exhibit A that extend past the Term and Service Provider shall perform those obligations after the Term. Service Provider shall not originate any new Loans, as evidenced by a fully executed commitment letter between Service Provider and a

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prospective borrower, after the date that is ten years after the Effective Date (the “**Origination Date**”). The Origination Date shall be automatically extended in 3 5-year increments unless either party delivers a written notice of non-renewal no later than 6 months prior to the expiration of the current origination period. Service Provider shall obtain the City’s written consent prior to originating any new Loans after delivery of a non-renewal letter in accordance with this Section.

**3. FUNDS.** Subject to the terms and conditions of this Agreement, the City shall pay to the Service Provider for provision of the Services an amount not to exceed the sum of \$2,728,800 (the “**Funds**”) and to be utilized in accordance with the itemized amounts set forth on Exhibit B (Budget) attached hereto. The City shall disburse the Funds to Service Provider in accordance with Section 9, and Service Provider agrees to accept such amounts as full and complete compensation for provision of the Services. Service Provider shall use the Funds solely for expenses itemized on Exhibit B and for no other purpose. In the event Service Provider receives principal payments on any Loans, such proceeds shall be reinvested in the Affordable Housing Trust Fund and used in accordance with this Agreement.

**4. NOTICES.** All notices shall be personally delivered or sent by U.S. mail addressed to the parties as follows, with an electronic copy emailed to the email address listed below, or addressed in such other way in respect to either party as that party may from time to time designate. Service Provider shall promptly notify the City of any change of address. If Service Provider sends a notice to the City that the City is in default under this Agreement, Service Provider shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, Ohio 45202.

<u>To the City:</u> Department of Community and Economic Development City of Cincinnati 805 Central Avenue, Suite 700 Cincinnati, Ohio 45202 Attention: Markiea Carter, Director Markiea.carter@cincinnati-oh.gov	<u>To Service Provider:</u> Cincinnati Development Fund, Inc. 1224 Race Street Cincinnati, Ohio 45202 Attn: Joe Huber, President & CEO jhuber@cincinnati-developmentfund.org
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**5. PROGRAM COLLABORATION.** No later than the date that is five years after the Effective Date, the parties will collaborate in good faith to ensure the operation of the Affordable Housing Trust Fund is meeting the program goals stated by City Council, the City Administration, and the Housing Advisory Board. Notwithstanding the foregoing, at any point during the Term, the parties may amend this Agreement, on mutually acceptable terms and conditions.

**6. UNDERWRITING GUIDELINES.** Service Prover has provided DCED for its review and approval, and DCED has approved, underwriting guidelines related to the issuance of Loans in accordance with this Agreement. Service Provider shall receive DCED’s prior written approval to make material amendments to the underwriting guidelines.

**7. INCREASED FUNDING.** If the City desires to increase the amount of Funds provided pursuant to this Agreement, in its sole and absolute discretion, then the parties will execute a Funding Letter Agreement, the form of which is attached hereto as Exhibit C (Form of Funding Letter Agreement).

**8. AUTHORIZATIONS.** All notices, approvals, authorizations, waivers, instructions, or determinations by the City shall be effective only when written and signed by the individual identified to receive notice for the City in Section 4 above or his or her designee.

**9. METHOD AND CONDITIONS OF PAYMENT.**

**A. Method of Payment.** The City shall pay Service Provider for the Services for which vouchers and similar documentation to support payment are maintained by Service Provider under procedures approved by the City.

**B. As Authorized Under Scope of Work and Budget.** Funds shall be disbursed by Service Provider only as authorized under the provisions of Exhibit A and Exhibit B hereto.

**C. Conditions of Disbursement.** The City shall make a single disbursement of the Funds on an advance basis, as soon as is practicable after the Effective Date, *provided that* Service Provider is not in default of this Agreement. The City shall make the disbursement only when Service Provider meets all of the following conditions:

- i. Submission of requisition for payment to the City on Form 37, "Claim Voucher/Invoice," or such other form as may be provided by the City Form 37, "Claim Voucher/Invoice," must be accompanied by an original affidavit certifying the usage of the Funds.
- ii. Service Provider shall establish an accounting system including reporting, vouchering and invoicing, with adequate internal controls, to assure proper accounting of receipts and disbursements by Service Provider. A copy of Service Provider's accounting system procedures or financial audit shall be kept on file in DCED. The City may require a finding by the Director of Finance or his/her designee that such an accounting system has been established. In the event such system at any time differs from the system established by Service Provider, Service Provider shall alter its system to conform to the findings of the Director of Finance or his/her designee.
- iii. Service Provider shall provide DCED with documentation or other proof of nonprofit or tax-exempt status, including IRS Sec. 501(c)(3) determination letters or other documentation acceptable to the City. The documentation shall be provided by and signed by the Chief Executive Officer or President of the board or commission that administers the corporation's business. The documentation shall include the name of Service Provider's Chief Financial Officer or equivalent position.
- iv. Service Provider shall furnish the City with a statement from Service Provider's Executive Director, President, or Chief Financial Officer or its insurer certifying that all persons handling funds related to this Agreement are covered by fidelity insurance in an amount not less than ten percent (10%) of the maximum amount payable to Service Provider hereunder. If such insurance or bond is cancelled or reduced, Service Provider shall notify the City immediately and shall be ineligible for further funding until such coverage has been obtained.

**D. Conditions Subsequent to Disbursement.** Service Provider's entitlement to the Funds is subject to the following requirements:

- i. Service Provider shall deposit all Funds received directly into a single account which shall be used for the receipt and disbursement of Funds received from the City or other sources for the purposes set forth in this Agreement.
- ii. Disbursements made by Service Provider shall be by either (x) ACH transfers or (y) numbered checks drawn on Service Provider's commercial checking account.
- iii. Compensation for employees hired under this Agreement, including wages, salaries and supplementary benefits, shall not exceed compensation paid for similar work by City employees or similar work performed in the labor market. Compensation shall be subject to adjustment by the City if, in the sole judgment of the City, these levels are

exceeded.

- iv. No payment shall be made for items designated as ineligible costs.
- v. Service Provider's monthly and final reports to the City shall be accompanied by documentation satisfactory to the City indicating expenses incurred and payments made, such as grants awarded, payroll records, invoices, time sheets indicating hours worked, contracts, receipts, canceled checks, carbons of checks or check registers and corresponding bank statements or reasonable facsimiles thereof, and such other information and supporting documentation as the City may require.

**10. PROHIBITION AGAINST PAYING FOR ANY SERVICE RENDERED OR EXPENSE INCURRED PRIOR TO MAY 1, 2021.** The compensation provided for by this Agreement may only be disbursed for Services rendered or expenses incurred on or after May 1, 2021. No Funds shall be spent for any service rendered or expense incurred prior to that date.

**11. INDEPENDENT CONTRACTOR.** Service Provider shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of the City. Service Provider shall have exclusive control of and the exclusive right to control the details of the Services and work performed hereunder and all persons performing the same and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be construed as creating a partnership or joint venture between the City and Service Provider. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

**12. SUBCONTRACTS, SUCCESSORS, AND ASSIGNS.**

**A. Subcontracts.** Service Provider agrees that the Services shall not be subcontracted without the prior written approval of the City. The Services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement. In the event that Service Provider employs a subcontractor without first securing the City's written approval of the subcontractor by the City, the City shall have the right to stop payment to the Service Provider or withhold any of the Funds due to Service Provider until the subcontractor is approved by the City.

**B. Assignment.** Service Provider shall not assign or transfer its interest in this Agreement without the prior written consent of the City. Notwithstanding the foregoing, Service Provider may assign or transfer its interest in this Agreement to a subsidiary or affiliate entity controlled and managed by Service Provider.

**13. SERVICE PROVIDER'S INSURANCE AND INDEMNIFICATION.**

**A. Workers' Compensation.** Service Provider shall secure and maintain such insurance as will protect Service Provider from claims under the Workers' Compensation Laws.

**B. General Liability Insurance.** Service Provider shall secure and maintain such commercial general liability insurance as will protect Service Provider from claims for bodily injury, death or property damage which may arise from the performance of Service Provider's services under this Agreement, with a combined single limit for bodily injury and property damage liability of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate. Service Provider's insurance policy shall name the City as an additional named insured and shall contain a provision prohibiting the insurer from canceling the policy without notifying the City in writing at least 90 days prior to cancellation. Within 10 days following execution of this Agreement, Service Provider shall send proof of all such insurance to the City at the address specified above or such other address as may be specified by the City in writing from time to time.

**C. Indemnification of the City.** Service Provider shall indemnify, defend, and save City, its agents, and employees harmless from and against any and all losses, damages, claims, causes of action, settlements, costs, charges, professional fees, and liability of every kind and character arising out of or relating to the actions or inactions by Service Provider, its officers, employees, agents, contractors, and subcontractors in connection with this Agreement. Further, Service Provider shall protect and save the City harmless from any and all obligations to reimburse any government entity for disallowed costs paid by the City to Service Provider.

#### **14. COMPLIANCE WITH LAWS, REGULATIONS, AND PROGRAMS.**

**A. Generally.** Service Provider in the performance of the Services shall obtain all necessary permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances, and other governmental requirements applicable to the Services, including any and all applicable rules, orders, guidelines, laws, regulations, and binding directives issued by the federal government, the State of Ohio, and/or the City pertaining to COVID-19.

**B. Compliance with Ohio Revised Code Section 149.431.** If Service Provider is a non-profit corporation, it shall comply with Section 149.431 of the Ohio Revised Code, which provides: "Any non-profit corporation or association that enters into a contract with a political subdivision shall keep accurate and complete financial records of any moneys expended in relation to the performance of the services pursuant to such contract. Such contract and financial records are deemed to be public records."

**C. Equal Employment Opportunity Program.** This Agreement is subject to the City's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. Said chapter is hereby incorporated by reference into this Agreement.

**D. Minimum Wage.** This Agreement is subject to the provisions of Ohio Revised Code Section 4111.02 relating to minimum wage.

**E. Living Wage.** If the compensation for the Services is \$20,000 or more this Agreement is subject to the Living Wage provisions of Chapter 317 of the Cincinnati Municipal Code. The provisions require that, unless specific exemptions apply or a waiver is granted all employers (as defined) under service contracts shall provide payment of a minimum wage to employees (as defined) at the applicable rates set forth in the code. Such rates shall be adjusted annually pursuant to the terms of the Code.

**F. Prompt Payment.** This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System."

**G. Small Business Enterprise Program.** This Agreement is subject to the provisions of the Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. Section 323-99 of the Cincinnati Municipal Code is hereby incorporated into this Agreement. Details concerning this program can be obtained from the Department of Economic Inclusion, Two Centennial Plaza, 805 Central Avenue, Suite 610, Cincinnati, Ohio 45202, (513) 352-3144. Service Provider shall utilize best efforts to recruit and maximize the participation of all qualified segments of the business community in subcontracting work, including the utilization of small business enterprises, including small business enterprises owned by minorities and women. This includes the use of practices such as assuring the inclusion of qualified Small Business Enterprises in bid solicitation and dividing large contracts into small contracts when economically feasible.

**H. Conflict of Interest.** Service Provider agrees to report to the City any potential conflicts of interest under any applicable laws before entering into this Agreement and agrees to report to the City any potential conflicts of interest that Service Provider discovers at any time during the Term.

- i. **Employee or Agent of City.** Service Provider agrees that no officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning and carrying out of the program, nor any immediate family member, close business associate, or organization which is about to employ any such person, shall have any personal financial interest, direct or indirect, in Service Provider or in this Agreement, and Service Provider shall take appropriate steps to assure compliance.
- ii. **Subcontractors.** Service Provider shall not contract with any subcontractors in which it has any personal financial interest, direct or indirect. Service Provider covenants that in the performance of this Agreement no person having any conflicting interest shall be employed.

**I. Wage Enforcement.** This Agreement is or may be subject to the Wage Enforcement provisions of the Cincinnati Municipal Code. These provisions require that any person who has an agreement with the City, or a contractor or subcontractor of that person, shall report all complaints or adverse determinations of Wage Theft and Payroll Fraud (as defined in Chapter 326 of the Cincinnati Municipal Code) against the person, contractor or subcontractors to the Department of Economic Inclusion within 30 days of notification of the complaint or adverse determination. Under the Wage Enforcement provisions, the City shall have the authority, under certain circumstances, to terminate this Agreement or reduce the incentives or subsidies to be provided under this Agreement and to seek other remedies.

**J. Americans With Disabilities Act; Accessibility.**

- i. **Applicability.** This section may be applicable if any of the Funds are used for costs associated with construction or rehabilitation of real property (such construction or rehabilitation being a “**Project**”). Cincinnati City Council adopted Motion No. 201600188 on February 3, 2016 (the “**Accessibility Motion**”). The Accessibility Motion directs City administration to include language specifically requiring compliance with the Americans With Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, the “**ADA**”), and imposing certain minimum accessibility standards on City-subsidized projects regardless of whether there are arguably exceptions or reductions in accessibility standards available under the ADA or State law.
- ii. **Requirement.** If this section is applicable per paragraph (J)(i) above, then (a) the Project shall comply with the ADA, and (b) if (1) any building(s) within the Project is subject to the accessibility requirements of the ADA (e.g., by constituting a “place of public accommodation” or another category of structure to which the ADA is applicable) and (2) such building is not already required to meet the Contractual Minimum Accessibility Requirements (as defined below) pursuant to the ADA, applicable building code requirements, or by any other legal requirement, then the Service Provider shall cause such building(s) to comply with the Contractual Minimum Accessibility Requirements in addition to any requirements pursuant to the ADA and the applicable building code or legal requirement. As used herein, “Contractual Minimum Accessibility Requirements” means that a building shall, at a minimum, include (x) at least one point of entry (as used in the ADA), accessible from a public right of way, with respect to which all architectural barriers (as used in the ADA) to entry have been eliminated, and (y) if such accessible point of entry is not a building’s primary point of entry, conspicuous signage directing persons to such accessible point of entry.

**K. Prevailing Wage.** Service Provider shall comply, and shall cause all Participants to comply with any prevailing wage requirements that may be applicable to their Loan. In the event that the City is directed by the State of Ohio to make payments to construction workers based on violations of such re-



quirements, Service Provider shall cause Participants to make such payments or reimburse the City for such payments within sixty (60) days of demand therefor.

## **15. REPORTS, INFORMATION, AND AUDITS.**

**A. Submission of Reports.** In such form as the City may require, Service Provider shall collect, maintain, and furnish to the City data, information, and reports as may be requested that pertain to the work or services undertaken by this Agreement, the costs and obligations incurred or to be incurred in connection therewith, financial or operational controls, and/or any other matters covered by this Agreement, including without limitation, such accounting, financial, administrative, and operational statements and reports as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (if applicable). If requested by the City, financial statements furnished by Service Provider shall be audited.

**B. Record Retention.** Service Provider shall, throughout the Term of this Agreement and for a minimum of 3 years after the expiration or termination of this Agreement, keep and retain all accounting, financial, administrative, and operational statements and records pertaining to all matters covered by this Agreement.

**C. Access/Right to Inspect and Audit.** Upon request during the Term of this Agreement and for a period of 3 years after the expiration or termination of this Agreement, Service Provider shall permit the City or any designee or auditor to have access to and to inspect and audit all such accounting, financial, administrative and operational books, records, and statements of Service Provider that relate or pertain to this Agreement or as necessary for the City to ensure that all funds are used for authorized purposes in compliance with laws, regulations, and the provision of contracts or grant agreements and that performance expectations and goals are achieved.

## **16. SPECIAL REPORTING REQUIREMENTS.**

**A. Quarterly Reports.** Within 45 days following the end of each quarter during the Term, Service Provider shall provide the City with a quarterly report describing the Services performed, expenses incurred, number of applications received, approved, or denied for the quarter that just ended in accordance with Exhibit A and containing such other information and supporting documentation as the City may require.

**B. Semi-Annual and Annual Reports.** Within 45 days following the end of each six-month period during the Term, Service Provider shall provide the City with a semi-annual report describing the performance of the Affordable Housing Trust Fund for the period that just ended in accordance with Exhibit A and containing such other information and supporting documentation as the City may require. No later than 120 days following the anniversary of the Effective Date each year, Service Provider shall prepare and provide to the City an annual reporting of all Participants and related projects receiving a Loan in accordance with Exhibit A and containing such other information and supporting documentation as the City may require.

**C. Participation in Status Meetings.** Service Provider shall participate in meetings providing updates to the City related to Service Provider's performance of this Agreement as reasonably requested by the City.

**D. Final Report.** Within 120 days following the end of the Term, Service Provider shall provide the City with a final report describing the Services performed, expenses incurred, and payments made during the Term and containing such other information and supporting documentation as the City may require. The final report shall be accompanied by the remaining Funds after the disposition of all Loans.

**17. CERTIFICATION AS TO NON-DEBARMENT.** Service Provider certifies that neither Service Provider nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from the transaction covered by this Agreement. Service Provider {00356098-5}

acknowledges and agrees that if it or its principals are presently debarred, it shall not be entitled to compensation under this Agreement and it shall promptly return to the City any and all funds received pursuant to this Agreement. In such event, any and all materials received by the City pursuant to this Agreement shall be retained by the City.

#### **18. NON-PERFORMANCE AND TERMINATION.**

**A.** If, through any cause, Service Provider shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Service Provider shall violate any of the covenants or agreements of this Agreement, the City shall have the right to terminate this Agreement by giving written notice to Service Provider specifying the effective date of the termination, at least 30 days before such effective date. In such event, all finished or unfinished documents, data, studies, reports and/or information prepared by Service Provider under this Agreement shall, at the option of the City, become the City's property, and Service Provider shall be entitled to receive equitable compensation for any work satisfactorily completed at the date of termination. Service Provider shall reimburse the City for all costs incurred by the City as a result of Service Provider's breach of this Agreement.

**B.** Any periodic payments from the City specified in this Agreement shall be contingent upon performance of contractual obligations to date, including the proper receipt of supporting receipts, invoices, reports, statements, or any other supporting information as required by the City in this Agreement. Failure to satisfactorily meet any one of the obligations of Service Provider hereunder may result in the City not approving periodic payments to Service Provider and/or filing liens as may be necessary against Service Provider's assets or future assets, until Service Provider satisfactorily fulfills its obligations under this Agreement or satisfactorily reimburses the City for any prior payments. The City also reserves the right to seek any other legal financial remedies in connection with damages the City may have suffered by reason of Service Provider's default under this Agreement until all or part of the City's prior payments have been recouped as the City deems appropriate but not to exceed the total amount of any prior payments. The City also reserves the right in the event of non-performance of this Agreement to prohibit any future or limited contractual relationships with Service Provider either directly or indirectly.

**C.** If Service Provider terminates this Agreement after the work has begun, the City shall not be required to compensate Service Provider for services/work not fully completed.

**19. OWNERSHIP OF PROPERTY.** Upon the expiration or termination of this Agreement, any and all memoranda, maps, drawings, working papers, reports, and other similar documents produced in connection with this Agreement shall become the property of the City and Service Provider shall promptly deliver such items to the City. Service Provider may retain copies for Service Provider's records.

**20. OUTSIDE CONTRACTS.** Service Provider may contract with other public and private organizations and secure donations to provide related services, except that Funds shall be used solely for the Services. Service Provider shall include notification of the execution of any such agreement in the reports required under Section 16 of this Agreement. Service Provider shall keep records of the receipts and expenditures that result from such outside funds. Said records shall be in the same general form as for the Funds provided hereunder. The City shall have the right to inspect said records at any time during reasonable business hours, provided that such inspection does not violate the terms of any agreement to which Service Provider is a party.

**21. NON-EXCLUSIVE AGREEMENT.** This is a non-exclusive Agreement. The City may procure the same or other similar Services from other service providers at any time during the Term of this Agreement.

**22. CITY IDENTIFICATION IN MARKETING ACTIVITIES.** Service Provider shall identify the City as a sponsor of activities undertaken pursuant to the terms of this Agreement on any and all stationery, informational releases, pamphlets, and brochures; and publicity, including that appearing on television or cable television, on the radio or in the press.

**23. GOVERNING LAW.** This Agreement is entered into and is to be performed in the State of Ohio. The City and Service Provider agree that the laws of the State of Ohio and City of Cincinnati shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Service Provider agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to all disputes arising under the Agreement.

**24. WAIVER.** This Agreement shall be construed in a manner that a waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

**25. ENTIRETY.** This Agreement and the exhibits and attachments, if any, hereto constitute the entire Agreement between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

**26. SEVERABILITY.** This Agreement shall be severable, and if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

**27. AMENDMENT.** This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

**28. REVERSION OF ASSETS.** Upon the expiration or termination of this Agreement, Service Provider shall transfer to the City any and all Funds remaining after the disposition and repayment or disposition of all Loans.

**29. COUNTERPARTS AND ELECTRONIC SIGNATURES.** This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

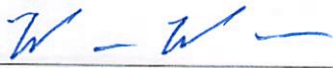
**30. EXHIBITS.** The following attachments are hereby incorporated into and made a part of this Agreement:

Exhibit A - *Scope of Services*  
Exhibit B - *Budget*  
Exhibit C - *Form of Funding Letter Agreement*


SIGNATURE PAGE FOLLOWS.

Executed by the entities below on the dates indicated below their signatures, effective as of the later of such dates (the "Effective Date").

CITY OF CINCINNATI

By:   
~~John P. Curp, Interim City Manager~~  
William Weber, Asst. City Manager  
Date: 8/26, 2022

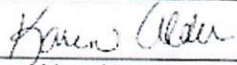
CINCINNATI DEVELOPMENT FUND, INC.

By:   
Name: Joseph R Huber  
Title: President + CEO  
Date: July 21, 2022

APPROVED AS TO FORM:

Kaitlyn Geiger  
Assistant City Solicitor

CERTIFICATION OF FUNDS:

Certified Date: 8/26/22  
Fund/Code: 980, 439  
Amount: \$2,728,800  
By:   
Karen Alder, City Finance Director

**EXHIBIT A**  
**SCOPE OF SERVICES**

Service Provider will administer the existing and future funds appropriated by City Council into the Affordable Housing Trust Fund.

Service Provider will use the AHTF to extend financing and subsidy to projects through an evaluation and underwriting process, pairing the Funds with other available sources when appropriate. Service Provider will extend the financing either as (1) forgivable Loans or (2) low-interest repayable Loans. All Loans shall be on terms to make the project financially feasible and as further described below. Repaid amounts shall be recycled and re-lent in accordance with the terms of this Agreement.

Prior to commitment for a forgivable Loan, Service Provider shall secure City approval for such Loan, evidenced by written approval in e-mail form from the DCED or other staff designated by the City Manager. In requesting such approval, Service Provider shall provide to the City such project information as necessary to verify the need for the forgivable Loan. The City shall use best efforts to reply promptly to any such request, with a goal of providing a response within no more than 10 business days.

No additional City sign off or involvement is needed for extension of repayable Loans, so long as the terms conform to restrictions described in this Agreement.

**Eligible Uses:** Service Provider may deploy the Funds for (1) acquisition costs or (2) hard construction costs and reasonable soft costs, which are related directly to construction of the project. Funded soft costs shall not be excessive and shall be limited to those soft costs typically financed under Service Provider's standard practice (rehabilitation or new construction) of mixed-use or residential rental projects. Mixed-income projects are eligible.

With written City approval and at the City's sole discretion, Funds may also be utilized for the following uses if such use is necessary to make the overall project feasible and will preserve or create additional affordable units:

- Refinancing of existing debt;
- Use in tax credit financing structures beyond directly financing acquisition or hard construction costs, including, but not limited to, equity bridge loans; and
- A project that has been awarded funding in the City's Notice of Funding Availability (NOFA) process. Note that granting of a forgivable Loan and NOFA funds to the same project shall be considered a last resort to making the project feasible.

**Amount of Financing:** Service Provider may deploy funds in the following amounts per project, provided that funds from Fund 439 must be used in accordance with the description in Ordinance No. 364-2018:

**Forgivable Loan Maximums:**

Area Median Income ("AMI") Level for Unit	Maximum Forgivable Loan per 1- 2 Bedroom Unit	Maximum Forgivable Loan per 3+ Bedrooms
Up to 60% AMI	\$50,000 per unit	\$60,000 per unit
Up to 80% AMI	\$25,000 per unit	\$30,000 per unit
Up to 100% AMI	\$10, 000 per unit	\$20,000 per unit

After two years, these maximums will be revisited to see if adjustments are needed. In determining the amount of a forgivable Loan to recommend to the City for a given project, Service Provider shall complete underwriting to verify that any such amount is a certified financial gap and that the project will not happen “but for” the forgivable Loan. Additionally, Service Provider shall consider additional factors such as the leverage ratio of AHTF or other City funds to other sources of funds, the location of the project and the need for more affordable housing options in that area, and alternative project uses for the limited public resources.

**Repayable Loan Maximums:**

Repayable Loans may be extended at amounts above the maximum caps described above to the extent necessary to make the project financially feasible.

***Affordability Terms:*** For any project receiving Funds (either through a forgivable Loan or a repayable Loan) the following required terms will be effectuated and enforced through a restrictive covenant that will be recorded on the project property.

- 1) **Term** – The term of affordability restrictions shall generally be 15 years. However, the term may be shortened with written City approval if (1) Service Provider determines such shorter term is necessary to the project’s viability and (2) the project is receiving a tax abatement with a term of less than 15 years or is not receiving a tax abatement. If the project qualifies for a shorter term, the affordability term may be reduced to match the term of the tax abatement; however, in no circumstances shall the term be reduced to less than 10 years (even if no tax abatement is sought).
- 2) **Maximum Monthly Rent Limits** – A maximum monthly rent limit amount shall be established for each affordable unit based on the number of bedrooms in the unit. The maximum amount shall be pre-determined based on a formulaic calculation used by both the Ohio Housing Financing Agency and HUD.

No adjustments will be made for utility expenses. Rents limits shall be reset each year once updated income levels are posted by HUD and made effective. Below are the current calculations of income limits and rent limits for 60% and 80% AMI levels.

**2022 HUD Income and Rent Limits – as of June 15, 2022**

<b>2022 Income Limit Category</b>		<b>1 Person</b>	<b>2 People</b>	<b>3 People</b>	<b>4 People</b>	<b>5 People</b>	<b>6 People</b>	<b>7 People</b>	<b>8 People</b>
60% AMI Income Limits		\$40,140	\$45,840	\$51,600	\$57,300	\$61,290	\$66,480	\$59,100	\$75,660
<b>2022 Rent Limit Category</b>	<b>Studio</b>	<b>1 BR</b>	<b>2 BR</b>	<b>3 BR</b>	<b>4 BR</b>	<b>5 BR</b>			
Rent Limits for 60% AMI	\$1,003	\$1,074	\$1,290	\$1,490	\$1,662	\$1,834			

<b>2022 Income Limit Category</b>		<b>1 Person</b>	<b>2 People</b>	<b>3 People</b>	<b>4 People</b>	<b>5 People</b>	<b>6 People</b>	<b>7 People</b>	<b>8 People</b>
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80% AMI Income Limits		\$53,500	\$61,150	\$68,800	\$76,400	\$82,550	\$88,650	\$94,750	\$100,850
<b>2022 Rent Limit Category</b>	<b>Studio</b>	<b>1 BR</b>	<b>2 BR</b>	<b>3 BR</b>	<b>4 BR</b>	<b>5 BR</b>			
Rent Limits for 80% AMI	\$1,338	\$1,432	\$1,720	\$1,986	\$2,216	\$2,445			

- 3) Fixed/Floating - Fixed or floating affordable units within a project are permitted.
- 4) Income Verification – Owners shall verify and document the income of individuals at the time of lease-up to determine eligibility for an affordable unit. This shall include at minimum a three-month lookback to qualify at that income level. No additional annual verification shall be required until the unit is vacated and a new tenant occupies the unit. Owners will maintain all documentation that justifies an individual’s income level and shall provide it upon request to the City or Service Provider.
- 5) Ongoing Annual Reporting – Annually each owner shall submit (1) a rent roll and (2) an attestation form certifying that the rents are in compliance with the affordability requirements and that all tenants were qualified by income at the time of initial occupancy. This shall be submitted to Service Provider, who will review and provide a copy to the City.
- 6) Third-party Beneficiary Rights for Enforcement – A third-party beneficiary clause for the City shall be included in the restrictive covenant so that the terms can be enforced by the City.
- 7) Subordination to Other Affordability Requirements — The rent and income restrictions will be subject to any other affordable restrictions required by any other public funding source until such time as those other restrictions are no longer applicable. The right of first refusal described below shall be applicable upon execution of the restrictive covenant until released by the City.
- 8) Assignable Right of First Refusal – If a property receives a forgivable Loan, then an assignable right of first refusal shall be granted to the City in the restrictive covenant. The City shall have the right to assign this right to a non-profit organization that has a mission to preserve affordable housing or may assign it to an organized cooperative organization of tenants of the subject property. If at any time after recording of the restrictive covenant the owner intends to sell the property and has received a bona fide third party offer to purchase the property, then beginning on the day the owner provides written notice of such offer to the City and/or assignee, then the City or its assignee shall have 60 days to exercise a right to match that offer, then shall secure financing and close within 180 days of exercising such right. In the event that the right is not timely exercised, or closing does not timely occur, then the owner is free to complete the transaction with the third party offeror. Notwithstanding the foregoing, the City may waive this provision for a Loan upon the written request of Service Provider in its sole and absolute discretion.

**Collateral and Guaranties:** A mortgage and/or other acceptable collateral will be required to secure any project loans but may be subordinate to any other primary project financing. A reasonable corporate or

acceptable personal guaranty for payment and completion will be required if Service Provider determines the project entities are able to provide such guaranties (i.e, CDCs and other non-profit entities may have limited ability to provide such a guaranty).

**Default and Remedies:** In the event that borrowers are provided notice of an event of default, then they will have an opportunity to cure. In the event that the default is not cured in a timely manner, then the forgiveness component of any forgivable debt will be forfeited and normal creditor remedies will apply.

## **REPORTING:**

### **Quarterly Project Reporting:**

- Number of Applications Received (# awarded and # denied)
  - For awarded Projects: Project name
  - Developer
  - Address(es)
  - Neighborhood
  - Project Type: new vs renovation
  - Total # of Units (total # of affordable units with target AMI broken out)
    - Affordability Term
  - Target Population (family, senior, homeless)
  - Total Project Cost
  - Project Status (under Construction Complete)
  - AHTF \$ Investment and source(s)
  - Award type: forgivable Loans and repayable Loans
  - Private dollars leveraged
- For non-awarded Projects:
  - Project name
  - Developer
  - Address(es)
  - Neighborhood
  - Project Type: new vs renovation
  - Total # of Units (total # of affordable units with target AMI broken out)
    - Affordability Term
  - Target Population (family, senior, homeless)
  - Total project cost
  - Rationale behind denial

### **Semi-Annual Reporting:**

- Overall AHTF balance
- Overall AHTF dollars disbursed
- AHTF Repayments Collected

### **Annual Reporting (AHTF dollars):**

- Overall AHTF balance
- Overall AHTF dollars disbursed
- AHTF Repayments collected

### **Annual Reporting (Project Aggregate data):**

- Number of applications, received, awarded, denied

{00356098-5}



- Total funds awarded
- # of projects awarded
- # of total units created/preserved
- # of affordable units (segregated by AMI) and affordability term
- Total private or non-City public dollars leveraged
- Number of forgivable Loans vs. repayable Loans
- List of projects funded by AHTF whose Loans will mature in the next year or for which the affordability term is ending

**Monitoring, Enforcement, Accounting:**

- Service Provider will be responsible for monitoring and enforcement of affordability requirements as well as loan servicing.

***Affordable Housing Advisory Board:*** The City will be the primary liaison with the affordable housing advisory board. The advisory board will be utilized to provide feedback to the strategic priorities of the Service Provider and City program. The City will organize a meeting twice a year to update the Board on projects and expenditures of the Funds. Service Provider will assist the City in that meeting by providing information on lending activity to the City to present to the Board.

**EXHIBIT B**  
**BUDGET**

Subject to appropriation of necessary funds by Council, the City will agree to annually provide \$60,000 in funding for Service Provider's fees, which represents 50% of the minimum annual projected operating expense. However, whenever financially feasible as determined by Service Provider, to support the program Service Provider may charge origination fees or an interest rate spread (not to exceed 250 basis points) on loans. Service Provider will report to the City annually on revenue generated for fees and expenses for administering the program.

For start-up costs of the program (legal, etc.) and to offset administrative fees of the program, the City will seek to use proceeds from the Liberty and Elm project and as a condition of receipt, Service Provider agrees to only utilize \$250,000 of \$750,000 donation related to the Liberty and Elm project for start-up costs and to cover administrative fees of the program. The remainder will be utilized for project loans under the program. Notwithstanding the foregoing, in the event the Liberty & Elm proceeds are not realized by September 1, 2022, to pay for start-up costs of the program, Service Provider shall be allowed to either (i) use up to \$250,000 of any general funds appropriated by Council and added to this Agreement or (ii) as loans are disbursed under this Agreement, use a pro rata portion of the AHTF funds for the start-up costs of the program (as an example for the purposes of clarity, if a loan was disbursed for \$1,239,150 and no additional funds were added to this Agreement at the time of disbursement, CDF could use \$125,000 of the remaining funds available for administrative costs).

Summary of initial AHTF funds appropriated to support of affordable housing development:

<b>Sources of Funds</b>	
City Capital Funds	\$2,727,000
Fund 439 Revenues*	\$1,300
<b>Total</b>	<b>\$2,728,300</b>

<b>Use of Funds</b>	
Affordable Housing Development Awards	\$2,477,000
Affordable Housing Development Awards (Fund 439 Restricted Unit)*	\$1,300
Administrative Costs	\$250,000
<b>Total</b>	<b>\$2,728,300</b>

\*subject to provisions of Ordinance No. 364-2018

**Note:** Equipment purchases such as computers, fax machines, office furniture, cellular telephones, beepers, and costs such as entertainment, food, flowers for sick employees, etc., are not eligible reimbursement expenses from the City. If you list a contractual agreement under Item

II A for which reimbursement of expenses will be requested from the City, you must submit a copy of each contract agreement.

EXHIBIT C

FORM OF  
FUNDING LETTER AGREEMENT

Contract No: \_\_\_\_\_

Cincinnati Development Fund, Inc.  
1224 Race Street  
Cincinnati, Ohio 45202  
Attn: [\_\_\_\_\_]

Dear [\_\_\_\_\_]:

Pursuant to Section 7 of the *Funding and Management Agreement*, dated \_\_\_\_\_ (the “**Agreement**”), between Cincinnati Development Fund, Inc. (“**Service Provider**”) and the City of Cincinnati (“**City**”), the City is adding additional funds in the amount of \$[\_\_\_\_\_] to the Agreement (the “**Additional Funds**”) in accordance with Ordinance No. [\_\_\_\_], passed by City Council on [\_\_\_\_\_]. The City and Service Provider hereby agree that the Additional Funds shall constitute part of the Funds and their usage is subject to the terms and conditions of the Agreement. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

The City agrees to disburse the Additional Funds to Service Provider upon Service Provider’s compliance with Section 9 of the Agreement with respect to the Additional Funds as soon as practicable following the Effective Date.

Nothing herein is intended to amend or alter the obligations of Service Provider under the Agreement, and Service Provider shall maintain records of all expenditures of the Additional Funds in accordance with the terms of the Agreement. All terms of the Agreement not amended hereby or not inconsistent herewith shall remain in full force and effect, and the Agreement, as amended hereby, is hereby ratified by the parties.

In consideration of the City’s execution of this Funding Letter Agreement (this “**Letter**”), Service Provider hereby waives any and all defaults or failures on the part of the City to observe or perform the City’s obligations under the Agreement and any other liability of any kind on the part of the City to the extent any such default, failure, or liability occurred on or prior to the Effective Date.

This Letter may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Letter may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

[SIGNATURE PAGE ATTACHED]

This Letter is executed and dated as of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”).

City of Cincinnati

By: \_\_\_\_\_  
[\_\_\_\_\_] , City Manager

Approved as to Form:

\_\_\_\_\_  
Assistant City Solicitor

Certified Date: \_\_\_\_\_  
Fund/Code: \_\_\_\_\_  
Amount: \_\_\_\_\_  
By: \_\_\_\_\_  
[\_\_\_\_\_] , City Finance Director

**ACCEPTED AND AGREED:**  
Cincinnati Development Fund, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_