

**CITY OF MIRAMAR  
PROPOSED CITY COMMISSION AGENDA ITEM**

**Meeting Date:** July 9, 2025

**Presenter's Name and Title:** Elizabeth Valera, Chief Capital Improvement Program Officer, on behalf of the Office of the City Manager

**Prepared By:** Elizabeth Valera, Chief Capital Improvement Program Officer

**Temp. Reso. Number:** 8466

**Item Description:** Temp. Reso. #R8466, AUTHORIZING THE EXPENDITURE OF \$1,500,000 (One Million Five Hundred Thousand Dollars) TO FLORIDA COMMUNITY DEVELOPMENT CORPORATION FOR SITE WORK, INFRASTRUCTURE IMPROVEMENTS, PARK DEVELOPMENT AND OTHER DRAINAGE AND CONSTRUCTION-RELATED IMPROVEMENTS; RATIFYING ALL REQUIRED ACTIONS TAKEN FOR THE DISBURSEMENT OF THIS EXPENDITURE (*Elizabeth Valera, Chief Capital Improvement Program Officer*)

Consent ☐ Resolution ☒ Ordinance ☐ Quasi-Judicial ☐ Public Hearing ☐

**Instructions for the Office of the City Clerk: N/A**

**Public Notice** – As required by the Sec. \_\_\_\_ of the City Code and/or Sec. \_\_\_\_, Florida Statutes, public notice for this item was provided as follows: on \_\_\_\_\_ in a \_\_\_\_\_ ad in the \_\_\_\_\_; by the posting the property on \_\_\_\_\_ and/or by sending mailed notice to property owners within \_\_\_\_ feet of the property on \_\_\_\_\_  
(fill in all that apply)

**Special Voting Requirement** – As required by Sec. \_\_\_\_\_, of the City Code and/or Sec. \_\_\_\_\_, Florida Statutes, approval of this item requires a \_\_\_\_\_ (unanimous, 4/5ths etc.) vote by the City Commission.

**Fiscal Impact:** Yes ☒ No ☐

**REMARKS:** Funding in the amount of \$1,300,000 budgeted in GL Account No. 415-55-800-538-000-606540-53025 titled CIP-Construction and \$200,000 budgeted in GL Account No 170-43-000-554-000-608306 titled Grants to Others.


**Content:**

- Agenda Item Memo from the City Manager to City Commission
- Resolution TR8466
  - Attachment 1: Agreement with Florida Community Development Corporation.



**CITY OF MIRAMAR  
INTEROFFICE MEMORANDUM**

**TO:** Mayor, Vice Mayor, & City Commissioners

**FROM:** Dr. Roy L. Virgin, City Manager 

**BY:** Elizabeth Valera, Chief Capital Improvement Program Officer

**DATE:** July 2, 2025

**RE:** Temp. Reso. No. 8466 authorizing the expenditure of \$1,500,000 to Florida Community Development Corporation for Site Work, Infrastructure Improvements, Park Development, and other Drainage and Construction Related Improvements

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**RECOMMENDATION:** Temp. Reso. # 8466, authorizing the expenditure of One Million Five Hundred Thousand Dollars (\$1,500,000) to Florida Community Development Corporation ("FCDC") for Site Work, Infrastructure Improvements, Park Development and other Drainage and Construction Related Improvements and ratifying all required actions taken for the disbursement of this expenditure.

**ISSUE:** Approval of the City Commission is required for disbursement of and expenditure of funds from the Affordable Housing Trust Fund.

**BACKGROUND:** On November 3, 2021, the City Commission adopted Resolution No. 22-34 that authorized the City Manager to enter into negotiations with FCDC and execute a Memorandum of Understanding for the construction of an affordable housing development. On November 14, 2022, the City Commission adopted Resolution No. 23-36 and approved the allocation of funding up to Three Million Dollars (\$3,000,000) from the Affordable Housing Trust Fund to FCDC for the site work, infrastructure, roadways, park development and other construction improvements for the development of sixty-six (66) workforce townhomes affordable housing units. On March 1, 2024, FCDC and the City entered into a funding agreement for site work, infrastructure improvements, park development funding, and other drainage and construction-related improvements associated with the development of the affordable housing units.

**DISCUSSION:** Costs for the project have increased due to additional requirements from Broward County to address flooding concerns in Broward County, requiring a higher finished floor elevation, which increases the fill requirement and requires additional drainage improvements for the project site. The City has determined that affordable housing is essential for the residents within the City of Miramar and that providing additional funding to address the additional requirements will allow for the construction of the affordable housing units as contemplated. The addition of this funding will amend the agreement with FCDC for an additional \$1,500,000 to meet the new Broward County requirements for the finished floor elevation. The City Commission approved the FY25 CIP Budget that included \$1,300,000 for this purpose in CIP Project No. 53025.

**ANALYSIS:** Funding in the amount of \$1,300,000 is budgeted in GL Account No. 415-55-800-538-000-606540-53025 titled CIP-Construction and \$200,000 is budgeted in GL Account No. 170-43-000-554-000-608306 titled Grants to Others.

**CITY OF MIRAMAR  
MIRAMAR, FLORIDA**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA, AUTHORIZING THE EXPENDITURE OF ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) TO FLORIDA COMMUNITY DEVELOPMENT CORPORATION FOR SITE WORK, INFRASTRUCTURE IMPROVEMENTS, PARK DEVELOPMENT, OTHER DRAINAGE AND CONSTRUCTION RELATED IMPROVEMENTS; RATIFYING ALL NECESSARY ACTIONS TAKEN FOR THE DISBURSEMENT OF THIS EXPENDITURE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on November 3, 2021, the City Commission adopted Resolution No. 22-34 that authorized the City Manager to enter into negotiations with Florida Community Development Corporation ("FCDC") and execute a Memorandum of Understanding for the construction of an affordable housing development; and

**WHEREAS**, on November 14, 2022, the City Commission adopted Resolution No. 23-36 and approved the allocation of funding of up the Three Million Dollars (\$3,000,000) from the Affordable Housing Trust Fund of FCDC for the site work, infrastructure, roadways, park development and other construction improvements for the development of sixty-six (66) workforce townhomes affordable housing units; and

**WHEREAS**, on March 1, 2024, FCDC and the City entered into a funding agreement for site work, infrastructure improvements, park development funding and other construction-related improvements associated with the development of the affordable housing units; and

Reso. No. \_\_\_\_\_

**WHEREAS**, costs for the project have increased due to additional requirements from Broward County to address flooding concerns in Broward County, requiring a higher finished floor elevation, which increases the fill requirement and requires additional drainage improvements for the project site; and

**WHEREAS**, the City has determined that affordable housing is essential for the residents within the City of Miramar and that providing additional funding to address the additional code requirements will allow for the construction of the affordable housing units as contemplated; and

**WHEREAS**, the City is allocating additional funding of \$1,500,000 to FCDC to assist with the new Broward County requirements for the finished floor elevation; and

**WHEREAS**, approval of the City Commission is required for the disbursement of the allocation and for the expenditure of funds from the Affordable Housing Trust fund; and

**WHEREAS**, the City Manager recommends that the City Commission authorize the expenditure of \$1,500,000 to Florida Community Development Corporation for Site Work, Infrastructure Improvements, Park Development and Other Drainage and Construction Related Improvements and ratify all actions taken for the disbursement of this expenditure; and

**WHEREAS**, the City Commission deems it to be in the best interest of the residents and citizens of the City of Miramar to authorize the expenditure of \$1,500,000 to Florida Community Development Corporation for Site Work, Infrastructure Improvements, Park

Development and Other Drainage and Construction Related Improvements and ratify all actions taken for the disbursement of this expenditure.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA AS FOLLOWS:**

**Section 1:** That the foregoing “**WHEREAS**” clauses are ratified and confirmed as being true and correct and are made a specific part of this Resolution.

**Section 2:** That it authorizes the expenditure of \$1,500,000 to Florida Community Development Corporation for Site Work, Infrastructure Improvements, Park Development and Other Construction Related Improvements and ratify all actions taken for the disbursement of this expenditure.

**Section 3:** That the City Manager is authorized to execute all documents necessary to complete the disbursement of the funds.

**Section 4:** That the appropriate City Officials are authorized to do all things necessary and expedient to carry out the aims of this Resolution.

**Section 5:** That this resolution shall take effect immediately upon approval.

Temp. Reso. No. 8466

7/2/25

7/2/25

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Mayor, Wayne M. Messam

\_\_\_\_\_  
Vice Mayor, Yvette Colbourne

ATTEST:

\_\_\_\_\_  
City Clerk, Denise A. Gibbs

I HEREBY CERTIFY that I have approved  
this RESOLUTION as to form:

\_\_\_\_\_  
City Attorney,  
Austin Pamies Norris Weeks Powell, PLLC

**Requested by Administration**

Commissioner Maxwell B. Chambers

Commissioner Avril Cherasard

Vice Mayor Yvette Colbourne

Commissioner Carson Edwards

Mayor Wayne M. Messam

**Voted**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## AGREEMENT

(The City reserves the right, in its sole discretion, to amend the terms and conditions set forth herein)



### FUNDING AGREEMENT BETWEEN THE CITY OF MIRAMAR, FLORIDA AND FLORIDA COMMUNITY DEVELOPMENT CORPORATION FOR SITE WORK, INFRASTRUCTURE IMPROVEMENTS, PARK DEVELOPMENT AND OTHER CONSTRUCTION RELATED IMPROVEMENTS IN THE CITY OF MIRAMAR, FLORIDA

**THIS AGREEMENT** (the "Agreement") is entered into and dated 3/4/2024, 2024, by and between the CITY OF MIRAMAR, FLORIDA (the "City"), a Florida municipal corporation, whose address is 2300 Civic Center Place, Miramar, Florida 33025, and Florida Community Development Corporation (the "Nonprofit" or "FCDC"), Florida Not For Profit corporation and 501(c)(3) entity based in Miramar, Florida whose address is 3960 SW 146 Avenue, Miramar, Florida 33027.

#### WITNESSETH:

**WHEREAS**, on November 3, 2021, the City Commission adopted Resolution No 22-34, which authorized the City Manager to enter into negotiations with Nonprofit and execute a Memorandum of Understanding ("MOU") for construction of an affordable housing development, which MOU (and amendments thereto) are attached hereto as Exhibit "\_\_\_" and incorporated herein ; and

**WHEREAS**, on November 14, 2022, by Resolution No. 23-36, the City Commission approved the allocation of funding of up to Three Million and 00/100 Dollars (\$3,000,000) from the Affordable Housing Trust Fund to FCDC for the site work, infrastructure, roadways, park development and other construction improvements (the "Work") for the development of sixty six (66) workforce townhomes affordable housing units (the "Affordable Housing Units" or the "Project"); and

**WHEREAS**, the Nonprofit agrees to provide the affordable housing as set forth in the MOU, terms of which are incorporated and made a part hereof, including all definitions set forth therein.

**NOW THEREFORE**, the City and Nonprofit, in consideration of the mutual covenants hereinafter set forth, the receipt and sufficiency of which is acknowledged, agree as follows:



## **ARTICLE 1**

### **FUNDED CONSTRUCTION WORK**

The funded construction work shall include all labor, materials and equipment necessary for the proper execution and completion of the work detailed in the MOU (the MOU Work”), along with any and all additional work included in any contract documents entered into by Non-profit pursuant to performing the MOU Work (“Contract Documents”). Earthwork shall include but not be limited to site clearing, grading, excavation and fill for parking lot area only, dewatering, and erosion and sediment control ( the “Earthwork”). Exterior Improvements shall include but not be limited to flexible paving, curbs, gutter, parking bumpers, pavement markings, bollards, (the “Exterior Improvements”). Utilities shall include but not be limited to water utilities (up to meter at curb) sanitary sewerage (up to first 6” service clean out at curb), stormwater utilities, (the “Utilities”). The work shall include but not be limited to Earthwork, Exterior Improvements, and Utilities (collectively the “Funded Construction Work”).

## **ARTICLE 2**

### **CONSTRUCTION TIME**

Time is of the essence in the performance of the Funded Construction Work and MOU Work under this Agreement (the “Funded Construction Work” and the “MOU Work shall be referred to collectively as the “Work”).

The commencement date shall be established upon issuance of the building permit (“Commencement Date”). Nonprofit shall commence the Work within ten (10) Days from the Commencement Date. The Work shall be Substantially Complete within 913 Calendar Days after the commencement date and issuance of the building permit. Substantially complete shall mean that the Work has been completed in such a manner that the Non-profit has applied for the certificates of occupancy for the Project (“Substantially Complete”). The Work shall have reached final completion and certificates of occupancy (“Certificates of Occupancy”) issued within 1,095 Calendar Days (3 years) after the Commencement Date given with issuance of the building permit. Final Completion shall mean the issuance of the Certificates of Occupancy for the townhome units (“Final Completion”).

## **ARTICLE 3**

### **NON-PROFIT AND CITY’S RELATIONSHIP**

The Nonprofit accepts the relationship of trust and confidence established between it and the City by this Agreement. The Nonprofit, as is customary in the development of a housing project, is going to form a wholly owned single purpose entity to develop and construct the Project.(the “SPE”). The Nonprofit represents that it will assure that the SPE will furnish its best skill and judgment in performing the construction of the affordable housing project and the Work and shall always act to further the interest of the City in the expeditious completion of the Project, at the lowest responsible cost to the City, and in strict accordance with the Contract Documents. and prudent and customary industry practices. The City hereby agrees to the formation of SPE and the SPE undertaking the Work. Once the SPE is formed, the Nonprofit will provide the City documentation reflecting the creation and good standing of the SPE and the reimbursements for work

performed, as more particularly set forth in Article 5 below, can be made directly to the SPE.

The City is not a party to any contractual agreements with any of the general contractors, contractors or sub-contractors performing any of the Work on site. The City does not control the nature, scope or direct any of the Work on site related to the construction of the sixty-six (66) Affordable Housing Units (the "Workforce Townhomes"). The City is only funding up to Three Million and 00/100 Dollars (\$3,000,000.00) of costs related to the Work.

#### **ARTICLE 4**

##### **TERM**

The term of this Agreement shall commence upon the date of execution hereof and shall remain in effect until one-hundred twenty (120) days after receipt of a Certificate of Occupancy for all of the Affordable Housing Units, unless terminated earlier as provided herein.

#### **ARTICLE 5**

##### **REQUIRED DOCUMENTS FOR PAYMENT REQUEST**

Nonprofit shall submit invoices to the City for payment as the Work is completed. The invoices shall be consistent with the detailed estimated costs as provided to the City. The invoices shall include itemized items and a summary description written by Nonprofit or SPE of the work performed for which payment is being requested to justify the pay request and verification that the portion of the Work as set forth in the pay request and summary has been completed. The City may request additional documentation prior to paying any pay request. In no event shall the approved pay requests exceed the following amount: \$3,000,000.00

Although the amounts expended for Earthwork, Exterior Improvements and Utilities from the Nonprofit to complete construction of the Project may exceed the Three Million and 00/100 Dollars the City has agreed to pay the Nonprofit or the SPE for construction related costs, in no event shall the payment from the City to Nonprofit nor the SPE exceed Three Million Dollars (\$3,000,000.00) under this Agreement.

#### **ARTICLE 6**

##### **CONTRACT PRICE**

Nonprofit has entered into multiple contracts with Contractors for the construction of the Affordable Housing Units, including the construction of site work, infrastructure improvements, roadway improvements, the park development and other construction improvements. Nonprofit is responsible for payment of the contract related costs as work is completed and invoices are submitted for payment for completion of work.

## **ARTICLE 7**

### **PAYMENT PROCEDURES**

Pay requests shall be invoiced by Nonprofit and paid by the City as follows: Nonprofit shall submit monthly invoices to the City for review. The invoices shall be paid for Earthwork, Exterior Improvements and Utilities. Each invoice shall indicate the original fee estimate for the work provided the invoice date, the amount of the invoice, including with specificity the detail of the work performed and the category of work for each line item, and include the estimated fees remaining in each category. Payment for services rendered by contractors and sub-contractors hired by Nonprofit during the previous billing period shall be due and payable as of the date of the invoice, and shall be paid by the City no later than the 30<sup>th</sup> day after the date of invoice. All invoices are subject to the City's review and approval.

## **ARTICLE 8**

### **TERMINATION**

#### **TERMINATION OF AGREEMENT BY CITY (NONPROFIT DEFAULT):**

In the event of default by the Nonprofit, the City shall provide Nonprofit with thirty (30) days written notice of City's intent to terminate this Agreement and provide the Nonprofit an opportunity to remedy the conditions constituting the default. It shall be a default by the Nonprofit whenever Nonprofit shall:

- A.** Declare bankruptcy, become insolvent, or assign its assets for the benefit of its creditors;
- B.** Subject to the Force Majeure provisions set forth below in Article 21 hereinbelow, fail to provide materials or workmanship to complete construction of the Affordable Housing Units;
- C.** Subject to the Force Majeure provisions set forth below in Article 21 hereinbelow, fail to execute the Work or provide services on a timely basis to complete construction of the Affordable Housing Units;
- D.** Subject to the Force Majeure provisions set forth below in Article 21 hereinbelow, fail to provide a qualified superintendent, competent workmen, or materials or equipment on site to complete the construction of the Affordable Housing Units; or

Subject to the Force Majeure provisions set forth below in Article 21 hereinbelow, fail in any other material way to comply with the requirements of the MOU which will allow completion of construction of the Affordable Housing Units.

If the Contractor fails to remedy the conditions constituting default within thirty (30) Days from the date of the City's written notice of its intent to terminate this Agreement, the City may then issue a Notice of Termination and terminate this Agreement. Notwithstanding the foregoing and subject to the Force Majeure provisions set forth below in Article 21 hereinbelow, in the event the Nonprofit undertakes to remedy the conditions constituting the default within the thirty (30) day period and continues to do so but said remedy cannot be accomplished within said thirty (30) day period, then Nonprofit shall have additional time, as determined by the City, to remedy same.

## **ARTICLE 9**

### **DEFAULT**

An event of default shall mean a breach of this Agreement by Nonprofit. Without limiting the generality of the foregoing and in addition to those instances referred to as a breach, an event of default shall include the following:

- a. Subject to the Force Majeure provisions set forth below in Article 21 hereinbelow, Nonprofit has not performed services on a timely basis as set forth in the Project Schedule attached as, Exhibit "B";
- b. Subject to the Force Majeure provisions set forth below in Article 21 hereinbelow, Nonprofit has refused or failed, except in the case for which an extension of time is provided, to supply enough properly skilled staff personnel;
- c. Nonprofit has failed to make prompt payment to contractors, subconsultants or suppliers (if any) for any services;
- d. Nonprofit has become insolvent or has assigned the proceeds received for the benefit of Nonprofit's creditors, or Nonprofit has taken advantage of any insolvency statute or debtor/creditor law or, if Nonprofit's affairs have been put in the hands of a receiver.

In the event of default by the Nonprofit, the City shall provide Nonprofit with thirty (30) days written notice of City's intent to terminate this Agreement and provide the Nonprofit an opportunity to remedy the conditions constituting the default. Notwithstanding the foregoing and subject to the Force Majeure provisions set forth below in Article 21 hereinbelow, in the event the Nonprofit undertakes to remedy the conditions constituting the default within the thirty (30) day period and continues to do so but said remedy cannot be accomplished within said thirty (30) day period, then Nonprofit shall have additional time as determined by the City to remedy same.

City may take advantage of each and every remedy specifically existing at law or in equity. Each and every remedy shall be in addition to every other remedy specifically given or otherwise existing and may be exercised from time to time as often and in such order as may be deemed expedient by City. The exercise or the beginning of the exercise of one remedy shall not be deemed to be a waiver of the right to exercise any other remedy. City's rights and remedies as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to City at law or in equity.

## **ARTICLE 10**

### **AUDIT AND INSPECTION RIGHTS**

The City may, at reasonable times and for a period of up to three years following the date of final completion and issuance of the Certificate of Occupancy for the Project, audit, or cause to be audited, those books and records of Nonprofit that are related to Nonprofit's performance under this Agreement. For so long as there is no default under the MOU or this Agreement, City agrees that the audits will occur no more than one (1) time in a twelve (12) month period. Nonprofit agrees to maintain all such books and records at its principal place of business for a period of three years after final payment is made under this Agreement.

The City may, at reasonable times during the term hereof, inspect the construction site and perform such inspections as the City deems reasonably necessary to determine whether the requests for payment of services required to be provided by Nonprofit and its contractors and sub-contractors under this Agreement conform to the terms hereof and/or the terms of this Agreement and that the services have actually been completed. Nonprofit shall make available to the City all reasonable facilities and assistance to facilitate the performance of inspections by the City's representatives. All inspections shall be subject to, and made in accordance with, all applicable Laws, including but not limited to the provisions of the City Code and the Code of Broward County, Florida, as same may be amended or supplemented from time to time.

The City may, as deemed necessary, require from the Nonprofit support and/or documentation for any submission. Upon execution of the Agreement, the Nonprofit agrees that the City shall have unrestricted access during normal working hours to all Non-profit's records relating to this Project, including hard copy as well as electronic records, for a period of three years after final completion and issuance of the Certificate of Occupancy.

## **ARTICLE 11**

### **PUBLIC RECORDS**

The Nonprofit shall comply with The Florida Public Records Act as follows:

Keep and maintain public records in the Nonprofit's possession or control in connection with the Nonprofit's performance under this Agreement, that ordinarily and necessarily would be required by the City in order to perform the service.

Upon request by the City's records custodian, provide the City with a copy of 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 in Chapter 119, Florida Statutes, or as otherwise provided by law.

Ensure that 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 completion of this Agreement until the records are transferred to the City.

Upon completion of this Agreement or in the event of termination of this Agreement by either party, any and all public records relating to this Agreement in the possession of the contractor shall be delivered by the Nonprofit to the City, at no cost to the City, within

seven (7) days. All records stored electronically by the Nonprofit shall be delivered to the City in a format that is compatible with the City's information technology systems. Once the public records have been delivered to City upon completion or termination of this Agreement, the Nonprofit shall destroy any and all duplicate public records that are exempt or confidential and exempt from public record disclosure requirements.

The Nonprofit's failure or refusal to comply with the provisions of this Section 11 shall result in the immediate termination of this Agreement by the City.

**IF Nonprofit HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO NONPROFIT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-602-3011, [daqibbs@miramarfl.gov](mailto:daqibbs@miramarfl.gov) OR BY MAIL: City Of Miramar – City Clerk's Office, 2300 Civic Center Place, Miramar, FL 33025.**

## **ARTICLE 12**

### **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

Nonprofit understands that agreements between private entities and local governments are subject to certain laws and regulations, including, by example and not limited to, laws pertaining to public records, conflict of interest, and record keeping. Nonprofit agrees to comply with and observe all applicable Laws, codes and ordinance as they may be amended from time to time.

The Nonprofit agrees that it shall not make any statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing prior written consent, unless and except otherwise required by law. The Non-Profit also agrees that it shall not publish, copyright or patent any of the data developed under this Agreement, it being understood that such data or information are works made for hire and the property of the City.

The knowing employment by Nonprofit or its subcontractors or subconsultants of any alien not authorized to work by the immigration laws or the Attorney General of the United States is prohibited and shall be a default of this Agreement.

## **ARTICLE 13**

### **INSURANCE – SEE SECTION 4D OF MOU**

Insurance limits are in accordance with Section 4. D. Insurance of the MOU and the Nonprofit shall use its best efforts to continuously maintain said insurance in accordance with Section 4 D of the MOU to the extent same is available in the State of Florida, during the term of the construction contract up to the date of Final Completion, but the Nonprofit's liabilities under this Agreement shall not be deemed limited in any way to the insurance coverage required. All policies of insurance so required to be purchased and maintained shall contain a provision of endorsement that the coverage afforded shall not be cancelled, materially changed or renewal refused until at least 30 calendar days' written notice has been given to the City by certified mail.

**ARTICLE 14**  
**COSTS AND ATTORNEY FEES**

If either City or Nonprofit is required to enforce the terms of this Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including but not limited to court costs and reasonable attorney's fees.

**ARTICLE 15**  
**COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

**ARTICLE 16**  
**WAIVER**

The waiver by either party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing similar or dissimilar failure. No waiver shall be effective unless made in writing.

**ARTICLE 17**  
**BINDING AUTHORITY**

Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement. This Agreement shall be binding upon the parties hereto, their heirs, executors, legal representatives, successors, or assigns.

**ARTICLE 18**  
**NOTICES**

All notices or other communications required under this Agreement shall be in writing and shall be given by electronic mail transmittal, hand-delivery, delivered by a nationally recognized overnight courier, or by registered or certified U.S. Mail, return receipt requested, addressed to the other party at the address indicated herein or to such other address as a party may designate by notice given as herein provided. Notice shall be deemed given on the day on which personally delivered by hand or a nationally recognized courier, or, if by mail, on the tenth (10<sup>th</sup>) day after being posted or the date of actual receipt, whichever is earlier.

**TO NONPROFIT:**

ATTN: Jasmine Baldwin  
Chief Executive Officer  
Florida Community Development  
Corporation  
3960 SW 146<sup>th</sup> Avenue  
Miramar, Florida 33027  
Telephone: (305) 528-6565  
Fax: N/A  
Email: redevconsulting@gmail.com

**TO CITY OF MIRAMAR:**

ATTN: Dr. Roy L. Virgin  
City Manager  
CITY OF MIRAMAR  
2300 Civic Center Place  
Miramar, Florida 33025  
Telephone: (954) 602-3120  
Fax: (954) 602-3672  
Email: [rvirgin@miramarfl.gov](mailto:rvirgin@miramarfl.gov)

**WITH COPY TO:****WITH A COPY TO:**

City Attorney  
Austin Pamies Norris Weeks Powell, PLLC  
401 NW 7<sup>th</sup> Avenue  
Ft. Lauderdale, FL 33311  
Tel: 954-768-9770  
Fax: 954-768-9790  
Email: [miramarcityattorney@apnwplaw.com](mailto:miramarcityattorney@apnwplaw.com)

**ARTICLE 19**  
**SEVERABILITY**

Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under any applicable Law, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect for limitation of its use.

City and Nonprofit each binds itself, its partners, successors, assign and legal representatives to the other party hereto, its partners, successors, assign and legal representatives in respect of all covenants, agreements and obligations contained in this Agreement.

**ARTICLE 20**  
**VENUE AND JURISDICTION**

This Agreement shall be construed and enforced according to the laws of the State of Florida. The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of or relating to this Agreement. Venue for any action arising out of this Agreement shall be in Broward County, Florida.



**ARTICLE 21**  
**FORCE MAJEURE**

The Nonprofit shall be excused for the period of any delay, which period of delay shall be the duration of any such force majeure event listed hereinbelow, and shall not be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this Funding Agreement when prevented from so doing so by cause or

causes beyond the Nonprofit's control, excluding filing of bankruptcy, but which shall include, without limitation, pandemics, epidemics, contagious diseases or other similar public health related occurrence, strikes, injunctions, lockouts, government shut downs or restrictions which otherwise limit freedom of movement or the ability to work, any labor or material shortages, civil riots, floods, terrorism, public enemy, insurrection, war, court order, requisition or order of governmental body or authority, all labor disputes, fire or other casualty, acts of God, or any other cause, whether similar or dissimilar to the foregoing, not within the control of the Nonprofit, or caused directly or indirectly by the Nonprofit.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties have set their hands and seals the day and year first above written.

**CITY OF MIRAMAR:**

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

*Dr. Roy Virgin*  
City Manager  
Dr. Roy Virgin

This \_\_\_\_\_ day of 3/1/2024, 2024.

ATTEST: \_\_\_\_\_

DocuSigned by:

*Denise Gibbs*

Denise A. Gibbs, City Clerk  
3/4/2024

**NONPROFIT:**

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

*Jasmine Baldwin*  
Chief Executive Officer  
Jasmine Baldwin

Date: 2/15/2024

Corporate Seal

Approved as to form and legal sufficiency  
for the use of and reliance by the City of  
Miramar, Florida only:

\_\_\_\_\_  
City Attorney

Austin Pamies Norris Weeks Powell, PLLC

Original

**FIRST AMENDMENT TO FUNDING AGREEMENT BETWEEN THE CITY OF MIRAMAR,  
FLORIDA AND FLORIDA COMMUNITY DEVELOPMENT CORPORATION FOR  
SITE WORK, INFRASTRUCTURE IMPROVEMENTS, PARK DEVELOPMENT AND OTHER  
CONSTRUCTION RELATED IMPROVEMENTS  
IN THE CITY OF MIRAMAR, FLORIDA**

**THIS FIRST AMENDMENT TO AGREEMENT** (the "First Amendment to Agreement") is entered into and dated November 20, 2024, by and between the CITY OF MIRAMAR, FLORIDA (the "City"), a Florida municipal corporation, whose address is 2300 Civic Center Place, Miramar, Florida 33025, and Florida Community Development Corporation (the "Nonprofit" or "FCDC"), Florida Not For Profit corporation and 501(c)(3) entity based in Miramar, Florida whose address is 3960 SW 146 Avenue, Miramar, Florida 33027.

**WITNESSETH:**

**WHEREAS**, on November 3, 2021, the City Commission adopted Resolution No 22-34, which authorized the City Manager to enter into negotiations with Nonprofit and execute a Memorandum of Understanding ("MOU") for construction of an affordable housing development, which MOU (and amendments thereto) are attached hereto as Exhibit "\_\_\_" and incorporated herein ; and

**WHEREAS**, on November 14, 2022, by Resolution No. 23-36, the City Commission approved the allocation of funding of up to Three Million and 00/100 Dollars (\$3,000,000) from the Affordable Housing Trust Fund to FCDC for the site work, infrastructure, roadways, park development and other construction improvements (the "Work") for the development of sixty six (66) workforce townhomes affordable housing units (the "Affordable Housing Units" or the "Project"); and

**WHEREAS**, on or about March 1, 2024, the Nonprofit and the City entered into a funding agreement for site work, infrastructure improvements, park development funding and other construction related improvements associated with development of the affordable housing units; and

**WHEREAS**, costs for the project have increased due to additional requirement from Broward County to address flooding concerns in Broward county requiring a higher finished floor elevation, which increases the fill requirement for the project site; and

**WHEREAS**, the City has determined that affordable housing is necessary and important for the residents within the City of Miramar and that providing additional funding to address the additional code requirements will allow for the construction of the affordable housing units as contemplated; and

**WHEREAS,** the Nonprofit agrees to provide the affordable housing as set forth in the MOU, terms of which are incorporated and made a part hereof, including all definitions set forth therein; and

**WHEREAS,** the Parties wish to amend the Funding Agreement to provide the additional funding to meet the new Broward County requirements for the finished floor elevation.

**NOW THEREFORE,** the City and Nonprofit make this First Amendment to the Funding Agreement, in consideration of the mutual covenants hereinafter set forth, the receipt and sufficiency of which is acknowledged, agree to amend the following sections of the Agreement:

# **ARTICLE 1** **FUNDED CONSTRUCTION WORK**

The funded construction work shall include all labor, materials and equipment necessary for the proper execution and completion of the work detailed in the MOU (the MOU Work"), along with any and all additional work included in any contract documents entered into by Non-profit pursuant to performing the MOU Work ("Contract Documents"). Earthwork shall include but not be limited to site clearing, grading, excavation and fill, dewatering, erosion and sediment control and soil treatment ( the "Earthwork"). Exterior Improvements shall include but not be limited to flexible paving, curbs, gutter, sidewalks and driveways, parking bumpers, pavement markings, fences and gates; bollards, (the "Exterior Improvements"). Utilities shall include but not be limited to water utilities (up to meter at curb) sanitary sewerage (up to first 6" service clean out at curb), stormwater utilities, (the "Utilities"). The work shall include but not be limited to Earthwork, Exterior Improvements, and Utilities (collectively the " Funded Construction Work"). Earthwork shall include additional fill requirements to meet the new Broward County finished floor elevations, FEMA's flood elevation requirements and adequate drainage requirements for construction of the project.

# **ARTICLE 3** **NON-PROFIT AND CITY'S RELATIONSHIP**

The Nonprofit accepts the relationship of trust and confidence established between it and the City by this Agreement. The Nonprofit, as is customary in the development of a housing project, is going to form a wholly owned single purpose entity to develop and construct the Project.(the "SPE"). The Nonprofit represents that it will assure that the SPE will furnish its best skill and judgment in performing

the construction of the affordable housing project and the Work and shall always act to further the interest of the City in the expeditious completion of the Project, at the lowest responsible cost to the City, and in strict accordance with the Contract Documents and prudent and customary industry practices. The City hereby agrees to the formation of SPE and the SPE undertaking the Work. Once the SPE is formed, the Nonprofit will provide the City documentation reflecting the creation and good standing of the SPE and the reimbursements for work performed, as more particularly set forth in Article 5 below, can be made directly to the SPE.

The City is not a party to any contractual agreements with any of the general contractors, contractors or sub-contractors performing any of the Work on site. The City does not control the nature, scope or direct any of the Work on site related to the construction of the sixty-six (66) Affordable Housing Units (the "Workforce Townhomes"). The City is only funding up to Three Million and 00/100 Dollars (\$3,000,000.00) of costs related to the Work. Notwithstanding the foregoing, the City agrees to fund an additional One Million Five-Hundred Thousand Dollars (\$1,500,000.00) to meet the new finished floor elevation requirements of Broward County, FEMA's flood elevation requirements and adequate drainage requirements for construction of the project.

#### ARTICLE 5

##### REQUIRED DOCUMENTS FOR PAYMENT REQUEST

Nonprofit shall submit invoices to the City for payment as the Work is completed. The invoices shall include a summary description written by Nonprofit or SPE of the work performed for which payment is being requested to justify the pay request and verification that the portion of the Work as set forth in the pay request and summary has been completed. The City may request additional documentation prior to paying any pay request. In no event shall the approved pay requests exceed the following amounts:

<u>Funded Construction Work</u>	<u>\$ 3,000,000.00</u>
<u>Finished Floor Elevation/FEMA/Drainage</u>	<u>\$ 1,500,000.00</u>

Although the amounts expended for Earthwork, Exterior Improvements and Utilities from the Nonprofit to complete construction of the Project may exceed the Three Million and 00/100 Dollars the City has agreed to pay the Nonprofit for construction related costs, in no event shall the payment from the City to Nonprofit exceed Three Million Dollars (\$3,000,000.00) under this Agreement. Notwithstanding the foregoing, the City agrees to fund an additional One Million Five-Hundred Thousand Dollars (\$1,500,000.00) to meet the new finished floor elevation requirements of Broward County, FEMA and drainage requirements for a total Funded Construction Work allocation in the amount of Four Million,

Five Hundred Thousand Dollars (\$4,500,000.00).

City may take advantage of each and every remedy specifically existing at law or in equity. Each and every remedy shall be in addition to every other remedy specifically given or otherwise existing and may be exercised from time to time as often and in such order as may be deemed expedient by City. The exercise or the beginning of the exercise of one remedy shall not be deemed to be a waiver of the right to exercise any other remedy. City's rights and remedies as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to City at law or in equity.

Any article, provisions and/or section in the Funding Agreement not changed herein by this First Amendment, remains in full force and affect.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

CITY OF MIRAMAR:

FLORIDA COMMUNITY  
DEVELOPMENT CORPORATION:

By:



Dr. Roy L. Virgin, City Manager

By:



Jasmine Baldwin, Chief Executive Officer

This 30<sup>th</sup> day of NOV 2024

ATTEST:



Denise A. Gibbs, City Clerk

\_\_\_\_\_  
Corporate Seal

Approved as to form and legal sufficiency  
for the use of and reliance by the City of  
Miramar, Florida only:



Austin Pamies Norris Weeks Powell, PLLC.