

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20070165

- 1. ACTION REQUESTED/PURPOSE:** Execute contract with both the Bonita Springs Area Housing Development Corporation and Lee County Housing Development Corporation for a \$900,000 interest free loan for acquisition of land and site development for 110 dwelling units by these two non-profit housing providers for conveyance to the Community Land Trust of Lee County, Inc. by December 31, 2022.
- 2. FUNDING SOURCE:** General Fund (funds were budgeted in 2005) **PROGRAM:** Comprehensive Planning
- 3. WHAT ACTION ACCOMPLISHES:** Allows the two non-profit housing providers to start *start* developing and conveying dwelling units to the Community Land Trust.
- 4. MANAGEMENT RECOMMENDATION:** Approve the Contract

5. Departmental Category: 04 *CAA* **6. Meeting Date: 2-27-07**

7. Agenda:	8. Requirement/Purpose:(specify)	9. Request Initiated:
<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Statute	Commissioner _____
<input type="checkbox"/> Administrative	<input type="checkbox"/> Ordinance	Department Community Development
<input type="checkbox"/> Appeals	<input type="checkbox"/> Admin. Code	Division Planning
<input type="checkbox"/> Public	<input type="checkbox"/> Other	By: Paul O'Connor, AICP, Planning Director
<input type="checkbox"/> Walk-On		<i>POC 02/05/07</i>

10. Background: May 3, 2005 - BoCC approved the transfer of \$1 million from the General Fund Reserves to the newly created Community Land Trust (CLT) Program for Affordable Housing.

June 30, 2005 - Affordable Housing Committee reviewed and recommended approval of the proposal submitted jointly by the Bonita Springs Area Housing Development Corporation (BSHDC) and the Lee County Housing Development Corporation (LCHDC) for the establishment of a CLT. The proposal called for an interest free loan of \$1 million with \$100,000 for the establishment and administration of the CLT and \$900,000 for land acquisition and development of 110 affordable housing units.

August 1, 2005 - BoCC Management and Planning Committee reviewed the Affordable Housing Committee's recommendation.

August 30, 2005 - BoCC executed a contract with both organizations (BSHDC and LCHDC) for \$100,000 to cover start up and administrative expenses for the establishment of a CLT.

September 1, 2006 - Community Land Trust of Lee County Inc. filed its Articles of Incorporation with the Florida Secretary of State as a non-profit corporation.

Current request: Execute the attached contract for a \$900,000 interest free loan for acquisition of land and site development for 110 dwelling units by the two non-profit housing providers (BSHDC and LCHDC) for conveyance to the Community Land Trust of Lee County Inc by December 31, 2022. To assure that the organizations are following the best business practices for the establishment and operation of the CLT, the organizations will continue to submit all proposed documents such as by-laws, operation manuals etc for review and approval by county staff. During the establishment of the CLT the county will continue contracting with Michael Brown, a national expert on CLTs.

Upon budget carryovers from FY06, funds will be available in account LB5150800100.508301

11. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P. W. Director
					Analyst	Risk	Grants	Mgr.	
<i>Mary Gibbs</i>	<i>Rebecca Brown</i>			<i>Michael</i>	<i>2/8/07</i>	<i>2/9/07</i>	<i>2/9/07</i>	<i>2/2/07</i>	<i>2-13-07</i>

- 12. Commission Action:**
- Approved
 - Deferred
 - Denied
 - Other

RECEIVED BY COUNTY ADMIN: *MP*

2/8

4:45 PM

COUNTY ADMIN FORWARDED TO: *PO*

2/13/07

3:20 PM

Rec. by CoAtty

Date: *2/5/07*

Time: *4:25 PM*

Forwarded To: *Admin.*

2/6/07 10:30 am

**AGREEMENT FOR FUNDING BETWEEN
THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS
AND THE BONITA SPRINGS AREA HOUSING DEVELOPMENT CORPORATION WITH THE LEE
COUNTY HOUSING DEVELOPMENT CORPORATION**

THIS AGREEMENT entered this 20th day of February 2007, between LEE COUNTY hereinafter referred to as **COUNTY**, a political subdivision and Charter County of the State of Florida, and the Bonita Springs Area Housing Development Corporation with the Lee County Housing Development Corporation, both Not-for-Profit Corporations existing under the laws of the State of Florida and, hereinafter referred to jointly and severally as the "**PROVIDER**".

WHEREAS, the **COUNTY** believes it to be in the public interest to provide certain activities to Lee County through the **PROVIDER** according to this contract, the agency's intent as stated in the proposal and attachments and/or exhibits and all other terms and conditions as specified; and

WHEREAS, the **COUNTY**, subject to the provisions of this funding agreement, is willing to loan funds on a reimbursable basis for the **PROVIDER'S** Project, in an amount up to \$900,000.00 contingent upon the **PROVIDER** using such funds to purchase land to build 110 affordable dwelling units and conveying the land to the Community Land Trust of Lee County Inc. hereinafter referred to as the "**CLT**"; and,

NOW THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein **COUNTY** and the **PROVIDER** agree as follows:

ARTICLE I SCOPE OF WORK

The **PROVIDER** will be jointly and severally responsible for completing the Scope of Work outlined in "Attachment 1", within the time periods set forth in this agreement, for the residents of Lee County. The Project must be completed in accordance with the approved Proposal(s) and Exhibits/Attachments.

The **PROVIDER** will proceed in good faith and due diligence to satisfactorily complete the Project as outlined in "Attachment 1" hereto. The Provider will enter into all required contracts in order for the Provider to timely make the required purchase of land. It is hereby made expressly a part of this agreement that the Provider will make all payments to third parties retained by the Provider for the satisfactory completion of the work.

ARTICLE II TERM OF CONTRACT

This contract shall begin **February 20, 2007** and ends **December 31, 2022** unless terminated earlier as specified in Article VIII, Suspension/Termination.

ARTICLE III COMPENSATION AND REPORTS

A. Contract Payment

The purpose of this Agreement is for the County to loan up to \$900,000.00 of county funds to the Provider on a reimbursable basis, to assist in the funding of the Project as described in Attachment 1 hereof. The County's funding obligation to the Provider will be subject to the provisions and conditions as further set forth in this agreement. The Provider will use the County's reimbursable funds as provided herein solely for the purchase of land and site development, to be conveyed to the CLT, on which 110 affordable dwelling units will be built and sold to households earning less than 80% of the median income for the Cape Coral-Fort Myers MSA.

Once the County's total obligation of up to \$900,000 has been reached, the County's funding obligations pursuant to this agreement will be concluded. This agreement in no way binds County to provide future funding for the Project, except as specifically authorized, budgeted, and appropriated pursuant to the provisions herein.

The Provider agrees to accept as full compensation the total amount not to exceed \$900,000.00 during the term of this contract, subject to the provisions of Article III B. Deferred Payment/Return of Funds, and Article VIII, Suspension/Termination.

B. Deferred Payment/Return of Funds

The **PROVIDER** agrees to return to the **COUNTY** any overpayments due to funds disallowed pursuant to the terms of this contract. Such funds shall be considered county funds and must be refunded to the **COUNTY** within thirty (30) calendar days of receiving notice from the **COUNTY** in writing regarding the overpayment. Should repayment not be made in a timely manner, the **COUNTY** will charge interest of one (1) percent per month compounded on the outstanding balance after forty (40) calendar days after the date of notification or discovery. The **PROVIDER** will be required to reimburse the **COUNTY** for any acts of non-compliance resulting in disallowed costs or fines.

It is at the option of the **COUNTY** to defer payment to the **PROVIDER** for noncompliance with contract deliverables or during the period of a county audit or monitoring due to questionable items. If as a result of the audit or monitoring, unallowable or unsupported costs are found, no further payments will be made until the full amount of overpayment is remitted to Lee County or a repayment agreement is accepted by Lee County.

C. Required Reports

1. **Quarterly reports, final report, and any other report as stipulated in Attachment 1**
2. **Schedule for Debt Repayment to Lee County by Non-Profit/Attachment 2**

ARTICLE IV AUDITS, MONITORING, AND RECORDS

A. Monitoring

The **PROVIDER** agrees to permit employees duly authorized by the **COUNTY** or any representatives to inspect all records, papers, documents, facility's goods and services of the **PROVIDER** and/or interview any clients and employees of the **PROVIDER** in order to, among other matters, monitor and verify the continuation of the

PROVIDER'S I.R.S. Code § 501(c)(3) status with the Internal Revenue Service, or any pending application thereof, to be assured of satisfactory performance of the terms and conditions of this contract to the extent permitted by the law after giving the **PROVIDER** reasonable notice. The monitoring is a limited scope review of the contract and agency management and does not relieve the **PROVIDER** of its obligation to manage the grant in accordance with applicable rules and sound management practices. The County may immediately terminate this Agreement if the **PROVIDER** refuses to permit access to County representatives for such examinations.

Following such monitoring the **COUNTY** may deliver to the **PROVIDER** a written report regarding the manner in which goods or services are being provided. The **PROVIDER** will rectify all noted deficiencies within the specified period of time indicated in the monitoring report or provide the **COUNTY** with a reasonable and acceptable justification for not correcting the noted shortcomings. The **PROVIDER'S** failure to correct or justify the deficiencies within the time specified by the **COUNTY** may result in the withholding of payments, being deemed in noncompliance, or termination of this contract.

PROVIDER must supply **COUNTY** with copies of all monitoring reports of programs which are also funded by the **COUNTY**, including agency response, within thirty (30) days of receipt.

B. Audit and Inspections

The **PROVIDER** will make all records referenced in Article IV. C., and all items included on financial statements available for audit or inspection purposes at any time during normal business hours and as often as **COUNTY** deems necessary.

The County, its various Departments and all parties entering into agreements with the County that involve public funds, are subject to audit by the Lee County Clerk of Court. As such, the BSHDC/LCHDC are also subject to audit by the Clerk of the Court. The Clerk of Courts Internal Audit division, Lee County employees, or any duly authorized representatives have the right of timely and unrestricted access to any books, documents, papers, or other records of **PROVIDER** or **CPA** that are pertinent to the contract in order to make audits, examinations, excerpts, transcripts and copies of such documents. If contract non-compliance or material weaknesses in the organization is noted, the **COUNTY** or other authorized representatives have the right to unlimited access to records during an audit or inspection. The **PROVIDER** will comply with all reasonable requests made by the **COUNTY** to examine the **PROVIDER** books and records that are kept relative to this agreement in order to verify the payment of taxes, or fees and compliance with the by-laws of the corporation and the terms and obligations of this agreement. The County may terminate this Agreement if the BSHDC/LCHDC refuse to permit such reasonable examinations by the Clerk of Court. This includes timely and reasonable access to a **PROVIDER'S** personnel for the purpose of interview and discussion related to such documents. The County may immediately terminate this Agreement if the **PROVIDER** refuses to permit access to County representatives for such examinations.

C. Records

The **PROVIDER** shall retain all financial, client demographic, and programmatic records, supporting documentation, statistical records and other records which are necessary to document service provision, client demographics, expenditures, income and assets of the **PROVIDER** by funding source, program, and functional expenses category during the term of this contract and five (5) years from the date of contract expiration. If any litigation, claim, negotiation, audit, or other action involving the records has been initiated before the expiration of

the 5-year period, the records shall be retained for one (1) year after the final resolution of the action and final resolution of all issues that arise from such action.

D. Independent Audit

An original, bound annual audit (performed at the **PROVIDER'S** own expense) of the **PROVIDER'S** financial statements in accordance with FASB 117, or current GAGA Standards as applicable including the auditor's opinion, requisite reports on internal control and compliance if required, management letter addressing internal controls if required, and management's response to such letter if required, must be submitted to the **COUNTY** no later than **180** days following the end of the **PROVIDER'S** fiscal year along with any corrective action plan ii applicable.

The audit must be conducted by an independent licensed certified public accountant who has received an unmodified opinion on their current Peer Review and must be in accordance with Auditing Standards Generally Accepted in the United States, and generally accepted Government Auditing Standards, OMB Circular A-133, "Audits of Institutions of Higher Education and other Non-Profit Organizations" if applicable, the Florida Single Audit Act (F.S. 215.97) if applicable, and the Auditor General rule 10.550 if applicable. The audit must detail the programs or service areas that are funded by Lee County either in the statement of functional expenses, revenues and expenditures, footnotes, schedule of federal awards and state financial assistance or as supplemental data in the financial statements. The statement should be consistent with programs detailed in the corresponding proposal(s) and exhibit(s).

Failure to submit the report within the required time frame will result in the withholding of payment, or termination of the contract by the **COUNTY**.

ARTICLE V MODIFICATIONS

Modifications of provisions of this contract shall only be valid when they have been reduced to writing and duly signed and dated by both parties.

ARTICLE VI CONTRACTOR STATUS

A. Independent Contractor

It is mutually agreed that the **PROVIDER** is an independent contractor and not an agent or employee of the **COUNTY**.

B. Subcontracts

Primary roles and responsibilities of **PROVIDER** cannot be assigned or subcontracted to another party without the prior written consent of the **COUNTY**. Notwithstanding the foregoing, upon the establishment and functionality of the CLT, the Providers may request that this contract, its obligations and rights hereunder, be assigned and assumed by the CLT. Such request will not be unreasonably denied by the **COUNTY**. The **PROVIDER** must ensure each subcontractor conforms to the terms and conditions of this contract and must be subject to indemnification as stated in Article VII.

ARTICLE VII **RISK MANAGEMENT**

A. Indemnification

The **PROVIDER** will defend, hold harmless, and indemnify the **COUNTY** from and against any and all liability, loss, claims, damages, costs, attorneys' fees, and expenses of whatever kind or nature which the **COUNTY** may sustain, incur, or be required to pay either by reason of the loss or improper use of any monies disbursed or to be disbursed hereunder including but not limited to fraud, embezzlement, or dishonesty on the part of any person represented or employed by the **PROVIDER**, or by reason of the intentional or negligent act of the **PROVIDER** or its agents, representatives and/or employees.

The **PROVIDER** further agrees that it will, at its own expense, defend any and all claims, actions, suits, or proceedings that may be brought against the **COUNTY** in connection with the above and satisfy, pay, and discharge any and all judgments or other resolution of claims that may be entered against the **COUNTY** in any such action or proceedings.

The **PROVIDER** further agrees that it is responsible for any and all claims arising from the hiring of individuals relating to activities provided under the contract. All individuals hired are employees of the **PROVIDER** and not of the **COUNTY**.

B. Insurance

The **PROVIDER** agrees to provide and maintain during the term of this contract Commercial General Liability insurance insuring the **PROVIDER** against any and all claims, demands, or causes of action whatsoever for injuries received or damage to property incurred in the performance of the terms of this Contract or the use, occupation, management, or control of any facility herein provided for and the improvements thereto. Such a policy of insurance will insure the **PROVIDER** in an amount not less than \$300,000 to cover any and all bodily injury, personal injury, and/or property damage claim connected with any **COUNTY** accident or occurrence that may arise or be claimed to have arisen against the **PROVIDER**. The **PROVIDER** must furnish an appropriate Certificate of Insurance (**Exhibit**) naming Lee County Board of County Commissioners as Certificate Holder and Additional insured. The **PROVIDER** agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess. The **PROVIDER** agrees that this insurance requirement shall not relieve or limit **PROVIDERS** liability and that the **COUNTY** does not in any way represent that the insurance required is sufficient or adequate to protect the **PROVIDER'S** interests or liabilities, but are merely minimums. Certificates of Insurance and bonding and renewals must be submitted to:

Risk Management
Lee County Board of County Commissioners
P.O. Box 398 Fort Myers, Florida 33902-0398

C. Bonding

The **PROVIDER** must provide fidelity bonding for all employees that handle **PROVIDER'S** funds. The amount of the bond must be equivalent to the highest daily cash balance of the **PROVIDER**. Proof of this bonding must be submitted to the **COUNTY** prior to the date of execution of this contract.

ARTICLE VIII SUSPENSION/TERMINATION

A. Suspension

The **COUNTY** reserves the right to suspend funding for failure to comply with the requirements of this contract.

In the event **PROVIDER** ceases operation for any reason or files for protection from creditors under bankruptcy law, any remaining unpaid portion of this contract, less funds for expenditures already incurred, shall be retained by the **COUNTY** and the **COUNTY** shall have no further funding obligation to the **PROVIDER** with regard to those unpaid funds.

B. Termination by COUNTY

Failure of the **PROVIDER** to materially comply with any of the provisions of this agreement, including any misuse or improper usage of the funds, shall be a material breach hereof and, upon notice of material breach to the **PROVIDER** by the County, this contract will be forthwith terminated, at the discretion of the County. The **PROVIDER** shall be obliged to repay all such misused or improperly used sums to the County. Any breach of this agreement will be provided in writing to the **PROVIDER** by the County via certified mail. The **COUNTY** may at any time and for any reason cancel this contract by giving twenty-four (24) hours written notice to the **PROVIDER** by certified mail following a determination by the Board of **COUNTY** Commissioners, at its sole discretion, that such cancellation is in the best interest of the people of the **COUNTY**. From the date of cancellation, neither party shall have any further obligation unless specified in the termination notice.

C. Termination by PROVIDER

The **PROVIDER** may at any time and for any reason cancel this contract by giving seventy-two (72) hours prior written notice to the **COUNTY** by certified mail of such and specifying the effective date.

COUNTY'S obligation to make any payments under any provision of this contract shall cease on the effective date of termination.

ARTICLE IX ASSURANCE, CERTIFICATIONS, AND COMPLIANCE

The **PROVIDER** agrees that compliance with these assurances and certifications constitutes a condition of continued receipt of or benefit from funds provided through this contract, and that it is binding upon the **PROVIDER**, its successors, transferees, and assignees for the period during which services are provided. The **PROVIDER** further assures that all contractors, subcontractors, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs and activities are not discriminating against those participants or employees in violation of statutes, regulations, guidelines and standards. By acceptance of this funding, the **PROVIDER** assures and certifies the following:

- A.** If required by Florida Law, secure competitive bids or proposals for all work to be performed by third party contractors. The Provider shall be in privity of contract with all contractors for whom Provider is requesting reimbursement to the Provider for such work.
- B.** Be responsible to pay all costs of the Project and shall be solely responsible to resolve and discharge any and all liens, claims, demands, and judgments associated with Project work.

- C. The Provider shall be solely responsible to resolve all Project purchase/sale contract disputes, claims, and demands, and the payment of any additional monies required thereby.
- D. Keep books, records, documents, and other evidence pertaining to costs and expenses incurred for the purchase of land and/or site development to the extent and in such detail as will properly reflect an accurate total Project cost and accounting for all funding of the Project, to include the use of the County's funds hereunder and administration of this agreement. The Provider shall make available at their offices at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized County representatives for a minimum of five (5) years after completion of the Project or as otherwise longer required by Generally Accepted Accounting Practices (GAAP).
- E. That it will comply with all applicable laws, ordinances and regulations of the United States, the State of Florida, the **COUNTY**, and the municipalities as said laws, ordinances and regulations exist and are amended from time to time. In entering into this contract, the **COUNTY** does not waive the requirements of any county or local ordinance or the requirements of obtaining any permits or licenses that are normally required to conduct business or activity contemplated by the **PROVIDER**.
- F. That it will comply with all local, state and federal laws, rules and regulations governing the payment of taxes, general accounting principles and charitable corporations and that it will comply with all reasonable requests made by the **COUNTY** to examine the **PROVIDER'S** books and records that are kept relative to this agreement in order to verify the payment of taxes, or fees and compliance with the by-laws of the corporation and the terms and obligations of this agreement.
- G. That it will comply with Federal law Chapter 760, Florida Statutes and Lee County Ordinance 00-19 which prohibit discrimination in housing on the basis of race, color, national origin, sex, religion, disability or familial status.
- H. That it will comply with Federal law Chapter 760, Florida Statutes and Lee County Ordinance 00-18 which prohibit discrimination in employment on the basis of race, color, national origin, sex, religion, disability or marital status.
- I. That it will administer its programs under procedures, supervision, safeguards, and such other methods as may be necessary to prevent fraud and abuse, and that it will target its services to those who most need them.
- J. That if clients are to be transported under this contract, the **PROVIDER** will comply with the provisions of Chapter 427, Florida Statutes, which requires the coordination of transportation for the disadvantaged.
- K. That any products or materials purchased with contract funds shall be procured in accordance with the provisions of Chapter 403.7065, Florida Statutes, which refers to the procurement of products or materials with recycled content.
- L. That it will comply with the Americans with Disabilities Act which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities.
- M. That it shall report any unusual incidents involving funded activities to the **COUNTY**, in writing, within five (5) calendar days of the occurrence or the **COUNTY** may terminate this contract. Unusual incidents

include, but are not limited to those events which are reported to local police authorities by the **PROVIDER** or any person whose report requires any type of response by local law enforcement authorities; those events which result in physical injury to a person receiving **PROVIDER** services that are underwritten in any way by the **COUNTY**; or, those incidents or events which result in a report to or investigation arising from a call to the Florida Abuse Hotline. In accordance with Chapter 415, Florida Statute, an employee of the **PROVIDER** who knows or has reasonable cause to suspect that a child, aged person, or disabled adult has been abused, neglected, or exploited, shall immediately report such knowledge or suspicion to the Florida Abuse Hotline on the statewide toll-free number (1-800-96- ABUSE).

- N. That it will comply with Chapter 216.347, Florida Statutes, which prohibits the expenditure of contract funds for the purpose of lobbying the Legislature, State or County agencies.
- O. That it will notify the **COUNTY** immediately of any funding source changes and/or additions from other sources that are different from that shown in the **PROVIDER'S** proposal. This notification must include a statement as to how this change in funding affects provision of service as well as the use of and continued need for county funds.
- P. That it will acknowledge support for programs funded by Lee County.
- Q. That it will notify the **COUNTY** of any **SIGNIFICANT** changes to the **PROVIDER** organization to include articles of incorporation and bylaws within ten (10) working days of the effective date.
- R. Provider will ensure that the deed for each parcel of land acquired by the Provider with County funds and transferred to the CLT will contain a requirement that if the CLT dissolves, terminates, ceases to exist, or is otherwise unable to perform its obligations under this Agreement, then the land, and related ground lease fees, will be conveyed immediately to the County or its designee for purposes of providing Affordable Housing to low and very-low income families, as defined by HUD. In the event that the County succeeds to the interest of the CLT under the lease by any remedy available to it by law or pursuant to its lien, the County agrees to recognize all community land trust ground lease(s) and its provisions. The Parties agree to meet to discuss any reimbursement that may be due and owing to the Provider for payments made to County prior to such land conveyance.

ARTICLE X NOTICES

Official notices concerning this contract shall be directed to the following authorized representatives:

COUNTY:

ATTN: Gloria M. Sajgo, AICP, Principal Planner,
Lee County Department of Community Development
P.O. Box 398, Fort Myers, FL 33902-0398

Telephone: (239) 479-8311 Fax: (239) 479-8161 E-mail: sajgo gm@leegov.com

PROVIDER:

Name: Treva K. Gilligan

Title: Executive Director

Agency: Lee County HDC

Address: P.O. Box 2854
Fort Myers, FL 33902

Telephone: 239-656-2721-105 Ext.

Web site address: leecountyhdc.org

E-mail: trevalchdc@yahoo.org

PROVIDER:

Name: Diane Ledford

Title: Executive Director

Agency: Bonita Springs Area HDC

Address: 26801 Old 41 Road, Unit #2
Bonita Springs, FL 34135

Telephone: 239-495-7100

Web site address: _____

E-mail: dledford@earthlink.net

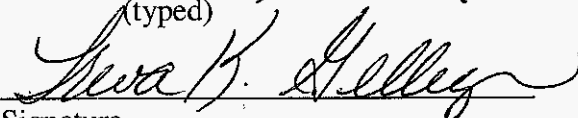
The signatures of the persons shown below are designated and authorized to sign all applicable reports:

COUNTY:

Name: <u>Gloria M. Sajgo, AICP,</u> (typed)		<u>Principal Planner</u> Title
--	--	-----------------------------------

PROVIDER:

Name: Treva K. Gilligan
(typed)


Signature

Executive Director
Title

PROVIDER:

Name: Diane Ledford
(typed)


Signature

Executive Director
Title

In the event that different representatives are designated by either party after execution of this contract, notice of the name and address of the new representative will be rendered in writing by authorized officer of **PROVIDER** to the **COUNTY**. The notification shall be attached to originals of this contract.

ARTICLE XI SPECIAL PROVISIONS

A. If needed, **PROVIDER** may be called upon to assist county during a natural disaster or emergency.

ARTICLE XII ALL TERMS AND CONDITIONS INCLUDED

This contract and its **attachments**, and any **exhibits** referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties. There are no provisions terms, conditions, or obligations other than those contained herein, and this contract shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of this contract is legally determined unlawful or unenforceable, the remainder of the contract shall remain in full force and effect and such terms or provisions shall be stricken.

IN WITNESS THEREOF, **PROVIDER** and **COUNTY** have caused this contract, to be executed by their undersigned officials as duly authorized.

PROVIDER:

By: Lee Ford
Name (typed)
[Signature]
Signature of authorized officer
Vice President
Title
1/31/07
Date

PROVIDER:

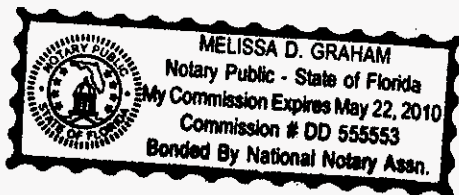
By: Diane Ledford
Name (typed)
[Signature]
Signature of authorized officer
Executive Director
Title
2-1-07
Date

NOTARY:

By: [Signature]
Notary of Public (Signature)
Treva K. Gilligan
Name (Typed)

NOTARY:

By: [Signature]
Notary of Public (Signature)
Melissa D. GRAHAM
Name (Typed)



LEE COUNTY BOARD OF COUNTY COMMISSIONERS

By: [Signature]
Chairman Robert Janes

Date: _____

ATTEST: CLERK OF CIRCUIT COURT

By: _____

Title: _____

Date: _____

**APPROVED AS TO FORM:
COUNTY ATTORNEY'S OFFICE**

By: _____

Title: _____

Date: _____

ATTACHMENT 1

Community Land Trust Bonita Springs Area Housing Development Corporation and the Lee County Housing Development Corporation

1. A. The Project, as approved for assistance, shall consist of the following authorized scope of work:
 - a) Creation of a Community Land Trust (CLT) non-profit Corporation, structured and operated in conformance with the definition of a CLT found in Attachment 3 herein. The CLT will be a non-profit organization created for the purpose of owning land and providing 99-year renewable leases to those owning the buildings on the land. By permanently limiting land costs, CLT's can lock in subsidies and also lower purchase prices, allowing very-low and low-income families to qualify for housing.
 - b) Acquisition of land and site development for one hundred and ten (110) dwelling units by the Bonita Springs Area Housing Development Corporation (BSHDC) and the Lee County Housing Development Corporation (LCHDC) for conveyance to the Community Land Trust no later than December 31, 2022.
 - c) Upon issuance of Certificates of Occupancy for any of the 110 dwelling units, the underlying land shall be conveyed without charge – except for incidental fees and expenses - to the CLT and the dwelling units shall be sold, either by the Provider or by the CLT, to households earning under 80% of median income for the Cape Coral – Fort Myers MSA.
 - d) For the initial forty-nine (49) dwelling units, land must be acquired, the dwelling units constructed, the land turned over to the CLT and the dwelling units occupied by income eligible households by December 31, 2013. All 110 dwelling units shall be completed no later than December 31, 2022. Failure to produce these units by this date; will trigger mandatory repayment per Section 1.E. Acceleration, below.
 - e) Other expenses associated with the acquisition of and, establishment and implementation of a CLT.

- B. Additional conditions affecting the development of the one hundred and ten (110) dwelling units:
 - a) Affordable price. Dwelling units must be priced to be affordable on initial sale to households earning less than 80% of the median income for the Cape Coral – Fort Myers MSA. Affordable means a household is not paying more than 30% of its income for housing (for homeownership the 30% figure includes principal, interest, taxes and insurance).
 - b) Eligible buyers. Dwelling units must be sold to households earning less than 80% of the median income for the Cape Coral – Fort Myers MSA.

- c) Dwelling units must be encumbered with durable controls over subletting and resales, designed to preserve the occupancy and affordability of assisted units.
- d) Dwelling units must be encumbered with durable controls over maintenance and improvement, designed to preserve the structural integrity and lasting affordability of the assisted units.
- e) The CLT must retain a preemptive option to purchase any such structural improvements at a price determined by formula that is designed to ensure that the improvements remain affordable to households earning less than 80% of the median income for the Cape Coral – Fort Myers MSA.
- f) The dwelling units to be constructed must comply with the Florida Power and Light BUILDSMART or comparable program. This program evaluates the energy efficiency of homes based upon the State of Florida Energy Performance Index (EPI) and awards certifications to homes that are progressively more energy efficient than the State required standard EPI rating of 100. Simple energy improvements like tighter air ducts, a higher energy efficiency air conditioner/heater/water heater, greater attic and wall insulation, and more energy efficient windows are common recommendations.

g) All new dwelling units must incorporate elements of Universal Design in their construction. Universal Design is the principle of design for home environments and products so as to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. Required elements are:

- On the first habitable floor of the unit, 32 inches clear passage through at least one exterior door and 29 inch clear passage through all interior doors, including bathrooms.
- On the first habitable floor of the unit, 36-inch wide level route through hallways and passageways.
- All new projects must provide at least one entrance, which will be a ramp or no-step entrance.
- Single-lever water controls at all plumbing fixtures and faucets.
- Light switches above floor, 36” - 44” maximum, and thermostats at 48” maximum height.

Examples of additional recommended Universal Design elements include but are not limited to:

- Reinforcement in first floor bathroom walls around the toilet and bathtub/shower for installing grab bars
- Electrical outlets at least 15 inches above the floor.
- Levered door handles eliminate the need for painful twisting; electric rocker switches, rather than conventional switches, are easily turned on and off.

h) Demonstration that the proposed CLT Development is in compliance with Smart Growth Principles illustrating the linkage between jobs, schools, land use, transportation networks, a healthy environment and affordable housing.

Smart Growth as defined by the National Smart Growth Network is development that serves the economy, community and the environment and is most often characterized by ten principles for growth:

1. Mix land uses.
2. Take advantage of compact building design.
3. Create housing opportunities and choices for a range of household types, family sizes and incomes.
4. Create walkable neighborhoods.
5. Foster distinctive, attractive communities with a strong sense of place.
6. Preserve open space, farmland, natural beauty, historic buildings, and critical environmental areas.
7. Reinvest in and strengthen existing communities and achieve more balanced regional development.
8. Provide a variety of transportation choices.
9. Make development decisions predictable, fair and cost-effective.
10. Encourage citizen and stakeholder participation in development decisions.

i) The Provider will annually prepare a written update/progress report and present same to the Board of County Commissioners and/or designee (the Affordable Housing Committee).

C. The amount of funds awarded under this contract is \$900,000.00. The County is not obligated or authorized to award any funds in addition to this amount.

D. Repayment Schedule: These funds are being provided as an interest free loan. Repayment of these funds shall begin on January 1, 2017 in accordance with the CLT Repayment Schedule (Attachment 2).

E. Acceleration. The whole of the indebtedness secured by this Contract shall become due and payable, at the option of the Provider:

a) After default in the performance of any authorized scope of work in this Project which remains uncured for 15 days after notice of default. Upon the happening of any such event, and at the County's option, the whole amount of the indebtedness secured by this Contract shall become immediately due and payable and shall bear interest at the rate of 2 percent over the prime interest rate from the date of such default.

b) In the event of a default in payments due under this Contract which remains uncured for 15 days after the due date, or in the event of any other default under this Contract which remains uncured for 15 days after notice from the County to Provider, the County shall have, in addition to other

rights and remedies specified in this Contract, all other rights and remedies provided by law. The remedies of County shall be cumulative and concurrent, and may be pursued singularly, successively, or together at the sole discretion of the County, which may exercise them whenever necessary. The failure to exercise any right or remedy shall in no event be construed as a waiver or release of the right or remedy.

F. Security.

- a) In consideration of and as security for the sum set forth in this Agreement, the Provider will execute a promissory note and mortgage in favor of the County for each parcel purchased with County funds. However, the County is willing to subordinate its lien position to other construction subsidy lenders if needed to complete construction in a timely manner. Any property acquired by Provider with County funds will be subject to a mortgage and the Provider will continue to be obligated to repay such funds in accordance with the terms contained in the note until December 31, 2022 or until transfer of the property to the Community Land Trust (CLT), whichever occurs sooner. However, no transfer to the CLT shall occur until such time as the County and CLT have a fully executed contract that sets forth the terms and conditions for the note and mortgage in favor of the County for the properties purchased with county funds.
- b) Provider will ensure that the deed for each parcel of land acquired by the Provider with County funds and conveyed to the CLT will contain a requirement that if the CLT dissolves, terminates, ceases to exist, or is otherwise unable to perform its obligations under this Agreement, then the land will be conveyed immediately to the County or its designee for purposes of providing Affordable Housing to low and very-low income families, as defined by HUD. In the event that the County succeeds to the interest of the CLT under the lease by any remedy available to it by law or pursuant to its lien, the County agrees to recognize all community land trust ground lease(s) and its provisions. The Parties agree to meet to discuss any reimbursement that may be due and owing to the Provider for payments made to County prior to such land conveyance.
- c) At the time the property is turned over to the CLT, land use restrictions or restrictive covenants will be placed on the property encumbering the property with durable controls over subletting and resales, designed to preserve the occupancy and affordability of assisted units.

G. Failure to Demonstrate Progress

- a) In the event that the Provider is unable to demonstrate through due diligence, reasonable progress toward completing the scope of work specified under Section 1A, above, the Provider shall have the right to

cause any land acquired and/or dwellings constructed with funds provided by Lee County that remain in the Provider's possession to be conveyed to Lee County or its assignee. Reasonable progress is to be defined by the occurrence of one or more of the following within the timeframes described in Section 1.A.: complete financing commitments, necessary permits and approvals in hand, construction start, construction complete, marketing and sales program and resident/homebuyer selection process underway; signed purchase and sales contracts; permanent financing commitments; real estate closings, unit occupancies, conveyance of the underlying land to the CLT, etc.

This Contract shall be binding on and inure to the benefits of the parties and their respective administrators, successors, and assigns.

- H. By-laws, 501(c)3 documentation, operations and procedures manuals, educational materials, marketing documents, and all other documents related to the formation of the CLT must be submitted to Lee County staff for review and approval. In making its review of these documents, Lee County will seek comments and suggestions from Community Land Trust experts.
 - I. The Provider is expected to make every reasonable effort to participate in program training activities offered by the Florida Housing Finance Corporation, the Florida Housing Coalition, Lee County or similar organizations in order to ensure compliance with local and State regulations governing the State Housing Initiatives Partnership Program.
2. The County agrees to provide drawdowns to the Provider, upon receipt and verification of the Provider's request and documentation for project costs pursuant to and as defined in Subsection 1. A. up to the amount of actual cash expended by the Provider for project work, whichever is less.
 3. The Provider is hereby placed on notice that when public funds are expended by an agency, then all the financial, business, and membership records pertaining to the public agency from which or on whose behalf the payments are made, of the person, corporation, foundation, trust, association, group, or organization to whom such payments are made shall be public records and subject to the provisions of Florida Statutes, Chapter 119 Public Records.

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Before any person is granted access to the records related to these funds (except governmental agencies or their agents who are entitled to access to the records specified in this paragraph for the purposes of auditing federal, state, or local housing programs or

housing assistance programs), please seek the advice of your legal counsel or contact the Lee County Division of Planning who shall seek counsel from the office of the County Attorney. Home addresses, telephone numbers, social security numbers, photographs, and places of employment of the certain personnel, spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from public record. Medical history records, bank account numbers, credit card numbers, telephone numbers, and information related to health or property insurance furnished by an individual to any agency pursuant to federal, state, or local housing assistance programs are confidential and exempt. Any other information produced or received by any private or public entity in direct connection with federal, state, or local housing assistance programs, unless the subject of another federal or state exemption, is subject to public records requests.

A person who has custody of a public record and who asserts that an exemption or special law applies to a particular public record or part of such record shall delete or excise from the record only that portion of the record with respect to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and examination.

4. The Provider agrees to perform all necessary requirements to assist the County in implementing its monitoring responsibilities, which include on-site inspections of the project to determine compliance with applicable laws, rules, regulations, ordinances, and codes of the federal, state, and local governments, including the requirements of the State Housing Initiatives Partnership (SHIP) and the Lee County Local Housing Assistance Plan.
5. The County shall be provided access to all contracts of the Provider for the procurement of goods and/or services relating to the project work described in Subsection 1. A. and all change orders or amendments, but said access shall not be construed as acceptance by or imposition of upon the County of any financial liability in connection with said contracts.

ATTACHMENT 2

Community Land Trust - \$900,000 Land Acquisition - Non-Profit's Schedule for Debt Repayment to Lee County Bonita Springs Area Housing Development Corporation (BSHDC) and the Lee County Housing Development Corporation (LCHDC)

	Anticipated Land Acquisition for 110 Affordable Housing Units						
Payment Schedule for Each Calendar Year	2007	2008	2009	2010	2011	2012	2013
CLT Land Acquisition - Non-Profit's Debt*	\$ 900,000	\$ 900,000	\$ 900,000	\$ 900,000	\$ 900,000	\$ 900,000	\$ 900,000
CLT Land Acquisition - Schedule for Debt Repayment to Lee County by Non-Profit	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Balance Owed	\$ 900,000	\$ 900,000	\$ 900,000	\$ 900,000	\$ 900,000	\$ 900,000	\$ 900,000

	Repayment Schedule								
Payment Schedule for Each Calendar Year	2014	2015	2016	2017	2018	2019	2020	2021	2022
CLT Land Acquisition - Non-Profit's Debt*	\$ 900,000	\$ 900,000	\$ 900,000	\$ 900,000	\$ 784,548	\$ 654,516	\$ 515,844	\$ 368,532	\$ 196,272
CLT Land Acquisition - Schedule for Debt Repayment to Lee County by Non-Profit	\$ -	\$ -	\$ -	\$ 115,452	\$ 130,032	\$ 138,672	\$ 147,312	\$ 172,260	\$ 196,272
Balance Owed	\$ 900,000	\$ 900,000	\$ 900,000	\$ 784,548	\$ 654,516	\$ 515,844	\$ 368,532	\$ 196,272	\$ -

* Debt cannot exceed this amount. Actual debt will vary depending on draw schedule.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/31/2006

PRODUCER
NATIONWIDE INS - THOMAS AGCY
 26831 S Tamiami Trail #52
 Bonita Springs, FL 34134
 (239) 498-2111

INSURED
BONITA SPRINGS AREA HOUSING DEVELOPMENT
CORP
 26801 OLD 41 RD UNIT 2
 BONITA SPRINGS, FL 34135

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC#
INSURER A: NAUTILUS INSURANCE CO	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

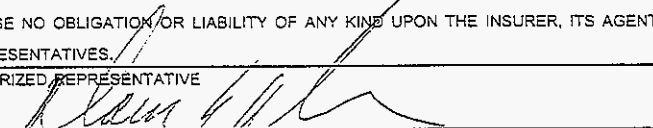
COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

SR ADD'L TO INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMSMADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	CAENP-I	09/12/06	09/12/07	EACH OCCURRENCE \$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ EXCLUDED				
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMSMADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	OTHER DISHONESTY BOND	77B0451272-3001	09/12/06	09/12/07	\$250,000 LIMIT

RECEIVED

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
CERTIFICATE HOLDER IS ALSO NAMED AS ADDITIONAL INSURED FOR THE ABOVE NAMED INSURED.

CERTIFICATE HOLDER	CANCELLATION
LEE COUNTY BOARD OF COMMISSIONERS RISK MANAGEMENT PO BOX 398 FORT MYERS, FL 33912 239-335-2262	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 

CERTIFICATE OF INSURANCE

The company indicated below certifies that the insurance afforded by the policy or policies numbered and described below is in force as of the effective date of this certificate. This Certificate of Insurance does not amend, extend, or otherwise alter the Terms and Conditions of Insurance coverage contained in any policy numbered and described below.

CERTIFICATE HOLDER:

LEE CO BOCC
 ADDITIONAL INSURED
 ATTN RISK MANAGEMENT
 PO BOX 398
 FORT MYERS, FL 33902

INSURED:

LEE COUNTY HOUSING
 DEVELOPMENT CORPORATION
 PO BOX 2854
 FT MYERS, FL 33902

TYPE OF INSURANCE	POLICY NUMBER & ISSUING CO.	POLICY EFF. DATE	POLICY EXP. DATE	LIMITS OF LIABILITY (*LIMITS AT INCEPTION)
LIABILITY	77-PR-464354-3001	07-01-06	07-01-07	
<input checked="" type="checkbox"/> Liability and Medical Expense	NATIONWIDE MUTUAL FIRE INSURANCE CO.			Any One Occurrence..... \$ 1,000,000
<input checked="" type="checkbox"/> Personal and Advertising Injury				Any One Person/Org \$ 1,000,000
<input checked="" type="checkbox"/> Medical Expenses				ANY ONE PERSON \$ 5,000
<input checked="" type="checkbox"/> Fire Legal Liability				Any One Fire or Explosion \$ 100,000
				General Aggregate* \$ 1,000,000
				Prod/Comp Ops Aggregate* . \$ 1,000,000
<input type="checkbox"/> Other Liability				
AUTOMOBILE LIABILITY				
<input type="checkbox"/> BUSINESS AUTO				Bodily Injury (Each Person) \$
<input type="checkbox"/> Owned				(Each Accident) \$
<input type="checkbox"/> Hired				Property Damage (Each Accident) \$
<input type="checkbox"/> Non-Owned				Combined Single Limit \$
EXCESS LIABILITY				
<input type="checkbox"/> Umbrella Form				Each Occurrence \$
				Prod/Comp Ops/Disease Aggregate* \$
STATUTORY LIMITS				
<input type="checkbox"/> Workers' Compensation and				BODILY INJURY/ACCIDENT ... \$
<input type="checkbox"/> Employers' Liability				Bodily Injury by Disease EACH EMPLOYEE \$
				Bodily Injury by Disease POLICY LIMIT \$

Should any of the above described policies be cancelled before the expiration date, the insurance company will endeavor to mail written notice to the above named certificate holder, but failure to mail such notice shall impose no obligation or liability upon the company, its agents, or representatives.

DESCRIPTION OF OPERATIONS/LOCATIONS
 VEHICLES/RESTRICTIONS/SPECIAL ITEMS
 DISHONESTY BOND \$50,000
 NON-AUTO LIAB \$1M