

SHIP REHABILITATION OWNER/CONTRACTOR AGREEMENT

THIS AGREEMENT is hereby made this _____ between the Owner(s), _____
and the Contractor, _____. The project address _____
_____.

The Owner and the Contractor agree to do the following:

ARTICLE 1. The Work

1.1 The Contractor shall perform all the work required by the Contract Documents for the rehabilitation of the above-described property according to the work write-up, plans and specifications provided by the State Housing Initiatives Partnership ("SHIP") Program and the Owner.

ARTICLE 2. Time of Commencement and Completion

2.1 The Contractor shall, within **15** calendar days from the date of the issuance of the Notice to Proceed, commence performance hereunder, and all work to be performed by the Contractor shall be completed in accordance with the conditions, plans, and specifications within **30** calendar days of issuance of the Notice to Proceed. The parties agree that a sum of **\$50.00** per calendar day shall be deducted from the Contract Sum as liquidated damages for each day the project remains incomplete beyond the date specified for completion. The deadline date for completion is _____.

ARTICLE 3. Contract Sum and Payment

3.1 The Owner, with loan proceeds provided by the City of Miami Beach ("City"), shall pay the Contractor the total Contract sum of \$ _____. The sum of the Contract is final. No changes will be allowed once this contract is executed unless approved by the City.

3.2 Payments may be withheld on account of any one of the following: (1) defective work not remedied; (2) claims filed; (3) failure to pass required Building Department inspections; (4) required documents not submitted; and (5) unsatisfactory performance by the Contractor.

3.3 Final payment shall not be due until the Contractor has delivered to the Owner, and approved by the City, guarantees and warranties, a complete release of all claims of lien, notices filed or received in connection with the work, or receipts covering all labor, materials, and equipment for which a lien could be filed, a payment and performance bond, if applicable, satisfactory to the Owner and the SHIP Program.

3.4 Final payment shall constitute a waiver of all claims by the Owner, except those claims presented in writing to the City prior to final payment, and the Contractor arising from: (1) unsatisfied liens; (2) faulty or defective work appearing after substantial completion; (3) failure of the work to comply with the requirements of the Contract Documents; or (4) substandard work violating guarantees/warranties required by the Contract Documents. The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and still unresolved at the time of final payment.

ARTICLE 4. Method of Payment

4.1 The Owner agrees to pay the Contractor in accordance with the payment schedule submitted by the contractor. Work awarded on contracts of \$10,000 or less shall have one final payment processed at project completion. Contracts over \$10,000 will be entitled to three payment draws. An initial payment when 35% of the total project is completed. A second payment when 70% of the total project is completed. And a final payment will be processed at project completion. No more than three draws will be permitted. Each item requested on each payment draw including electrical, plumbing, mechanical and roofing must have proper inspections at the time the draw request is made. The contractor must submit to the housing staff, proof of all required inspections.

4.2 One hundred (100%) percent completion is defined as all work being completed and accepted by the Owner and the Housing Specialist and verified by the Building Department, in writing. The final payment will not be released until there is 100% completion of the work as so defined. Progress payments and final payment are subject to final inspections by the SHIP Program Rehabilitation Inspector. If the SHIP Program inspector recommends corrective action to be taken pursuant to this Contract, then the Owner has the option to pay for the corrective work or deduct the cost of the corrective work from the Contract sum.

ARTICLE 5. Contract Documents

5.1 The Contract Documents consist of this Agreement, the drawings, the specifications, all addenda issued prior to the execution of this Agreement, all modifications, Change Orders, written interpretations of the Contract Documents issued by the SHIP Program, and all appropriate regulations issued by the Florida Housing Finance Corporation governing rehabilitation or new construction work, and the South Florida Building Code. The intention of the Contract Documents is to include all labor, materials, equipment, tools, services, and other items as provided in paragraph 9.2 necessary or reasonably implied for the proper execution and completion of the work and compliance with the terms and conditions of payment.

5.2 The Contract Documents shall be executed in triplicate by the Owner and the Contractor. By executing the Contract, the Contractor represents that it has visited the site and familiarized itself with the local conditions under which the work is to be performed, and all applicable regulations and requirements of the SHIP Program and South Florida Building Code.

5.3 The term "work" as used in the Contract Documents includes all labor necessary to perform the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in such construction.

ARTICLE 6. Supervision

6.1 The SHIP Program staff will make periodic visits to the site to monitor the progress and quality of the work in order to assess compliance with the work write up. The City SHIP Program will not be responsible for the means, methods, techniques sequences or procedures relating to the construction, or for safety precautions and programs in connection with the work; nor shall the City be responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents.

6.2 The SHIP Program staff will attempt to adjudicate all claims and disputes between the Owner and the Contractor. Unsettled claims or disputes between the Owner and the Contractor arising of or related to the work shall be submitted to arbitration under the laws governed by the State of Florida. Notice of the demand for arbitration shall be filed in writing with the other party to this agreement, and shall be made within a reasonable time after a dispute has arisen. The award rendered by the Arbitrator shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The prevailing party may be entitled to recover all costs, including reasonable attorney's fees.

6.3 Work which does not conform to the Contract Documents and/or to the South Florida Building Code shall be rejected by the Owner.

ARTICLE 7. Owner

7.1 The Owner may issue instructions to the Contractor through the SHIP Program staff, and apprise the staff of any changes, discrepancies or problems that may arise during the term of the Contract.

ARTICLE 8. Contractor

8.1 The Contractor must notify the SHIP Program staff, prior to commencing any rehabilitation work, of any known or suspected hazardous, dangerous, toxic or radioactive substances, including asbestos, on the property. The Owner will take all necessary measures to remove hazardous, dangerous, toxic or radioactive substances from the site.

8.2 The Contractor shall supervise and direct the work using its best skills and attention. The Contractor shall be solely responsible for all the means, methods, techniques, sequences, and procedures relating to the construction, and for coordinating all portions of the work under the Contract. All work shall be performed in a workmanlike manner according to standard practices.

8.3 Unless otherwise specifically noted, the contractor shall provide and pay for all labor, withholding and unemployment taxes, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services for the proper execution and completion of work.

8.4 The Contractor shall at all times enforce strict discipline, sobriety, and good order among its employees, and shall not employ any person or anyone not skilled in the task assigned to him/her.

8.5 The Contractor warrants to the Owner that all materials and equipment incorporated in the work will be new unless otherwise specified and that all work will be of good quality free from faults and defects, and in conformity with the Contract Documents. All work not in conformity with these standards may be considered defective and the work may be rejected and/or appropriate deductions from the Contract price shall be made accordingly.

8.6 The Contractor shall pay all sales, use, and other similar taxes required by law and shall secure all permits, fees, and licenses necessary for the execution of the work.

8.7 The Contractor shall give all notices and comply with all laws, ordinances, rules regulations, and orders of any public authority bearing on the performance of the work and shall notify the SHIP Program staff if the drawings and specifications are at variance therewith.

8.8 The Contractor shall be responsible for the acts and omissions of its employees and all other persons performing any of the work under the Contract at the request of, or direction of, the Contractor or subcontractor.

8.9 The work shall be in accordance with approved samples and shop drawings.

8.10 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his activities. At the completion of the work, it shall remove all waste materials and rubbish from and about the project as well as tools construction equipment, machinery, and surplus materials, and shall clean all glass surfaces and shall leave the work "broom clean" or its equivalent, except as otherwise specified.

8.11 The Contractor shall indemnify and hold harmless the Owner and the City, by and through the SHIP Program, its and their employees, officials, representatives, agents and attorneys, from and against all claims, damages, losses, and expenses including attorney's fees, cost and expenses (trial, appellate and administrative) arising out of or in connection with the performance of the work, provided that any such claim damage or loss, or expense: (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting there from; and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. In any and all claims against the Owner or against the City, its officials, employees, agents, representatives or attorneys, by any employee of the Contractor, subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, the indemnification obligation under this subparagraph shall not be limited in any way by any limitation on the amount or type of damages, compensation on benefits payable by or for the Contractor of any subcontractor under workers' compensation laws, disability benefit laws, or other employee benefit laws. The obligation of the Contractor under this subparagraph shall not extend to the liability of the SHIP Program, its agents or employees arising out of: (1) the preparation or approval of maps, drawings,

opinions, or (2) the giving of or the failure to give direction or instructions by the SHIP Program, its agents or employees; provided such acts or omissions are the primary cause of the injury or damage.

8.12 The Contractor shall guarantee all work performed for a period of one year from the date of final acceptance. The Contractor shall furnish the Owner, in care of the SHIP Program, properly completed manufacturers and supplier's written guarantees and warranties covering materials and equipment furnished under this Contract. Any defects that appear within the one-year period and arise out of defective or improper materials or workmanship shall, upon direction of the SHIP Program staff, be corrected and made good by the Contractor at its expense. Contractors who fail to comply with the terms of the warranty will be removed from the bidder's list and reported to the Department of Professional Regulation.

8.13 Other Federal, State and Local Requirements. The Contractor and/or subcontractor agrees to adhere to all Federal, State and local requirements including but not limited to the SHIP Program Regulations, Federal Labor Standard Provisions, if applicable, Section 3 Regulations, Equal Employment Opportunity Affirmative Action requirements including 24 CFR Part 570 Section 602, which require that no person shall be excluded from participation, be denied the benefits of or be subjected to discrimination based on race, color, national origin, age, sex, religion or disability. Failure to site specific Federal, State or local requirements shall not relieve the Contractor or subcontractor of compliance with the appropriate regulation, if deemed applicable.

ARTICLE 9. Subcontractors

9.1 A subcontractor is a person who has a direct written contract with the Contractor to perform any of the work at the site.

9.2 Unless otherwise specified in the Contract Documents or in the instructions to the Bidders, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the SHIP Program, in writing, a list of the names of subcontractors proposed for the principal portions of the work. The Contractor shall not employ a subcontractor to whom the SHIP Program or the Owner may have a reasonable objection. The Contractor shall not be required to employ any subcontractor to whom he has a reasonable objection. Contracts between the Contractor and the subcontractor shall be in accordance with the terms of this Agreement and shall include the General Conditions of this Agreement insofar as applicable. The contractor may not employ a subcontractor that is not licensed or insured in the trade hired to work.

ARTICLE 10. Separate Contracts

10.1 The Owner does not reserve the right to award other contracts while this contract is underway. All construction work will be limited to the work specified on the work write up to be performed by the contractor and its subcontractors.

10.2 The Contractor shall notify the City if other work is being performed at the site. The contractor cannot enter into any contract with the owner for work other than what is specified on the work write up during the term of the this contract.

ARTICLE 11. Royalties and Patents

11.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall hold the Owner harmless from loss on account thereof.

ARTICLE 12. Time

12.1 Time is of the essence.

12.2 If the Contractor is delayed at any time in the progress of the work by changes ordered in the work, by labor disputes, fire, unusual delay in transportation, unavoidable casualties, causes beyond the Contractor's control, or by any cause which the SHIP Program staff, may determine justifies the delay, then the Contract time may be extended by a Change Order for such reasonable time as the SHIP

Program staff may determine. The Contractor must request such extension of time in writing prior to the contract deadline. Contractors who do not submit extensions of time in writing before the contract deadline will be fined in accordance with Article 2 of this contract.

ARTICLE 13. Protection of Person and Property

13.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. The Contractor shall make all reasonable precautions in accordance with prevailing industry standards for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (1) all employees of the job and other persons who may be affected thereby; (2) all the work and all materials and equipment to be incorporated therein; and (3) other property at the site or adjacent thereto. The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of person or property, or to protect them from damage, injury, or loss. The Contractor will be held responsible for all damage or loss to any property caused in whole or in part by the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable.

ARTICLE 14. Contractor's Liability Insurance

14.1 The Contractor shall purchase and maintain and shall ensure that each of its subcontractors shall purchase and maintain such insurance as will protect each of them from claims from worker's compensation laws and other employee benefit laws, from claims for damage because of bodily injury including death, and from claims for damages to property which may arise out of or result from the Contractor's operation under this Contract, including any subcontractor or their respective employees, agents or representatives. This insurance shall be written for not less than any limits required by law, and shall include liability insurance as applicable to the Contractor's obligations under paragraph 8.11.

14.2 The Contractor shall provide builders risk insurance to cover all losses in the event of theft of materials from the project site during the terms of the Contract.

14.3 Certificates evidencing the above-required insurance shall be filed with the Owner and the SHIP Program, prior to issuance of the Notice of Commencement.

ARTICLE 15. Owner's Insurance

15.1 The Owner shall be responsible for purchasing and maintaining its own liability insurance and, at its option, may maintain such insurance as will protect it against claims which may arise from activities under the Contract.

15.2 Flood Insurance Requirements. The owner shall be responsible for purchasing and maintaining flood insurance, if the property is located in a Federal Emergency Management Act 100-year flood plain zone. The insurance will be maintained active for the duration of the lien filed in connection with this project.

ARTICLE 16. Changes in the Work

16.1 Once this contract has been executed, no changes to the work will be allowed. Under extreme circumstances, when the City/County determines that changes must be made to this contract, any approved alterations, deletions, or deviations from this Contract will be executed upon a written change order signed by the Owner, Contractor, Rehabilitation Specialist and the SHIP Program Administrator. Such Change Orders and resulting cost changes, if any, will be made part of the original Contract and will be limited to 10% of the cost of the line item. However, no extra costs will be paid if the Contractor has neglected to properly evaluate the extent of the work. Work performed prior to the execution of a Change Order will not be paid.

16.2 The Contract sum and the Contract time may be changed only by written Change Order.

16.3 The cost or credit to the Owner from a change in the work shall be determined by mutual agreement of the Owner, Contractor and SHIP Program.

ARTICLE 17. Correction of Work

17.1 The Contractor shall correct any work that fails to comply with the requirements of the Contract Documents where such failure to comply appears during the progress of the work, and shall remedy any defects due to faulty materials, equipment, or workmanship which appear within a period of one (1) year from the date of final payment of the Contract or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents. The provisions of this Article 17 apply to work done by subcontractors as well as to work done by employees of the Contractor.

ARTICLE 18. Prohibition, Use, and Elimination of Lead-Based Paint Hazard

18.1 No Contractor or subcontractor shall use or permit the use of lead-base paint on applicable surfaces. Every Contract and subcontract shall contain a prohibition on the use of lead-based paint.

18.2 Defective paint shall be presumed to be lead-based and deemed a health hazard that must be corrected, unless testing shows that lead is not present in the paint at a level above one (1%) percent.

18.3 All applicable surfaces identified in subparagraph 18.4(b) as health hazards shall receive adequate treatment to protect against the ingestion of the contaminated paint. Particular care shall be taken to correct conditions of cracking, scaling, peeling, and loose paint on walls, ceilings, doors, windows, trim, stairs, railings, cabinets, and piping. All such surfaces that require treatment shall be thoroughly washed, sanded, scraped, or wire brushed; so as to remove all cracking, scaling, peeling, and loose paint before repainting. As a minimum, these surfaces must receive two coats of a suitable non-lead based paint. Where it is not feasible to control or correct the cracking, scaling, peeling, or loosening of the lead-based paint and where the film integrity of the treated surfaces cannot be maintained, the paint of these surfaces shall be removed or covered with materials such as hardboard, plywood, drywall, plaster, or other suitable materials.

18.4 Definitions

(a) "lead-based paint" as defined in section 501(3) of the Lead-Based Paint Poisoning Prevention Act [42 U.S.C. § 4341(3)] means any paint containing more than one (1%) percent lead by weight (calculated as lead-metal) in the total nonvolatile content of liquid paints or in the dried film of paint already applied.

(b) "Applicable surface" means all interior surfaces and those exterior surfaces, such as stairs, decks, porches, railings, windows, and doors, which are readily accessible to children under seven (7) years of age [42 CFR 90.2(g)].

ARTICLE 19. Termination by the Owner

19.1 If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents or fails to perform any provisions of the Contract, as determined by the Owner or the SHIP Program staff, the Owner may, after seven (7) days written notice specifying the default to the Contractor, correct deficiencies and deduct the cost thereof from the payment then or thereafter due the Contractor or, at his option, terminate the Contract and complete the Contract, and if expenses of completion exceed the unpaid balance, the Contractor shall be liable for the difference.

ARTICLE 20. Conflict of Interest

20.1 Contractor is aware of the conflict of interest laws of the State of Florida, particularly, Chapter 112, Part III, Florida Statutes; and the United States Department of Housing and Urban Development, particularly 24 CFR Part 570 § 570.611, and agrees that it shall fully comply in all respects with those provisions.

ARTICLE 21. Notices

21.1 All notices shall be sent to the parties at the following addresses:

Owner: _____

Contractor: _____

With Copy To: City of Miami Beach
Office of Housing and Community Services
1700 Convention Center Drive
Miami Beach, FL 33139
ATTN: Director

or such address and to the attention of such other person as each party may from time to time designate by written notice to the other parties.

ARTICLE 22. Venue

22.1 This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall be in Miami-Dade County, Florida.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court.

ARTICLE 23. Waiver of Jury Trial

23.1 By entering into this agreement, owner and contractor expressly waive any rights either party may have to a trial by jury of any civil litigation related to, or arising out of, this agreement.

IN WITNESS WHEREOF, the Owner and the Contractor have caused this Agreement to be executed by duly authorized officials on the date first above written.

Signed, sealed and delivered in the presence of:

Owner

Witness
Printed Name: _____

Signature

Witness
Printed Name: _____

Witness

Printed Name: _____

Witness

Printed Name: _____

Attest:

Corporate Secretary

Printed Name: _____

(Seal)

If Contractor is an individual:

Contractor: _____

By: _____

Address: _____

If Contractor is a Corporation:

Contractor: _____

Address: _____

By: _____