

**BOROUGH OF RED BANK
COUNTY OF MONMOUTH**

RESOLUTION NO. 23-113

WHEREAS, the Borough desires to further its Fair Share Affordable Housing obligations by supporting the Red Bank Housing Authority's (RBHA) goal of rehabilitating its properties known as Evergreen Terrace and Montgomery Terrace, and its intention to explore conversion of these housing sites to appropriate Housing Choice Voucher ("HCV") program(s) or other appropriate rent subsidy program(s), as determined by the RBHA's pre-development needs assessments ("Pre-Development Project"), as set forth in the Grant Plan attached to the Grant Agreement as Exhibit A; and

WHEREAS, the Borough will provide assistance to the RBHA in the form of a municipal grant of \$350,000.00, in accordance with the attached Grant Agreement; and

WHEREAS, it is in the best interest of the Borough and RBHA to enter into such an agreement.

NOW THEREFORE, BE IT RESOLVED, by the Governing Body of the Borough of Red Bank, that the Mayor and Borough Clerk to execute the Grant Agreement between the Borough of Red Bank and the Red Bank Housing Authority; a copy of which is attached hereto, be executed by the Mayor and Municipal Clerk in accordance with the provisions of law; and

	MOVED	SECONDED	AYES	NAYS	ABSTAIN	ABSENT	I hereby certify that the above Resolution was adopted by the Borough Council of the Borough of Red Bank, In the County of Monmouth at a Meeting held on April 26, 2023.
Councilmember Jackson			x				
Councilmember Mirandi			x				
Councilmember Sturdivant			x				
Councilmember Triggiano			x				
Councilmember Ballard	x		x				
Councilmember Zipprich			x	x			
Mayor Portman							
ON CONSENT AGENDA	Yes			No x			

Laura Reinertsen
Laura Reinertsen. Borough Clerk

GRANT AGREEMENT BETWEEN THE BOROUGH OF RED BANK AND THE HOUSING AUTHORITY OF THE BOROUGH OF RED BANK

This is a Grant Agreement (“Agreement”), dated as of _____, 2023 by and between the Housing Authority of the Borough of Red Bank (hereinafter referred to as the “Authority” or the “Grantee”) and the Borough of Red Bank (hereinafter referred to as the “Grantor” or “Borough”).

1. BACKGROUND

- A. The Authority is a body corporate and politic of the State of New Jersey and an instrumentality of the Borough of Red Bank which is governed by N.J.S.A. 40A:12A-1 et seq. Its mission is to provide decent, safe and affordable housing to low- and moderate-income families. The Authority administers a Housing Choice Voucher program and provides public housing at sites known as Montgomery Terrace and Evergreen Terrace, Red Bank (“Project Premises”). In order to access funds to preserve housing affordability and rehabilitate the sites, the Authority through the appropriate U.S. Department of Housing and Urban Development (“HUD”) conversion programs(s), intends to convert the public housing sites to the appropriate Housing Choice Voucher (“HCV”) program or other appropriate rent subsidy program.
- B. The Borough desires to further its Fair Share Affordable Housing obligations by supporting the Red Bank Housing Authority’s goal of rehabilitating the Project Premises, and its intention to explore conversion of the Project Premises to appropriate Housing Choice Voucher (“HCV”) program(s) or other appropriate rent subsidy program(s), as determined by the Authority’s pre-development needs assessments (“Pre-Development Project”), as set forth in the Grant Plan attached as Exhibit A.

2. CORE TERMS

2.1 GRANT

Borough will make the Grant to Authority in the amount and in accordance with the schedule set out in the Grant Plan.

2.2 USE OF GRANT

Authority will use the Grant, and any income earned on the Grant funds, for the purpose set forth in the Grant Plan.

2.3 GRANT PERIOD

The grant period (“Grant Period”) is set out in the Grant Plan.

3. COMMUNICATION, REPORTS AND RECORDS

3.1 CONTACT PERSONS

Authority and Borough will each appoint one individual to act as principal contact person (“liaison”) for notices and other communications under this Agreement. The initial appointees are identified in the Grant Plan. Authority and Borough may change their respective contact person at any time by written notice to the other party.

3.2 REPORTING

Authority will provide Borough with narrative and/or financial reports as set out in the Grant Plan.

3.3 RECORDKEEPING

Authority will maintain its books and records in manner that will provide Borough with sufficient detail to review Authority's receipts and expenditures relating to the Grant. Authority will make such records available for review by the Borough upon reasonable notice during the Grant Period and for four (4) years after the termination or expiration of this Agreement.

4. GRANT ADMINISTRATION

4.1 The Authority will be responsible for the administration and management of the redevelopment of the Project Premises in accordance with applicable laws, the provisions of this Agreement and Authority policies. The Borough will be responsible for the administration of the Grant Funds in accordance with applicable laws, and the provisions of this Agreement.

4.2 Changed Circumstances

Authority will notify Borough if it determines in good faith that, because of factual or other changes in circumstances, it is no longer possible for the Grant to serve its original purpose. In that case, and in cases where a portion of the Grant remains unspent or unallocated upon completion of the applicable purpose, the unspent funds shall be retained by the Borough and the Borough will determine whether the funds may be used by Authority on an unrestricted basis in accordance with its mission.

5. COMPLIANCE

5.1 Authority is subject federal and state procurement regulations and laws and represents that it will comply with the same in connection with the expenditure of grant funds.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 **Representations and Warranties by Authority.** The Authority represents and warrants as follows:

(a) **Legal Capacity:** The Authority has the legal capacity to enter into this Grant Agreement and to perform each of the undertakings set forth herein.

(b) **Organization:** The Authority is a duly organized and validly existing legal entity under the laws of the State of New Jersey, and all necessary resolutions or authorizations have been duly adopted to authorize the execution and delivery of this Agreement and to authorize and direct the person(s) executing this Grant Agreement to do so for and on the Authority's behalf, as may be applicable.

(c) **No Indictment:** No indictment has been returned against any member, manager or officer of the Authority.

(d) **No Pending Actions:** To the best of the Authority's knowledge and belief after diligent inquiry, there is no action, proceeding or investigation now pending, nor any basis therefor, known or believed to exist which questions the validity of this Grant Agreement, Authority's execution hereof, or any action or act taken or to be taken by the Authority pursuant to this Grant Agreement; or is likely to result in a material adverse change in the Authority's property, assets, liabilities or condition which will materially and substantially impair the Authority's ability to perform the Project under this Agreement.

(e) **No Violation of Any Agreement:** The Authority's execution and delivery of this Grant Agreement and its performance hereunder do not constitute a violation of any agreement of the Authority or of any mortgage, indenture, instrument or judgment to which the Authority is a

party, as may be applicable.

(f) **True and Accurate Statements:** All information and statements included in any information submitted by Authority to the Borough and its agents are complete, true and accurate in all material respects. Authority acknowledges that the facts and representations contained in the information submitted by Authority, incorporated herein by reference, are being relied upon by the Borough and are a material factor(s) in the decision of the Borough to enter into this Grant Agreement.

(g) **Prohibition on Discrimination:** The Authority shall not discriminate against, restrict, or segregate any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference, sexual orientation, or gender in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project nor shall the Authority itself, or any Person claiming under or through the Authority, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, or use of occupancy of any tenant(s), lessee(s), subtenant(s), subleasee(s), or vendee(s) upon the Project Premises.

6.2 **Representations and Warranties by the Borough.** The Borough hereby represents and warrants, to the best of the Borough's knowledge after due inquiry, as follows:

(a) **Authority to Enter into Agreement:** The Borough has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Borough is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

(b) **Legally Binding upon the Borough:** This Agreement is duly executed by the Borough, and is valid and legally binding upon the Borough and enforceable in accordance with its terms on the basis of applicable laws currently in effect and the execution and delivery thereof shall not constitute a Default under or violate the terms of any indenture, agreement or other instrument to which the Borough is a party.

(c) **No Pending Actions:** There is no action, proceeding or investigation now pending nor any basis therefor, known or believed to exist which questions the validity of this Agreement or any action or act taken or to be taken by the Borough pursuant to this Agreement.

(d) **No Pending Litigation:** There is no pending litigation which affects the Grant Plan or the Borough's ability to fund the grant and convey same to the Authority.

6.3 **Prohibited Political Contributions.** Authority hereby warrants and covenants that Authority has not made and will not make at any time, any contribution that is in violation of the Borough's Pay to Play Ordinance, which may be amended from time to time, and which prohibits certain financial contributions to any of the Borough's political candidates or committees.

6.4 **Conflict of Interest.** No member, agent, official, employee, or representative of the Borough has or shall acquire any interest, direct or indirect, in the Project or the Property or in any property included or planned to be included in this Project, or has or shall have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with the Project or Property, in accordance with the requirements of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.

6.5 **Duration of Authority's Covenants.** Authority's covenant to comply with the Borough's Pay to Play Ordinance, together with all other covenants made by Authority in this Agreement, shall terminate and cease as expressly stated or as may be required or imposed by law.

6.6 **Consistency with Grant Plan.** Authority hereby warrants and covenants that its use of the Project Premises, and any construction upon the Project Premises by Authority, shall be restricted to and consistent with the current applicable Grant Plan. Authority acknowledges that this section shall comprise a covenant which shall run with the land and shall not be terminated.

7. INDEMNIFICATION, DEFENSE, HOLD HARMLESS AND RELEASE OF THE BOROUGH BY AUTHORITY

7.1 **Indemnification, Defense and Hold Harmless.** Authority agrees to indemnify, defend and hold harmless the Borough and the Borough's officers, agents, employees, contractors, and consultants and Authority shall pay and be responsible for any and all Claims, including any Claim related to this Agreement, the Authority's Pre-Development and any Due Diligence activities, as further set forth herein, the environmental or other nature and condition of the Property, and/or the ownership or marketability of title, which the Borough may sustain at any time by reason of any action relating to or arising out of the Project Premises and/or this Agreement. This Indemnification, Defense and Hold Harmless provision shall survive the termination of this Agreement or the issuance of the Certificate of Completion, as applicable.

8. EVENT OF DEFAULT AND TERMINATION OF THE AGREEMENT

8.1 **Event of Default.** Any breach of any material warranty, covenant or obligation pursuant to this Agreement ("Event of Default") may be deemed an Event of Default. Upon determination that an Event of Default has occurred, the party asserting that an Event of Default has occurred shall provide the other party to this Agreement with a notice of said default in order to notify the party of the Event of Default and to provide a period of forty-five (45) calendar days within which Event of Default may be corrected ("Notice of Default"). If the Event of Default cannot be corrected within forty-five (45) calendar days of receipt of the Notice of Default, the party against which the Event of Default is claimed may request a reasonable extension in writing. If the Event of Default is not corrected and no reasonable extension of time has been requested within the timeframe provided herein, this Agreement may be terminated upon written notice ("Termination Notice").

(a) **Default by Authority:** In an Event of Default by the Authority, the Borough may pursue any remedies against Authority that are available to it by the terms of this Agreement and/or by law, following the issuance of the Termination Notice. Authority shall also be liable for any damages of any kind sustained by the Borough as a result of any Event of Default.

(b) **Default by the Borough:** In an Event of Default by the Borough, excluding the pursuit of consequential damages of any kind whatsoever, the Authority, following the issuance of a Termination Notice to the Borough, may take whatever action at law or in equity as may appear necessary or desirable to enforce the terms of this Agreement.

8.2 **Force Majeure.** For the purposes of this Agreement, neither the Borough nor the Authority shall be considered in breach or in default with respect to its obligations hereunder because of a delay in performance arising from a Force Majeure Event, as that term is defined herein, which shall be an event that is or was beyond the reasonable control of and not due to the fault of either party, such as war, fire, extreme and sustained weather conditions, and the resulting consequences thereof, lasting more than 24 hours or declarations of public emergency, as may be applicable ("Force Majeure Event"). It is the purpose and intent of this provision that in the event of the occurrence of any such delay, the time(s) for performance of the obligations of the Borough or the Authority, as may be applicable, shall be extended for the period of the delay caused by the Force Majeure Event. The party invoking the provisions in this paragraph shall provide written notice to the other party of the occurrence of a Force Majeure Event as soon as practicable but in no event more than thirty (30) days after the occurrence thereof.

8.3 **Termination of the Agreement by the Borough** In the event that this Agreement is terminated by the Borough, the Borough may, at its election, pursue any remedies available to it under this Agreement or at law.

9. NOTICES

All Notices permitted or required to be made by the Authority or the Borough under this Agreement shall be made in writing and shall be by overnight delivery or by registered or certified mail, return receipt requested. All such notices shall be deemed provided to the other party as follows: (i) one (1) business day following the date sent, when sent by overnight delivery; or (ii) three (3) business days following the date mailed, when mailed by registered or certified mail, return receipt requested.

Notices to the Borough shall be sent to:

Borough of Red Bank
Borough Hall
90 Monmouth Street
Red Bank, New Jersey 07701
Attn: Business Administrator

With a copy to:

Office of the Borough Clerk
Borough Hall
90 Monmouth Street
Red Bank, New Jersey 07701

Notices to the Authority shall be sent to:

Red Bank Housing Authority
52 Evergreen Terrace
P.O. Box 2158
Red Bank, New Jersey 07701
Attn: Executive Director

With a copy to:

Terrence J. Corriston, Esq.
Breslin & Breslin, P.A.
41 Main Street
Hackensack, New Jersey 07601

10. MISCELLANEOUS

10.1 **Severability.** If any provision of this Agreement shall be held void, unenforceable or invalid, then the remainder of this Agreement shall not be affected, and each provision of this Agreement shall remain valid and enforceable.

10.2 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. Transmission by fax or email PDF of executed counterparts constitutes effective delivery.

- 10.3 **Successors and Assigns.** Unless otherwise stated in this Agreement, this Agreement shall be binding upon permitted successors and assigns of the parties executing this Agreement.
- 10.4 **Modification.** No modification, amendment, revision, or change of this Agreement shall be valid unless the same is in writing, duly authorized, and fully executed.
- 10.5 **Approvals or Consent by the Borough.** Any approval or consent which may be issued by the Borough pursuant to the terms of this Agreement which is not specifically required to be issued by the Municipal Council pursuant to the terms of this Agreement shall be issued in writing by the Business Administrator of the Borough of Red Bank and filed with the Borough Clerk's office.
- 10.6 **Exhibits.** Any and all Exhibits attached to this Agreement are hereby made a part of and incorporated into this Agreement by reference.
- 10.7 **Entire Agreement.** This Agreement, together with the Grant Plan, expresses the final, complete, and exclusive agreement between Borough and Authority and supersedes any and all prior or contemporaneous written and oral agreements, communications, or course of dealing between Borough and Authority relating to this subject matter. If there are any inconsistencies between the Grant Plan and this Agreement, this Agreement will control.
- 10.8 **Third Party Beneficiaries.** This Agreement is for the exclusive benefit of Authority and Borough, and not for the benefit of any third party.
- 10.9 **Governing Law; Jurisdiction; Venue.** This Agreement, and all matters arising directly and indirectly therefrom (the "Covered Matters"), shall be governed in all respects by the laws of the State of New Jersey as such laws are applied to agreements between parties in New Jersey. The Borough and Authority irrevocably submit to the personal jurisdiction of the courts of the State of New Jersey for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Borough has caused this Agreement to be fully executed in its name and on its behalf by its proper officers and its seal to be hereunto duly affixed and attested, and the Authority has caused this Agreement to be duly executed in its name, on or as of the day first above written.

APPROVED AS TO FORM & LEGALITY:

Daniel Antonelli, Esq., Borough Counsel

BOROUGH OF RED BANK

By:

RED BANK HOUSING AUTHORITY

By: Lisa Hendricks Richardson
Executive Director

Exhibit A

GRANT PLAN

1. The Authority will be responsible for the administration and management of the redevelopment of the Project Premises in accordance with applicable laws, the provisions of this Agreement and Authority policies. The Borough will be responsible for the administration of the **Grant Funds in the amount of Three Hundred Fifty Thousand Dollars (\$350,000.00)** in accordance with applicable laws, and the provisions of this Agreement, which will be applied toward the following:
 2. Pre-development costs, which are those associated with activities that will provide the Authority the ability to identify and assess potential infrastructure projects and modifications to its existing infrastructures, and to advance those projects from the conceptual phase to actual redevelopment. Predevelopment activities may include, but are not limited to:
 - (i) project planning, feasibility studies (such as Physical Needs Assessment of the properties), economic assessments and cost-benefit analyses, and public benefit studies and value-for-money analyses;
 - (ii) architectural design and engineering;
 - (iii) financial planning (including the identification of funding and financing options);
 - (iv) permitting, environmental review, and regulatory processes;
 - (v) assessment of the impacts of potential projects on the area, including the effect on communities, the environment, the workforce, wages, and benefits, as well as assessment of infrastructure vulnerability and resilience to climate change and other risks;
 - (vi) public outreach and community engagement. Pre-development costs include pre-development activities and associated costs, such as relocation consultant and staff, external advisors, convening potential investment partners, and legal costs; and
 - (vii) all pre-development costs must be provided in a written narrative to the Borough with contact information for the service providers associated with the pre-development costs and the Borough will be responsible for directly paying same and providing the Authority with documentation of said payments.
 3. **The Grant Period will be twenty-four (24) months** from the date the Borough commits the Grant Fund amount, as evidenced by the execution of the Agreement, which Grant Period may be extended at the request of either party, in writing, which approval will not be unreasonably withheld.
 4. The Authority designates its Executive Director, Lisa Hendricks Richardson, to be its Pre-Development Project liaison.
 5. The Borough designates its Business Administrator to be its Pre-Development Project liaison.
 6. Pre-Development Project will commence upon the Authority's issuance of Requests for Proposals ("RFP") for the aforementioned services, of which the Borough will be notified.

7. The review and selection of the RFP respondents (bidders) is the responsibility of the Authority; and the procurement process may be reviewed by the Borough's purchasing agent to confirm compliance with applicable procurement laws and regulations.
8. It is expressly agreed and understood that the total compensation to be paid by the Borough on behalf of the Authority under the Agreement for the above services, inclusive of all bills, will not exceed \$350,000.00. All vendors and/or service providers shall be compensated directly by the Borough.
9. Method of Payment. Upon approval of the aforementioned service contracts by the Authority's Board of Commissioners, thus obligating any advance payments and/or earned payments, the Authority will submit documentation to the Borough including a written detailed description of the services required or rendered and contact information for the service provider; and the Borough will compensate the service provider accordingly.
10. The Borough will not unreasonably withhold requested payments supported by appropriate voucher and supporting documentation and will make payment within thirty (30) days of receipt of the request.
11. Upon completion of the Authority's pre-development needs assessments resulting in identifying the appropriate HUD conversion programs(s), or other appropriate rent subsidy program(s) that it will utilize to rehabilitate the Project Premises, it will notify the Borough.
12. If there are any Grant Funds remaining may, upon request of the Authority and approval of the Borough, be used for furtherance of the Project Premises' redevelopment costs, as specified in the request.