

# ESCROW FUND DISBURSING AGREEMENT

## CITY OF MILWAUKEE COMMUNITY DEVELOPMENT GRANTS ADMINISTRATION

### HOME FUNDS

#### Organization

WHEREAS, the undersigned **Organization** (“CONTRACTOR”) and the City of Milwaukee, acting through its Community Development Grants Administration (the “CITY”) have entered into a contract No. **Contract No.** dated as of **January 1, 2017** (the “Grant Contract”), relating to the expenditure of HOME Investment Partnerships Act Funds for the **2017** Program Year in a total amount of not to exceed \$**HOME** (the “Grant Funds”); and

WHEREAS, the CONTRACTOR and the CITY request the Title Company to supervise the disbursement of Grant Funds under the Grant Contract and in accordance with the terms of this Disbursing Agreement;

NOW, THEREFORE, the CITY, the CONTRACTOR and the Title Company hereby agree as follows:

**1. Creation of Separate Escrow Accounts.** As part of its feasibility package submitted to the CITY, the CONTRACTOR will submit to the CITY a budget for each property to be financed with Grant Funds. Each such property shall be treated as a separate project (hereinafter each referred to as the “Project”) for purposes of this escrow agreement. The CITY will issue an award letter to CONTRACTOR, with a copy to the Title Company, which award letter shall identify the specific Project to be constructed or rehabilitated by the CONTRACTOR, and the amount of Grant Funds allocated to such Project. Each award letter shall become a part of this contract. Title Company shall create separate non-interest-bearing escrow accounts for each Project identified in each award letter. The separate escrow accounts for each Project shall be separately administered by the Title Company, and each escrow account shall be subject to the terms and provisions of this Escrow Agreement.

**2. Project Budget and Contractor’s Disbursement and Control Affidavit.** CONTRACTOR will continuously advise the CITY and the Title Company of the name of each person, corporation or other entity who is to receive any portion of the Grant Funds as payment in connection with the acquiring, constructing, financing, equipping and development of each Project (all of such persons, corporations or other entities being called “Contractors”). If requested by the CITY or the Title Company, CONTRACTOR will also furnish to the Title Company a copy of the contract with each Contractor, if any. When seeking a disbursement pursuant to this Agreement, CONTRACTOR will provide to the Title Company a Contractor’s Disbursement and Control Affidavit with respect to the work on the Project to which the requested disbursement relates. The CONTRACTOR will keep the Title Company and the CITY advised at all times of the names of all

Contractors, and the type of work or material and the amount covered by each of their respective contracts, if any, with the CONTRACTOR or with the general contractor, if any, and changes, if any relating to a previously provided Contractor's Control and Disbursement Affidavit.

**3. Deposit of Grant Funds.** Upon execution of the Grant Contract, the CITY will deposit to the custody of the Title Company, from time to time, a total amount of not to exceed CHDO Amount in Words -- Dollars (\$CHDO), to be used for making disbursements under this Disbursing Agreement. Such deposits shall be made in the form of two-party checks payable to the Title Company and the CONTRACTOR pursuant to requests for reimbursement by the CONTRACTOR submitted to the CITY pursuant to the Grant Contract. Each such two-party check, endorsed by the CONTRACTOR to the Title Company and received by the Title Company, shall be deposited by the Title Company in the separate escrow account for the Project to which it relates, within one business day of delivery of such two-party check. Notice of said deposit shall be given to the City Comptroller within 72 hours of such deposit. The CONTRACTOR agrees that the initial costs for which the first request for reimbursement is made under the Grant Contract shall relate solely to the reimbursement of funds previously borrowed by the CONTRACTOR from a private bank and expended for the purposes of each Project, in an amount equal to the lesser of either (i) 80% of the total Grant Funds available under the Grant Contract, or (ii) \$15,000.00. All deposits pursuant to this Agreement shall be held by the Title Company in a non-interest-bearing account.

**4. Draw Requests.** Upon receipt of each draw request, the Title Company shall give the CITY immediate notice of any intervening filed construction liens on the Project to which the draw request relates (other than those expressly listed in the Title Company's Policy identified above). If any such construction liens on that Project are disclosed, the Title Company shall withhold payment of further draws for that Project until the same have been satisfied of record, and then the Title Company shall disburse accordingly. No disbursement shall be made by Title Company until it has received evidence of an inspection on the subject property, completed by the CITY's Department of Neighborhood Services (DNS), on a form approved by the CITY, as more specifically provided in Section 6 below.

**5. Disbursements by Title Company.** If all of the terms and conditions of the Grant Contract and this Disbursing Agreement have been complied with to the satisfaction of the Title Company, or if the CITY shall have delivered a written authorization for payment of a draw request even though the CONTRACTOR has not complied with all the terms and conditions of the Grant Contract and this Disbursing Agreement, the Title Company shall, as promptly as possible thereafter, make disbursements from the proceeds received from the CITY by delivering to the contractor on whose behalf payment is requested, its check in the amount requested in such draw request. The Title Company shall make such disbursements within 10 business days of the receipt of a draw request that complies with all of the requirements of this Agreement.

**6. Withholding of Disbursements.** In the event that the Title Company shall determine that proper documentation as required by this Disbursing Agreement to support a given draw request has not been furnished, or that the results of the inspection required under Section 10 of this Agreement are not satisfactory to the Title Company, or that any other condition precedent to the payment of a draw request has not been met,

the Title Company shall withhold payment of all or such portion of such draw as shall not be approved and directed by DNS after inspection, and supported by proper documentation, and shall promptly notify the CONTRACTOR and the CITY of the discrepancy or omission in such documentation. Until such time as such discrepancy or omission is corrected to the satisfaction of the Title Company, it shall withhold such amount. In the event that the CONTRACTOR and DNS cannot agree with respect to a disputed draw request, either party may request a determination from the CITY, in which case the CITY's Community Development Grants Administration and Department of Building Inspection shall jointly render a final determination with respect to payment of such disputed draw request.

**7. Title Company Records.** With respect to each Project, the Title Company shall keep records showing the names of all Contractors to whom payment is made by the Title Company, the date of each payment, and the amount of each payment, which records may be inspected by the CONTRACTOR and the CITY. The Title Company shall also provide the CITY with a monthly report, in a form acceptable to the CITY, which accurately summarizes, by property and by CONTRACTOR, deposits and disbursements of funds pursuant to this Agreement and any other similar Agreement entered into between the CITY, the Title Company and a nonprofit housing agency holding a grant contract with the CITY.

**8. Audit by City Comptroller.** The Title Company shall permit the City Comptroller or his designee, during reasonable business hours, to inspect and audit all books and records relating to the Title Company's performance of its obligations under this Agreement.

**9. Inspections by CONTRACTOR.** The CONTRACTOR shall be responsible for making inspections of each Project during the course of construction, and shall determine to its own satisfaction that the work done, if any, or materials supplied by the Contractors to whom payment is to be made out of each draw has been properly done or supplied in accordance with applicable contracts with such Contractors.

**10. Inspections by DNS.** The CITY, acting through DNS, shall conduct inspections on behalf of the CITY for the purpose of determining whether work on each Project has been completed. The CITY is hereby authorized to enter upon the premises for the purpose of making such inspections. It is understood that the inspections which DNS conducts are for the benefit of the CITY only. The CONTRACTOR acknowledges that it will be the CONTRACTOR's personal responsibility to assure itself that the quality of workmanship and material is satisfactory, and that each Project is built in accordance with plans and specifications.

**11. Disclaimer of Responsibility for Completion of Project.** It is expressly understood and agreed that neither the CITY nor the Title Company assumes any liability or responsibility for the satisfactory completion of each Project, nor for the adequacy of funds deposited with either of them pursuant hereto to complete each Project, nor for any other acts on the part of the CONTRACTOR, or the contractors or subcontractors to be performed in the construction of each Project.

**12. Assignment.** Neither the Title Company nor the CONTRACTOR shall assign this contract or any interest therein, nor sublet the same, or any part thereof, without the consent in writing of the CITY, being first obtained, and that if the part of the first part shall so assign or sublet, with such consent, then the CITY shall have the right, in its discretion, to rescind the contract and to declare the same null and void.

**13. Prompt Performance.** The Title Company and Contractor shall and will well and truly execute and perform this contract under the terms applicable to the satisfaction of the CITY, and shall promptly make payment to each and every person or party entitled thereto of all the claims for work or labor performed and materials furnished in the performance of this contract.

**14. Indemnification.** The Title Company assumes full liability for all of its acts or omissions in the performance of this contract. The Title Company agrees to be legally liable for loss including theft, misallocation of funds, and errors due to the Title Company's negligence in the handling of funds held hereunder. The Title Company will save and indemnify and keep harmless the CITY against all liabilities, judgments, costs and expenses which may be claimed against the CITY in consequence of the granting of this contract to the Title Company, or which may result from the misconduct, carelessness or neglect of the Title Company, or its agents or employees in any respect whatever. If judgment is recovered, whether in suits of law or in equity, against the CITY by reason of the misconduct, carelessness or negligence (whether by acts of commission or omission) of the Title Company or such persons, firms or corporations carrying out the provision of the contract for the Title Company, the Title Company assumes full liability for such judgment not only as to the amount of damages, but also the cost, attorneys fees or other expenses resulting therefrom.

**15. No Waivers.** Failure or neglect of the CITY to require compliance with any term or condition of the contract or the scope of services shall not be deemed a waiver of such term or condition.

**16. Advertisement of Award.** The award of a contract by the City of Milwaukee does not grant permission to commercially advertise such an award unless specific authority is granted by the CITY.

**17. Conflict of Interest.** The Title Company covenants and agrees that Title Company is the only party with an interest in this contract, and that no person or corporation other than named has any interest in the contract. Title Company covenants and agrees that this agreement was entered into without any understanding, agreement, or connection with any person, firm or corporation making a bid for the same supplies, and that its proposal to enter into this Agreement was in all respects fair and without collusion or fraud; no member of the Common Council of the City of Milwaukee or head of any department or chief of any bureau or deputy thereof or clerk therein or any other officer, official or employee of the City of Milwaukee is, shall be or become interested directly or indirectly as contracting party, partner, stockholder, or in any other manner, in the supplies, material, items, services, equipment or work to which this Agreement relates, or in any portion of the profits or consideration thereof; Title Company is not in arrears to the City of Milwaukee upon any debt or contract or is not a defaulter, as surety or otherwise, upon any obligation to the City of Milwaukee, and this contract is not in violation of any of the provisions of Section 348.28 of the Wisconsin Statutes of 1933, which among other things prohibits officers, clerks, employees, or officials from entering into contract, directly or indirectly, with the City of Milwaukee, by whom they are employed.

**18. Discrimination Prohibited.** In all hiring or employment made possible by or resulting from this Agreement there (1) will not be any discrimination against any employee or applicant for employment because of race, color, sex orientation, religion, sex or national origin, and (2) affirmative action will be taken to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex orientation, sex or national origin.

This requirement shall apply to but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. There shall be posted in conspicuous places available to employees and applicants for employment, notices required or to be provided by federal or state agencies involved setting forth the provisions of the clause. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex orientation, sex or national origin.

No person in the United States shall, on the ground of race, color, sex orientation, religion, sex or national origin be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Contract. The CITY and each employer will comply with all requirements imposed by or pursuant to the regulations of the appropriate federal agency effectuating Title VI of the Civil Rights Act of 1964.

**19. ADA Compliance.** The Title Company agrees that it will comply with all applicable requirements of the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq.

**20. Duration.** This Agreement shall remain in effect for a term of one year beyond the date of its execution; provided, however, that if the Project is not completed by that date, this Agreement may be extended at the option of the CITY for successive additional one-year terms until the Project is completed.

**21. Termination for Cause.** This Agreement may be terminated by the CITY in the event of a breach by the Title Company of any of its obligations, representations or covenants hereunder. The CITY shall give the Title Company a 10 day written notice of such termination. In the event of such termination, the Title Company shall transfer management of the escrow account hereunder, and all necessary information for administration thereof, to a successor Title Company to be designated by the CITY.

**22. Termination for Convenience.** This Agreement may be terminated with the mutual consent of the CITY and the Title Company. In the event of such termination, the CITY and the Title Company shall mutually agree to the date for transfer management of the escrow account hereunder, and all necessary information for administration thereof, to a successor Title Company to be designated by the CITY.

**23. Compensation to Title Company.** The Title Company shall be compensated for its services hereunder as provided in the schedule attached hereto.

**24. Terms of RFP.** The terms and conditions set forth in the CITY's Request for Proposals with respect to this Agreement, and the Title Company's response thereto, are hereby incorporated by reference, and each of the obligations, representations and covenants agreed to therein by the Title Company shall be binding upon the Title Company as if fully set forth herein.

**25. Notices.** Any notices required by this Agreement shall be delivered to the following addresses:

If to the CITY:

Community Development Grants Administration  
200 East Wells Street, Room 600  
Milwaukee, Wisconsin 53202  
Attention: Steven L. Mahan, Director

If to the City Comptroller:

City of Milwaukee  
Office of the Comptroller  
200 East Wells Street, Room 400  
Milwaukee, Wisconsin 53202  
Attention: Martin Matson, City Comptroller

If to the CONTRACTOR:

«Organization»  
«Address»  
Milwaukee, Wisconsin Zipcode  
Attention: FName LName

If to the Title Company:

Chicago Title Insurance Company  
20825 Swenson Drive #200  
Waukesha, WI 53186

**26. Limits of Title Company's Duties.** The functions and duties assumed by the Title Company include only those described in this Agreement, and the Title Company is not obligated to act except in accordance with the terms and conditions of this escrow agreement. The Title Company does not certify or insure that (a) the building will be completed, (b) that the building, when completed, will be in accordance with plans and specifications, (c) that sufficient funds will be available for completion, or (d) that the certifications of the Inspector/Architect are correct. The Title Company shall not be responsible for any loss of documents or funds while such documents or funds are not in its custody. Documents or funds deposited in the United States Mail shall not be construed as being in custody of the Title Company.

**27. Prompt Payment.** It is the CITY's policy to pay all invoices within 30 days. If the CITY does not make payment within 45 days after receipt of properly completed supporting payment and other required contract documentation, the CITY shall pay simple interest beginning with the 31st calendar day at the rate of one percent per month (unless the amount due is subject to a good-faith dispute and, before the 45th day of receipt, notice of the dispute is sent to the contractor by first-class mail, personally delivered, or sent in accordance with the notice provisions in the contract). If there are

subcontractors, consistent with s.66.0135(3), Wis. Stats., the prime contractor must pay the subcontractors for satisfactory work within seven days of the contractor's receipt of payment from the CITY, or seven days from receipt of a properly submitted and approved invoice from the subcontractor, whichever is later. If the contractor fails to make timely payment to a subcontractor, the contractor shall pay interest at the rate of 12 percent per year, compounded monthly, beginning with the 8th calendar day. Reference Common Council File No. 101137 adopted January 2011.

**28. Severability; Governing Law.** If any provision hereof is duly held by a court of competent jurisdiction to be invalid with respect to any circumstance or otherwise, the remainder of this Agreement and/or the application of the Agreement to any other circumstance, shall not be affected thereby. The parties intend that the laws of the State of Wisconsin and ordinances and regulations of the City of Milwaukee shall be the governing law with respect to this Agreement.

By our signatures on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the undersigned Title Company, the CONTRACTOR, and the City of Milwaukee agree to all terms and conditions of this Agreement.

**Organization**

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

Title: \_\_\_\_\_

**THE CITY OF MILWAUKEE**

By: \_\_\_\_\_  
CDGA Director

Date: \_\_\_\_\_

**COUNTERSIGNED:**

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

Date: \_\_\_\_\_

**CHICAGO TITLE INSURANCE COMPANY:**

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form and execution this \_\_\_\_\_ day of \_\_\_\_\_, **2017**

By: \_\_\_\_\_  
Assistant City Attorney