

## SERVICE PROVIDER SUBCONTRACT

This Subcontract is made as of the \_\_\_\_ day of \_\_\_\_\_, 2023, by and among DC MANAGEMENT LLC, a Maine limited liability company with a place of business and mailing address of 631 Stevens Ave, Suite 203, Portland, Maine 04103 (“DCM”), DC BLUEBERRY LLC, a Maine limited liability company with a place of business and mailing address of 631 Stevens Ave, Suite 203, Portland, Maine 04103 (“Owner”) the CITY OF PORTLAND, a Maine body corporate and politic with a place of business and mailing address of 389 Congress Street, Portland, Maine 04101 (“City) and MAINE IMMIGRANTS’ RIGHTS COALITION, a Maine nonprofit corporation with a place of business in Portland, Maine and mailing address of 1 Marginal Way, Second Floor, Portland, Maine 04101 ( MIRC; collectively with the City, the “Service Providers”)

WITNESSETH:

WHEREAS, DCM has an agreement with Owner under which DCM will provide property management services to Owner with respect to Owner’s project located at 166 Riverside Industrial Parkway in Portland, Maine (the “Property”); and

WHEREAS, the Property will serve as an emergency homeless shelter for persons for whom the City is the municipality of responsibility under 22 M.R.S. § 4307, as may be amended (the “Project”); and

WHEREAS, Maine State Housing Authority (“MaineHousing”) has provided funds (the “Grant”) to Center for Regional Prosperity, a Maine nonprofit corporation (“CRP”) which will provide funding to be disbursed to Owner to pay for rehabilitation and operating and other costs with respect to the Project, and MaineHousing and CRP have entered into a Grant Agreement dated as of June \_\_\_\_, 2023 (the “Grant Agreement”) governing expenditures of the Grant and reporting and other requirements, a true and correct copy of which is attached to this Agreement as Exhibit A and is incorporated herein by reference; and

WHEREAS, DCM wishes to engage Service Providers to provide to DCM and Owner services with respect to the operation of the Project as more particularly set forth in this subcontract;

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. For a period of six months from the date of this Agreement, the Project shall operate on an emergency basis, without final land use approvals, as provided in the Portland Portland City Code. During that time, DCB shall work to obtain, at its sole expense, all required permanent permits and approvals for operation of the Project and a certificate of occupancy. If DCB does not obtain such permits and approvals, and the Project is not allowed to continue to operate on an emergency basis, this Agreement shall terminate and parties shall have no further

obligations hereunder, except for those obligations that expressly survive termination of this Agreement.

2. The term of this Agreement shall be 3 years commencing on the date of issuance of at least a temporary certificate of occupancy for the Project that allows for occupancy by persons experiencing homelessness.

3. During the term of this Agreement, Service Providers shall be responsible for providing the services described in the Initial Service Plan (attached hereto as Exhibit B and incorporated herein by reference) and for establishing pre-occupancy procedures for the Project; resident income certification; resident selection and placement; marketing for the Project; interior janitorial services and trash removal, and all other services that Service Providers determine are required to operate the Project in accordance with applicable local, state, and federal laws, rules and regulations. Notwithstanding anything to the contrary in the Grant Agreement, DCB, Owner, and MIRC acknowledge and agree that during the term of this Agreement, the City shall have sole control over resident selection at the Project and that all residents at the Project shall be persons for whom the City is the municipality of responsibility under 22 M.R.S. § 4307, as may be amended. In carrying out its duties under this Section, City, as a Service Provider, will place individuals and/or families who are experiencing, or are at risk of experiencing, homelessness, giving priority to those individuals residing at the Homeless Service Center, whose service needs are more aligned with the services to be provided at the Project than the services being provided at the Homeless Service Center. Additionally, upon approval of the Management Plan, as that term is defined below, the Management Plan will replace the Initial Service Plan as Exhibit B to this Agreement, and Service Providers shall be responsible for performing all services described in the Management Plan. To the extent that there is any conflict between the provisions of this Agreement and the Management Plan, the provisions of the Management Plan will control. During the term of this Agreement, so long as there exists no event of default hereunder, continuing beyond the expiration of any applicable grace period, DCB and Owner will not enter into any contracts with third parties to provide shelter operations services at the Project without Service Providers' prior written consent. DCM and Owner further agree not to conduct any operations or business at the Property except as necessary for DCM to fulfill its obligations under this Agreement.

4. Except as otherwise specified in this Agreement, Service Providers will have no responsibility to maintain or repair any aspect of the Property, unless damage is caused by guests' misconduct. DCM shall, at its sole expense, maintain in good condition and keep in good repair all aspects of the Property, including, without limitation, all structural components; all interior and exterior walls, floors, and ceilings; all doors and windows; all fixtures; all HVAC and other equipment; all utility equipment and infrastructure at the Property; and all snow removal, landscaping, parking areas, and hardscaping at the Property. Service Providers will promptly advise DCM of any known maintenance or repairs that may be needed from time to time at the Property, and any issues that may affect guests' ability to successfully navigate occupancy at the Project. DCM and Owner shall be responsible for paying all real and personal property taxes due on the Property.

5. DCM shall, at its sole expense, install all utilities and pay all monthly or other recurring expenses for all utilities reasonably required for operation of the Project, including, without limitation, electricity, water, hot water, sewer, natural gas, and heating oil (such monthly or recurring utility expenses are referred to herein as “Monthly Utility Expenses”). Service Providers shall make commercially reasonable efforts to seek reimbursement from third parties for Monthly Utility Expenses, but are no obligation to obtain such reimbursements. To the extent that Service Providers receive reimbursement for Monthly Utility Expenses, Service Providers will reimburse DCM for its documented Monthly Utility Expenses. Notwithstanding the foregoing, Service Providers shall be responsible for their own telephone and internet systems and service.

6. Service Providers will be compensated for its services by third parties, and neither Owner nor DCM shall have any responsibility to compensate Service Providers for the services they provide under this Agreement.

7. DCM or its designee has applied for and received approval under the Grant Agreement to expend Grant funds to purchase and install such furniture, fixtures, and equipment needed for necessary operation of the Project. DCM agrees that the City shall be allowed to select \$250,000.00 worth of such furniture, fixtures, and equipment that it determines are needed for operation of the Project. DCM is not required to spend more funds than are available under the Grant Agreement, nor is DCM required to replace such furniture, fixtures, and equipment that may become damaged by reason of the misconduct of Project guests, or purchase additional equipment, both of which shall be responsibility of Service Providers unless Grant funds are available for such replacement or purchases.

8. In performing its duties under this subcontract, Service Providers will comply at all times with applicable terms of the Grant Agreement and all applicable federal, state and local laws, rules, regulations, ordinances and orders (including but not limited to the Americans With Disabilities Act (“ADA”) and Fair Housing regulations); provided, however, that it is the responsibility of the Owner to assure that any renovations to the Project comply with applicable provisions of the ADA. Service Providers understand and agree that, without limiting the generality of the foregoing, compliance with the recordkeeping and reporting requirements set forth in Sections 6 and 7 of the Grant Agreement is critical. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement is intended to require the Service Providers to perform any of DCM’s or Owner’s obligations to CRP under the Grant Agreement.

9. Either party may terminate this subcontract upon thirty (30) days prior written notice if the other party commits a material breach or fails substantially to perform its obligations pursuant to this subcontract and does not cure such breach or failure to the reasonable satisfaction of the nonbreaching party within such thirty (30) day period. If the breach cannot reasonably be cured within such 30-day period, the breaching party shall commence and begin diligently to pursue a cure of the breach within that period and cure the breach within a commercially reasonable period thereafter. Written notices given under this paragraph shall describe the nature and extent of the breach or failure and specify the effective date of termination. Notwithstanding anything else in this Agreement, MIRC shall not be liable to the City, DCM or Owner for any breach of this Agreement or other damages resulting from its

failure to provide services under this Agreement due to MIRC's inability to secure sufficient funding. This limitation on MIRC's liability shall not apply to its indemnity obligations under section 10 of this Agreement.

10. Indemnification.

a. Each party (each, an "Indemnifying Party," as applicable) shall indemnify, defend, and hold harmless each other party, their officers, directors, members, managers, partners, agents, and employees (collectively, "Indemnified Parties"), from and against any and all Losses (as that term is defined below) to the extent such Losses arise from or relate to (i) a breach of this Agreement; (ii) any act, omission, or negligence of such Indemnifying Party, its officers, agents, employees, contractors, subcontractors, or anyone else for whom the Indemnifying Party may be liable; (iii) any violation by an Indemnifying Party or their respective servants or employees of laws, rules, regulations or ordinances applicable to the Project and the services rendered at the Project; or (iv) failure of the Indemnifying Party or their respective servants or employees to comply with the terms of the Grant Agreement to the extent that the Indemnifying Party is obligated to comply with such terms. The term "Losses" shall mean all claims, demands, expenses, actions, judgments, damages (actual, but not consequential), penalties, fines, liabilities, actual losses of every kind and nature, reasonable sums paid in settlement of claims (which settlement is approved by Service Providers), suits, administrative proceedings, costs and fees, including, reasonable attorneys' and consultants' fees and expenses, that are in any way related to any matter covered by the foregoing indemnity.

b. City's obligations under Section 10 a. above are subject to and limited by, and shall not be construed as a waiver of, the City's right to assert any and all defenses in response to claims made against the City, its officers, agents, or employees pursuant to the Maine Tort Claims Act or any other privileges or immunities as may be provided by law.

c. The indemnification provisions of this Section 10 shall survive the expiration or termination of this Agreement.

11. DCM and Owner shall at all times carry occurrence based commercial general liability insurance in amounts of not less than [One Million Dollars (\$1,000,000.00)] per occurrence. DCM and Owner shall also maintain property insurance sufficient to cover the Property and improvements made to it pursuant to this Agreement. In the event of a loss at the Property that interrupts Service Providers' ability to provide the services contemplated by this Agreement, DCM and Owner shall commit the available insurance proceeds to restore the Property to serviceable condition and cover any interim or replacement facility needs, including rent and other infrastructure expenses, provided MaineHousing allows the use of such proceeds, and if MaineHousing does not allow the use of such proceeds and terminates the Grant Agreement, then any party may terminate this Agreement.

Prior to the execution of this Agreement, MIRC will procure and maintain occurrence based Commercial General Liability Insurance coverage in amounts of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, death and property damage, and

Workers' Compensation Insurance coverage to the extent required by law, which shall include an endorsement waiving all rights of subrogation against the City of Portland, DCM, Owner, and their officers or employees. With respect to the Commercial General Liability MIRC shall name DCM and Owner as an additional insured, and MIRC shall name the City as additional for coverage for claims for which the City does not have governmental immunity, including, without limitation, those areas where government immunity has been expressly waived as set forth in 14 M.R.S. A. § 8104-A, as limited by § 8104-B, and § 8111. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the City under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the City. Prior to execution of this Agreement, MIRC shall furnish the City, DCM, and Owner and thereafter maintain certificates evidencing all such coverages, which certificates shall guarantee thirty (30) days' notice of termination of insurance from the insurance provider or agent.

City shall maintain insurance or self-insurance of not less than the statutory cap pursuant to the Maine Tort Claims Act, 14 M.R.S.A. §8101 et seq., including for the acts and omissions of its employees occurring within the course and scope of employment, and pursuant to the Maine Worker's Compensation Act of 1992, 39 M.R.S.A. §101 et seq. Under the provisions of the Maine Tort Claims Act and subject to the limitations of liability described therein, liability is imposed on a municipality for property damage, bodily injury and death. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to City under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the City. City further agrees to maintain the above stated insurance on an occurrence basis during the term of this Agreement and add DCM and Owner, as a member or additional insured thereon. City shall also require its contractors providing services within the Project to maintain insurance in commercially reasonable amounts. City shall provide a Certificate of Insurance evidencing such coverage upon request. In the case of any self-insurance, the City shall issue a letter to that effect upon request. City may insure or self-insure for its contents in the Project.

Notwithstanding anything in this Agreement to the contrary, the City's obligations under this Agreement are subject to and limited by the defenses, immunities, and limitations of liability or damages available to the City under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the City.

12. For at least the first [18] months of the term of this Agreement (the "City Provider Period"), City shall be primarily responsible for performing all obligations of the Service Providers under this subcontract. At any time after the eighteenth month of the term hereof, or at such earlier date agreed to by the parties, the City may request DCM's consent to allow MIRC to assume full responsibility of the Service Providers under this subcontract, which consent DCM will not unreasonably withhold. Upon DCM's granting of such consent, the City's obligations under this Agreement will terminate, and, upon City's request, DCM, Owner, and MIRC shall release the City in writing as to any future obligations under this agreement. Notwithstanding the foregoing, MIRC acknowledges and agrees as follows:

(a) At all times during the term of this Agreement, MIRC shall purchase food for and provide sufficient staff to prepare and serve three meals per day for all residents at the Project. MIRC shall also provide sufficient staff to clean up after each meal.

(b) For five days per week during the City Provider Period, MIRC shall provide two employees each day at the Project, one during a day shift, and one during an overnight shift, to shadow City staff at the Project so that MIRC will be able to assume full responsibility as the sole Service Provider for the Project after the City Provider Period.

(c) By the end of the City Provider Period, MIRC will have hired and trained a sufficient number of staff to assume full responsibility as the sole Service Provider at the Project.

(d) At all times during the City Provider Period, the City, and not MIRC, will be entitled to seek general assistance reimbursement for bed nights at the Project.

(e) MIRC, in accordance with its status as an independent contractor, covenants and agrees that its employees shall be regarded for all legal and tax purposes as employees of MIRC during the term of this Agreement, and MIRC shall govern and supervise the work of its employees. MIRC shall discharge all obligations imposed upon employers under the law, including without limitation payment of wages, social security taxes, withholding taxes, unemployment taxes and worker's compensation. MIRC's employees shall not be considered employees of the City for any purpose and shall not be entitled to any retirement benefits, social security benefits, group health or life insurance, vacation or sick leave, worker's compensation, or any other similar benefits from the City. MIRC further covenants and agrees that its employees will conduct themselves consistent with such status, that they will neither hold themselves out as, nor claim to be, officers or employees of the City by reason of this Agreement, and that MIRC and its employees will not, by reason of this Agreement, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the City, including but not limited to health insurance, unemployment insurance benefits, Workers' Compensation benefits, Social Security coverage or retirement membership or credit.

(f) With the approval of DCM, which shall not be unreasonably withheld, MIRC may use its member organization businesses or other contractors to fulfill its obligations under this agreement, but no such arrangement shall operate to release MIRC from its obligations under this Agreement.

13. This subcontract constitutes the entire understanding between the parties hereto and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the subject matter of this subcontract. In the event of a conflict between the terms of this Agreement and the Grant Agreement, the terms of the Grant Agreement shall control, except

as otherwise specified in this Agreement. DCM will not agree to amend the Grant Agreement without the Service Providers' prior written consent, which the Service Providers will not unreasonably withhold.

14. This subcontract may be modified or amended by the mutual assent of the parties hereto; provided however, that no such modification or amendment to this Subcontract shall be binding unless in writing and signed by the parties hereto.

15. This subcontract shall be governed by and construed in accordance with the laws of the State of Maine.

16. The City, in consultation with MIRC, shall have sole responsibility for creating and implementing such management plan (the "Management Plan") as may be required as part of the Project's conditional use application to the City's Planning Board. Upon municipal approval of such conditional use application, the Management Plan will be automatically incorporated into this document and shall replace the Initial Service Plan. Except for the Management Plan, DCM will be solely responsible for preparing, filing, and all costs associated with the conditional use application and all other permits and approvals required for the Project.

17. In the event issues arise during the term of this Agreement that materially affect any party's ability to perform its obligation hereunder, the affected party shall notify the other parties and all parties shall work in good faith to address the issues so raised.

IN WITNESS WHEREOF, DCM, Owner, and Service Providers have duly executed this subcontract as of the date first set forth above.

DC MANAGEMENT LLC

By: \_\_\_\_\_  
Kevin R. Bunker, its Manager

DC BLUEBERRY LLC

By: \_\_\_\_\_  
Kevin R. Bunker, its Manager

*[remainder of page left blank intentionally—signatures continue on next page]*

MAINE IMMIGRANTS' RIGHTS  
COALITION, Service Provider

By: \_\_\_\_\_  
Mufalo Chitam, its Executive  
Director

CITY OF PORTLAND, Service Provider

By: \_\_\_\_\_  
Danielle P. West, its City Manager



**EXHIBIT A**

(Attach copy of signed Grant Agreement)

## **MAINE STATE HOUSING AUTHORITY LONG-TERM SOLUTIONS GRANT AGREEMENT**

The Maine State Housing Authority, a public body corporate and politic and instrumentality of the State of Maine with a principal place of business and mailing address of 26 Edison Drive, Augusta, Maine 04330 (“MaineHousing”) and Center for Regional Prosperity, a Maine non-profit corporation, with a mailing address of 970 Baxter Boulevard, Portland, Maine 04103 and a Federal tax identification number of 83-0879130 (the “Beneficiary”), and DC Blueberry LLC, a Maine limited liability company, with a mailing address of 631 Stevens Ave. Suite 203, Portland Maine 04103 (“Developer;” collectively with MaineHousing and Beneficiary, “the Parties”) enter into this Long-Term Solutions Grant Agreement as of the 7<sup>th</sup> day of June, 2023 (the “Agreement”).

### **BACKGROUND**

1. The Maine State Legislature, through L.D. 3, appropriated \$21 million dollars from the unappropriated surplus of the State of Maine’s General Fund, Emergency Housing Relief Fund Program, Other Special Revenue Funds account, to provide one-time funding to support emergency housing and emergency shelters to prevent people from experiencing homelessness.
2. MaineHousing is making the Long-Term Solutions Grant available to provide long-term solutions to unsheltered homelessness through permanent supportive housing, shelter beds, or other opportunities that will continually provide warm, safe and dry accommodations for Mainers experiencing homelessness beginning no later than this winter 2023/2024.
3. Beneficiary is a recipient of the Long-Term Solutions Grant funds from MaineHousing as a result of a successful proposal provided by Beneficiary in response to MaineHousing’s Notice of Funding Availability for Long-Term Solutions to Assist People Experiencing Homelessness, issued January 13, 2023.
4. Beneficiary has changed the location of the proposed project real estate from 90 Blueberry Road to 166 Riverside Industrial Parkway (the “Site”), and Beneficiary’s Budget has been updated to include building acquisition, final construction fitup numbers, soft costs, and three years of operating expenses. This change in location and Beneficiary Budget has been accepted by MaineHousing.
5. Beneficiary will be relying on other parties to fulfill its obligations under this Agreement. In particular, Developer will ultimately own and operate the facility. As part of its contribution, Developer will borrow, and MaineHousing has agreed to loan, additional funds to balance the budget, as detailed in Section 17 below.
6. MaineHousing agrees to provide two allocations of Grant funds to Beneficiary in accordance with this Agreement.

## **AGREEMENT**

### **1. GRANT PERIOD.**

The Grant is for the period June 13, 2023 to June 13, 2026 (the “Grant Period”), unless sooner terminated in accordance with this Agreement.

### **2. GRANT AMOUNT.**

Beneficiary is eligible for a grant up to the total amount of \$4,596,160 (the “Grant”) in accordance with Beneficiary’s Budget attached hereto as Appendix D.

### **3. USE OF PROCEEDS.**

Grant proceeds shall be used in accordance with Beneficiary’s Application Information Sheet for MaineHousing Notice of Funding Availability for Long-Term Solutions to Assist People Experiencing Homelessness attached hereto as Appendix A and incorporated herein.

### **4. ALLOCATIONS, BENCHMARKS AND PLACEMENT.**

- A. Initial Allocation. MaineHousing will provide Beneficiary with an allocation of Grant funds in the amount of \$3,447,120 not later than the date of closing on the Site. Beneficiary will be required to support expenditures in quarterly reports, more fully described in Section 6, Tracking and Reporting, and submitted in a form approved by MaineHousing.
- B. Second Allocation. MaineHousing will provide Beneficiary a second allocation of Grant funds in the amount of \$1,149,040 upon receipt of: (1) a signed service agreement with the City of Portland and any other Service Providers to provide placement and other services to guests; (2) proof a contractor has been secured; (3) completion of 50% of the rehabilitation work; and (4) a rehabilitation reconciliation of monies spent on the first 50%.
- C. Initial Benchmark. By June 30, 2023 Beneficiary must have hired a contractor and secured from the City of Portland the service agreement referred to in paragraph B. above. Beneficiary shall connect with MaineHousing no later than June 30, 2023 to confirm the Initial Benchmark has been met. If the Initial Benchmark has not been met, MaineHousing reserves the right to provide the Beneficiary with additional time to meet the Initial Benchmark or to terminate this Agreement and request Beneficiary repay any unused Grant funds. MaineHousing acknowledges that the project may operate on an emergency basis without municipal approval and that municipal approval, which is not guaranteed to occur, is not required for a period of six months from initial occupancy.
- D. Second Benchmark. By November 30, 2023 the rehabilitation must be complete and Beneficiary must be serving individuals as described in Appendix A.

- E. Placement. The City of Portland, as Service Provider, will determine placement of individuals and/or families who are experiencing, or are at risk of experiencing, homelessness, giving priority to those individuals residing at the Homeless Service Center, whose service needs are more aligned with the services to be provided at the Site than the services being provided at the Homeless Service Center, as described in Appendix A.

## **5. OVERPAYMENT RECOVERY**

Any amount of the allocation of Grant funds later determined to have been made in excess of the amount necessary to provide the services outlined in Appendix A will at MaineHousing's discretion be refunded to MaineHousing. Beneficiary shall refund to MaineHousing any and all unexpended funds received from MaineHousing pursuant to this Agreement as directed by MaineHousing.

In the event MaineHousing determines, in its sole judgement, an overpayment occurred due to Beneficiary's error in determining expenditures, Beneficiary may be required to refund the overpayment to MaineHousing. MaineHousing will give Beneficiary a notice stating the findings and the amount of overpayment to be refunded.

MaineHousing, Beneficiary, and Developer further agree that any overall savings relative to budget shall be shared on an equal 50/50 basis between MaineHousing, in the form of returned Grant funds, and the Developer, in the form of a smaller Developer Loan. The parties further agree that overall savings shall be calculated at the end of the Grant Period.

## **6. TRACKING AND REPORTING**

Beneficiary shall track or cause to be tracked all costs associated with the Grant funds and submit to MaineHousing a quarterly accounting of costs and use of the Grant funds on the Expense Reporting Form, attached hereto as Appendix B, or in another format prescribed by MaineHousing, by July 15, 2023; October 15, 2023; January 15, 2024; April 15, 2024; July 15, 2024; October 15, 2024; January 15, 2025; and April 15, 2025. Beneficiary shall also submit or cause to be submitted to MaineHousing two (2) rehabilitation reconciliations, one at 50% completion and one at 100% completion. Beneficiary shall also submit or cause to be submitted quarterly Progress Reports on the progress of Beneficiary's proposal outlined in Appendix A. Beneficiary's Progress Reports will be due at the same time as the Expense Reporting Form and should describe the activities conducted by Beneficiary during the quarter, the services provided, the number of individuals/families served, the impact of Beneficiary's activities, Beneficiary's goals for the next quarter and any conflicts of interest that may have arisen. Beneficiary shall submit Progress Reports on the Progress Report Form, attached hereto as Appendix C, or in another format prescribed by MaineHousing.

## **7. MAINTENANCE, INSPECTION, AUDITING OF RECORDS AND REPORTING.**

The Beneficiary shall properly maintain or cause to be maintained all books, documents, payrolls, papers, information, records, accounting records, client files, and other material pertaining to this

Agreement and shall make or cause to be made such materials available in redacted format or through an anonymized report from Beneficiary's case management program, at MaineHousing's request, at its offices for purposes of audit, inspection, duplication, and examination so as to allow MaineHousing to conduct fiscal monitoring on an annual basis. MaineHousing shall have access to confidential information to the extent necessary to conduct such reviews. The Beneficiary shall maintain or cause to be maintained such books and records for five (5) years after the termination of this Agreement. Beneficiary must submit or cause to be made quarterly reports as outlined in Appendix A.

## **8. CONFIDENTIAL INFORMATION.**

Any information acquired by the Beneficiary, its employees, agents, or contractors in the performance of this Agreement shall be kept confidential in accordance with applicable law. Beneficiary shall safeguard and protect from disclosure at all times, and shall cause its employees, officers, agents, contractors, subcontractors and other representatives to safeguard and protect from disclosure at all times, all information about the individuals and families experiencing homelessness ("Clients").

## **9. TERMINATION.**

- A. Termination for Convenience by MaineHousing. MaineHousing may terminate this Agreement at any time for any reason whatsoever by giving written notice to Beneficiary of such termination and specifying the effective date thereof. In the event of such termination, MaineHousing shall be obligated to pay Beneficiary only for costs actually incurred by Beneficiary or its agents, or as to costs which Beneficiary or its agents are contractually obligated to pay, to the effective date of such termination provided that such costs have been accepted by MaineHousing or are reflected in the budget submitted to an approved by MaineHousing. Beneficiary will be required to return any unused Grant funds in accordance with Section 5, Overpayment Recovery.
- B. Termination for Cause by MaineHousing. MaineHousing shall also have the right to terminate this Agreement immediately in the event MaineHousing determines, in its reasonable judgment, that Beneficiary has failed to perform its obligations hereunder or has breached any representation or warranty made by Beneficiary hereunder, which failure or breach is not cured within thirty (30) days of written notice thereof. If the failure or breach is not cured within the foregoing grace period, such termination shall be effective on the date specified in a notice of termination given by MaineHousing to Beneficiary. In the event of such termination, MaineHousing shall be obligated to pay Beneficiary only for costs actually incurred by Beneficiary or its agents, or as to costs which Beneficiary or its agents are contractually obligated to pay, to the effective date of such termination provided that such costs have been accepted by MaineHousing or are reflected in the budget submitted to and approved by MaineHousing. Beneficiary will be required to return any unused Grant funds in accordance with Section 5, Overpayment Recovery.
- C. Termination for Convenience by Beneficiary. Beneficiary shall have the right to terminate this Agreement upon no less than thirty (30) days' advance written notice

to MaineHousing. In the event of such termination, MaineHousing shall be obligated to pay Beneficiary only for costs actually incurred by Beneficiary to the effective date of such termination provided that such costs have been accepted by MaineHousing. Beneficiary will be required to return any unused Grant funds in accordance with Section 5, Overpayment Recovery.

#### **10. INDEMNIFICATION.**

Each Party (in such capacity, an "Indemnifying Party") agrees to defend and indemnify the other party, its officers, directors, employees and agents (each, an "Indemnified Party") against, and hold the same harmless from, all liability, losses, damages, obligations, judgments, claims, causes of action and expenses (including court costs, reasonable settlements and attorneys' fees) ("Claim" or, collectively, "Claims") resulting from or arising out of, directly or indirectly, any breach by the Indemnifying Party of any of its covenants, representations or warranties contained in this Agreement. Notwithstanding the foregoing, an Indemnifying Party shall not be obligated to defend, indemnify and hold harmless an Indemnified Party from and against a Claim to the extent that such Claim results from or arises out of the intentional dishonest, fraudulent, criminal or malicious act of any Indemnified Party.

In addition to Beneficiary's obligation to indemnify MaineHousing, Beneficiary specifically acknowledges and agrees that it has an immediate and independent obligation to defend MaineHousing from any claims, lawsuits and/or demands of any kind which actually or potentially fall within this indemnification provision, even if the claims, lawsuits and/or demands of any kind are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Beneficiary by MaineHousing and continues at all times thereafter.

The foregoing provisions shall survive any final expiration or early termination of this Agreement.

#### **11. DEFAULT REMEDIES.**

Default by Beneficiary. In addition to the right to terminate this Agreement as provided in Section 9 hereof, in the event of default by Beneficiary in the performance of one or more of its obligations under this Agreement, MaineHousing will have the right to:

- a. recapture any Grant funds paid to Beneficiary not actually expended;
- b. offset any amounts owed to Beneficiary under this Agreement against any damages or costs incurred by MaineHousing as a result of Beneficiary's failure to perform its obligations under this Agreement, including but not limited to costs of procuring replacement services and costs incurred by MaineHousing attributable to delays in obtaining the services to be provided by Agreement hereunder, including without limitation any fines, penalties or assessments;
- c. recover compensatory damages from Beneficiary for breach by Beneficiary of this Agreement;
- d. bring an action against Beneficiary for specific performance to require Beneficiary to turn over to MaineHousing any records that MaineHousing is entitled to review, inspect, copy, audit or receive hereunder; or

- e. bring an action against Beneficiary to enjoin Beneficiary from destroying or removing any records, materials or documents related to the services hereunder.

In all such instances, MaineHousing shall have the right to recover from Beneficiary its reasonable attorneys' fees and costs. In addition to the rights and remedies available to MaineHousing under this Agreement, MaineHousing shall have all remedies available at law and in equity in the event of Beneficiary's default in the performance of its obligations hereunder. MaineHousing may, at its sole option, exercise one or more of the rights and remedies available under this Agreement, at law and in equity singly, simultaneously or sequentially, and the exercise of any right or remedy shall not preclude the exercise of any other right or remedy at any time.

## **12. ASSIGNMENT.**

Beneficiary shall not assign, subcontract, delegate, sell, transfer or otherwise dispose of this Agreement or any portion of its rights or obligations hereunder without the prior written consent of MaineHousing. Any such action taken without such prior written consent shall be null and void and shall not release Beneficiary from its obligations hereunder. Notwithstanding anything to the contrary contained in this paragraph, MaineHousing acknowledges and agrees that (i) Beneficiary will enter into agreements with Developer, (ii) Developer will own the Site upon commencement of occupancy and (iii) Developer or its management agent will enter into an agreement for services with the City of Portland and Maine Immigrants' Rights Coalition or other service provider (the "Service Provider") to provide services to residents of such facility. MaineHousing acknowledges and understands the Service Provider will be tasked with complying with this Agreement.

## **13. COMPLIANCE AND ENFORCEMENT.**

The Grant is subject to the Beneficiary's compliance with this Agreement and with all applicable federal, state and local laws and ordinances as may be amended from time to time.

Beneficiary agrees to comply with any additional or different requirements that MaineHousing believes upon advice of counsel are necessary to ensure compliance with the source of funds and that are communicated in writing to Beneficiary; provided, however Beneficiary shall have no obligation to expend any of its own funds to comply with such requirements.

## **14. NONDISCRIMINATION.**

Beneficiary shall not discriminate in any manner against any person because of race, color, religion, sex, sexual orientation, gender identity or expression, national origin, ancestry, age, physical or mental disability, or familial or marital status. Such prohibition against discrimination shall include, without limitation, all actions relating to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoffs or termination, rates of pay or other forms of compensation and selection for training.

## **15. BENEFICIARY'S REPRESENTATIONS AND WARRANTIES.**

- A. **Authority to do Business.** Beneficiary represents and warrants that it is authorized

to do business in the State of Maine, is duly organized, validly existing and in good standing under Maine and Federal laws; has the power and authority to carry on its business as now being conducted; is duly qualified to do such business wherever such qualification is required; and is in compliance with all applicable State and Federal laws governing its business.

- B. Authority to Enter Into Agreement.** Beneficiary represents and warrants that it and its employees and agents acting on its behalf are fully legally authorized to execute and deliver this Agreement and to engage in the transactions contemplated by this Agreement.

**16. AGREEMENT ADMINISTRATOR.**

The Beneficiary shall direct all submissions to MaineHousing pursuant to this Agreement to: Lauren Bustard, Senior Director of Homeless Initiatives by E-mail: [lbustard@mainehousing.org](mailto:lbustard@mainehousing.org) or at the MaineHousing address set forth above.

**17. DEVELOPER LOAN.**

The Parties agree that MaineHousing shall make a loan of \$592,000 to Developer of near or even date (the "Developer Loan"). The rate and term of the loan will be agreed upon by both MaineHousing and Developer and will be used as a source in accordance with the Beneficiary's Budget. The loan will be full recourse to the Developer but the Beneficiary shall have no obligation whatsoever in connection with the Developer Loan. MaineHousing will receive a first mortgage on the Property in connection with the Developer Loan. The Developer Loan will be drawn down after the Grant has been expended.

**18. CONFLICTS OF INTEREST.**

- A. Beneficiary has a duty to avoid conflicts of interest and the appearance of conflicts of interest. Beneficiary shall ensure that no person who is an employee, agent, or consultant of Beneficiary, and who performs or has performed any functions with respect to this Agreement may obtain a personal or financial interest or benefit (other than their earnings) from this Agreement, either for themselves or those with whom they have family, business, or close personal ties during their tenure. Each quarter, Beneficiary will submit a report notifying MaineHousing of the employees, including temporary staff and volunteers, of the Beneficiary who are beneficiaries (or prospective beneficiaries) of the Agreement. The report will identify the employee name, job title, and nature of the conflict and benefit.
- B. Beneficiary shall disclose to MaineHousing the name of any former MaineHousing employee or commissioner who was an employee or commissioner within the year and who works performs services under this Agreement.
- C. Beneficiary shall advise MaineHousing if anyone who will be paid for work under this Agreement has business ties, familial relationships, or other close personal relationships with a current MaineHousing employee, commissioner, or anyone who



was a MaineHousing employee or commissioner within the past year.

**18. ASSIGNABILITY; FINANCIAL RE-STRUCTURING.**

The Parties acknowledge that it may be advantageous to all Parties to structure some or all of the Grant as a deferred loan, or other mechanism, and further that it may be most advantageous to structure the Grant funds as a loan directly between MaineHousing and Developer. Upon Developer's reasonable request for such restructuring, and provided the Parties agree that the Grant shall be structured as described in the preceding sentence, then at Developer's election, Beneficiary agrees to assign its obligations under this Agreement to Developer and MaineHousing agrees to consent to such assignment and look solely to Developer for performance under this Agreement. If the Parties agree the Grant shall be restructured as provided in this paragraph, MaineHousing will enter into an amendment to this Agreement reflecting such restructuring in accordance with Developer's reasonable request, provided the basic intent of this Agreement is maintained. Such amendment may include but not be limited to: agreement in advance to subordinate to senior mortgages; and the addition of provisions to meet the true debt test and such other provisions as may be recommended by to Developer's tax advisors.

**19. ENTIRE AGREEMENT; SEVERABILITY**

This Agreement constitutes the entire agreement between MaineHousing and the Beneficiary and supersedes any other contract or agreement, written or otherwise, which previously may have been entered into by and between Beneficiary and MaineHousing for the provision of services and work described or contemplated herein for the term hereof. If any court determines that any provision of this Agreement is unenforceable, invalid or void, all other provisions of this Agreement not included in the court's determination shall remain in full force and effect, and both the Beneficiary and MaineHousing shall continue to be bound thereby.

**20. INDEPENDENT CAPACITY.**

It is understood and agreed by the parties hereto that Beneficiary, its agents or employees are acting in an independent capacity in the performance of this Agreement, and not as officers, agents or employees of MaineHousing.

**21. GOVERNING LAW.**

This Agreement shall be governed by, and construed under, the laws of the State of Maine.

**22. COUNTERPARTS.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one agreement binding on all of the parties hereto, notwithstanding that all of the parties have not signed the same counterpart. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature (including portable document format) by either of the parties and the receiving party may

rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.

**IN WITNESS WHEREOF**, the parties, by their duly authorized representatives, have executed this Agreement, effective as of the date first set forth above.

**MAINE STATE HOUSING AUTHORITY**

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: Daniel Brennan  
Its: Director

**CENTER FOR REGIONAL PROSPERITY**

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: Jerre Bryant  
Its: President

**DC BLUEBERRY LLC**

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: Kevin Bunker  
Its: Manager

**APPENDIX A****APPLICANT INFORMATION SHEET***for***MaineHousing Notice of Funding Availability for Long-Term Solutions to Assist  
People Experiencing Homelessness**

Please provide the following information, completed and signed, and place this form at the front of the application:

<b>General Information</b>	
<b>Applicant Name:</b>	Center for Regional Prosperity
<b>Federal Tax ID:</b>	83-0879130
<b>Street Address:</b>	970 Baxter Boulevard
<b>City, State, Zip:</b>	Portland, ME, 04103
<b>Telephone#:</b>	207-774-9891
<b>Homeless Service Hub Where Housing or Services will be Located (See Appendix C.)</b>	
<b>List of Partnering Organizations and Role (if any)</b>	Developers Collaborative (DC); Non-Profit TBD
<b>Contact Person for Questions</b>	
<b>Name:</b>	Belinda Ray
<b>Title:</b>	Director of Strategic Partnerships
<b>E-mail Address:</b>	bray@gpcog.org
<b>Telephone#:</b>	207-671-4000
<b>Description of Proposal</b>	

<b>Please describe what funding will be used for and how it will benefit people experiencing homelessness</b>	The Center for Regional Prosperity will distribute funding to DC to acquire and fit-up an existing facility at 166 Riverside Industrial Parkway in Portland to operate as an emergency shelter for individuals experiencing homelessness. The developer will then partner with a local nonprofit organization for shelter operations.
<b>Number of Individuals/Families to be Served on an annual basis</b>	On average 180 individuals per night. In total 65,700 bed nights annually.
<b>Staffing Plan</b>	To be determined by service provider
<b>Services to be provided</b>	The facility will allow for community collaboration to deliver wraparound services on site. Those services will be designed specifically around the needs of asylum seekers and further individualized to include housing navigation, case management, life skills, and immigration services. The services will evolve as need change.
<b>How will the proposal continue into the future despite this being one-time funding? Please describe the plans for sustainability.</b>	Once building fit-up is complete and congregate shelter space is created, service provider will be able to bill for bed nights to cover staffing costs.
<b>Description of Capacity</b>	
<b>Summarized Narrative of Applicant's ability to deliver on the proposal in response to this Notice</b>	A skilled and experienced service provider will be selected to operate the facility.
<b>List of planned resources to be assigned to meet the obligations of this Notice</b>	Developers Collaborative has committed to collaborate with local service providers to fulfill the various needs of the people to be served, modeling their partnership on what the City of Portland was able to accomplish in the operation of a Saco hotel as a temporary shelter. Those partners may include food service providers, social service organizations, relevant advocacy and legal organizations, and healthcare providers.
<b>Conflict of Interest. Does the Applicant, any principal or affiliate of the Applicant, or anyone who will be paid for work on the grant have business ties, familial relations, or other close personal relations with a current MaineHousing employee or</b>	No

commissioner, or anyone who was a MaineHousing employee or commissioner within the past year? If yes, please describe here:	
<b>Funding Request</b>	
<b>Total Funding Request</b>  Please provide a simple budget as Appendix D	\$4,596,160.00



Homeless Initiatives Department  
 26 Edison Dr, Augusta, ME 04330  
 1-800-452-4668 (in state)  
 207-626-4600

Appendix B

Agency Contact Information	
Name	
Dates Covered	
Contact Email	
Date Submitted	
Phone Number	

**THIS REPORT IS DUE TO MAINEHOUSING NO LATER THAN 30 DAYS AFTER THE CLOSE OF EACH QUARTER**  
**PLEASE SUBMIT REPORT TO: HIFINANCIALS@MAINEHOUSING.ORG**

Expenses Reporting		
Rehabilitation and Lease Costs		
Date Range	Description	Amount
<b>Total Operation Expense</b>		<b>\$ -</b>

Other		
Date Range	Other Expense Description	Amount
<b>Total Other Expense</b>		<b>\$ -</b>



**Progress Report Form**  
 Homeless Initiatives Department  
 26 Edison Dr, Augusta, ME 04330  
 1-800-452-4668 (in state)  
 207-626-4600

Appendix C

Agency Contact Information	
Name	
Dates Covered	
Contact Email	
Date Submitted	
Phone Number	

**THIS REPORT IS DUE TO MAINEHOUSING NO LATER THAN 30 DAYS AFTER THE CLOSE OF EACH QUARTER**  
**PLEASE SUBMIT REPORT TO: [lbustard@mainehousing.org](mailto:lbustard@mainehousing.org)**

Progress Report		
Activities Conducted		
Description of Activities Conducted	Impact	Number of Individuals/families served

Services Provided		
Description of Services Provided	Impact	Number of Individuals/families served

Goals for Next Quarter	
Description of Goals	Plan to Achieve Goals

Conflicts of Interest	
Name and Title of Employee	Description of Conflict

Appendix D : 166 Riverside Industrial Parkway budget

acquisition	1,858,850	
construction	1,995,580	
construction contingency	199,558	
sidewalk	100,000	
FFE	250,000	
landscaping	44,000	
legal/accounting	35,000	
phase 1/tank radar test	9,000	
architect	30,000	
civil/LA/planning board approvals	60,000	
title insurance	15,000	
building permit	30,000	insurance
3 yr shelter liability insurance	157,652	50,000
opex 3 years	403,520	52,500
developer	-	55,125
<hr/>		
total	5,188,160	
less Developer Loan	592,000	
 Total Grant Amount	 4,596,160	



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opex  
128,000  
134,400  
141,120

## **EXHIBIT B**

### **Initial Service Plan**

#### Service Provider Roles & Responsibilities

- Service Provider will provide appropriate staffing levels to deliver 24-hour on-site coverage 7 days/week at the Project for the term of this Agreement. With approximately 180 residents; the target ratio would be 1 Service Provider employee to 30 residents.
- Service Provider employees will include on-site Human Service Specialist staff who will help with daily problem solving, training residents to understand/follow daily routines/systems for living in US, cultural orientation to understand and navigate life in Maine.
- Service Provider employees will include on-site Housing Navigators who will assist with housing applications and enrollments (school, ESOL, GA, asylum apps, documents), help residents access services in community, and cultural orientations, health education, and assure access to relevant programming.
- Service Provider will provide a Services Manager, who will be responsible for facilitating and coordinating all third-party services on site at the Project including arranging on-site programming by outside providers (health, education, GA process, asylum process etc.). The Services Manager facilitates all partner organizations providing services on site and will also oversee orientation.
- Service Provider staff will triage health concerns for connection to community health providers for urgent health needs and to prevent spread of disease/infection. Bilingual staff will be hired as possible, supplemented with interpretation. A van may be rented for transportation of multiple people/large families to initial appointments (medical, enrollments), subsequent transport will be via staff vehicles, and training residents to use Metro bus.
- Service Provider employees will include an Operations Director who will be the Service Provider's primary point of contact at the Project and will manage relationships with state and local govt agencies, schools, other community and social service provider agencies, volunteers, and ethnic community-based organizations (ECBOs).
- Service Provider will establish offices on-site at the Project.
- All Guests will be housed in two dorms broken down between male and female.
- Service Provider will be responsible for providing its own computer and telephone systems at the Project.