



**LAKE WORTH**  
**COMMUNITY REDEVELOPMENT AGENCY**  
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**MEMORANDUM**

**TO:** Chair, Vice-Chair and Members of the Board

**FROM:** Joan Oliva, Executive Director

**DATE:** December 9, 2014

**SUBJECT:** Agreement between Neighborhood Lending Partners and the Lake Worth CRA for Business Loan Program

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**EXPLANATION:**

Last month, the CRA began talks with Neighborhood Lending Partners (NLP) of West Florida in regards to the creation of a small and medium size business lending program. These talks were precipitated after speaking with several lending institutions in the Lake Worth area about business loans, many of whom participate and help fund NLP's business lending program.

Neighborhood Lending Partners is a multi-bank lending consortium that provides money to help fund community revitalization efforts. It is a Community Development Financial Institution<sup>1</sup> (CDFI) and a Community Development Entity<sup>2</sup> (CDE) and is a not-for-profit 501c3. The organization serves North, South and West Florida with the West Florida affiliate serving as the organizations headquarters. NLP offers services and programs to incentivize the private sector in investing in affordable housing and community revitalization.

Establishment of the program will provide loans (a minimum of \$50K) to small and medium size businesses wishing to start, relocate or expand within the CRA boundaries. A copy of the full agreement is included and labeled Exhibit "A." The initial investment to be provided by the CRA is \$150K. These funds will be matched dollar for dollar by NLP. Funds will be renewed by both agencies every year for three years, establishing, at a minimum, a \$600K program. As funds are repaid by the borrower, they are returned to the program creating a revolving fund that has the potential to expand business resources within the District.

As discussed at the previous CRA meeting, a loan approval committee will be created and will contain one CRA Board member and the CRA Director. Recommendations will be provided by the underwriting team from NLP but the committee has final decision making powers. If the committee does not recommend funding a business but the CRA sees merit in the businesses application, the CRA will have the authority to approve the transaction and funds will be provided by the CRA exclusively.

NLP will administer a technical assistance program which will be funded by both NLP and the CRA. The CRA is responsible for issuing an RFP to establish a pool of specialty advisors. NLP

will then work with the CRA to select one or two providers. The goal is to provide entrepreneurs and small businesses with the tools they need to be successful and also to help protect our investment. The CRA will approve referrals to the advisors and also assist with the marketing and promotion of the program. Interest paid by the borrower will pay for the operation, monitoring and reporting of the fund. Once expenses are paid, any remaining interest income will be shared between the two agencies.

NLP agrees to comply with CRA insurance and indemnity provisions and shall maintain all records required by Florida State Statutes. The CRA will receive regular reports from NLP and an annual financial report.

**RECOMMENDATION:**

Staff recommends the Board authorize the Chair to sign the agreement between Neighborhood Lending Partners of West Florida and the CRA and appoint a Board member to the loan committee. Furthermore, Staff recommends the Board approve the movement of \$150K from fund balance to our operating budget line item – economic development.

<sup>1</sup> Community Development Financial Institution - CDFI

A CDFI is a private sector financial institution that focuses on personal lending and business development efforts in local communities. CDFIs can receive federal funding through the U.S. Department of the Treasury by completing an application. They can also receive funding from private sector sources such as individuals, corporations and religious institutions.

<sup>2</sup> Community Development Entity- CDE

A CDE is a domestic corporation or partnership that is an intermediary vehicle for the provision of loans, investments, or financial counseling in Low-Income Communities (LICs). Benefits of being certified as a CDE include being able to apply to the CDFI Fund to receive a New Markets Tax Credit (NMTC) allocation to offer its investors in exchange for equity investments in the CDE and/or its subsidiaries; or to receive loans or investments from other CDEs that have received NMTC allocations.

# Exhibit "A"

## AGREEMENT BETWEEN NEIGHBORHOOD LENDING PARTNERS OF WEST FLORIDA, INC. AND THE LAKE WORTH COMMUNITY REDEVELOPMENT AGENCY

THIS AGREEMENT is made this \_\_\_ day of \_\_\_\_\_, 2014, by and between the LAKE WORTH COMMUNITY REDEVELOPMENT AGENCY, a Florida public agency created pursuant to Chapter 163, Florida Statutes, (hereinafter referred to as the "LWCRA"), and NEIGHBORHOOD LENDING PARTNERS OF WEST FLORIDA, INC., a Florida not-for-profit corporation (hereinafter called "NLPWF"), whose address is 3615 W. Spruce Street, Tampa, FL 33607

### WITNESSETH:

**WHEREAS**, the LWCRA desires to utilize the services of NLPWF to facilitate the making of low-interest and deferred loans to owners/developers of small businesses in within the Lake Worth Community Redevelopment Area, within the City of Lake Worth, Florida (the "Redevelopment Area"); and

**WHEREAS**, NLPWF is a Community Development Financial Institution ("CDFI") and is also a 501(c)(3) community based not-for-profit corporation serving the State of Florida which has a need for a small and medium sized lending business program by providing financing from grants/funds received by NLPWF from the LWCRA, CDFI Fund, banks and other financial institutions;

**WHEREAS**, the parties intend to collaborate their resources so that NLPWF may assist LWCRA in its efforts to provide the community the LWCRA serves with access to small and medium sized business lending resources, and the LWCRA would be furthering its purposes by assisting in this regard; and

**WHEREAS**, the repayment of Project Loans to be made by NLPWF will generate revenue for both NLPWF and the LWCRA to be used for future eligible economic development activities; and

**WHEREAS**, the LWCRA finds that small business lending opportunities utilizing NLPWF serves a municipal and public purpose and is consistent with the LWCRA's Redevelopment Plan, and Florida law.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the parties agree as follows:

### ARTICLE I. SCOPE OF SERVICES

1.1 Subject to the terms and conditions herein, the parties will provide the respective services as provided herein. Notwithstanding the foregoing, the obligations of both NLPWF and LWCRA under this Agreement are subject to LWCRA budgeting and appropriating funds for the revolving loan program, NLPWF receiving grants or loans from LWCRA, the CDFI Fund, and/or financial institutions in such amounts and on such terms and conditions acceptable to NLPWF which grants shall be used by NLPWF to provide the small business lending services ("Loan" or "Loans") contemplated by this Agreement.

1.2 NLPWF agrees to review proposals located in the boundaries of the Redevelopment Area for small business lending. NLPWF's services will include loan underwriting, loan closing, loan servicing, compliance monitoring and project monitoring. The program guidelines that NLPWF and the LWCRA shall follow are contained in the attached guidelines which are attached hereto as Exhibit "A" (as the same may be amended or replaced, the "Program Guidelines"). The loan review, screening, and origination guidelines are attached hereto as Exhibit "B".

1.3 NLPWF shall administer all Project Loans in the same manner that it administers Member Loans (as described below).

1.3.1 NLPWF shall conduct a preliminary review of the proposed business that is requesting the loan. NLPWF will review the proposal and perform a financial analysis using NLPWF's standard underwriting criteria. A preliminary review will summarize each Project's overall strengths and weakness and will provide a recommendation. If a credit is deemed weak, a recommendation to strengthen the credit through underwriting or collateral will be recommended. If NLPWF believes that the weakness cannot be overcome through underwriting, NLPWF will recommend rejection of the proposal.

1.3.2 NLPWF will recommend a course of action and a final loan amount after careful review of the application and supporting documentation. Said recommendation will conform to NLPWF's standard underwriting criteria including projected loan ratios. NLPWF shall notify the LWCRA in writing prior to the scheduled closing of an approved loan.

1.3.3 A loan committee will be established for the LWCRA Loan Fund for approval or declination of transactions.

1.3.4 In the event the Loan Committee declines a transaction, the LWCRA will have the authority to approve any transaction that utilizes exclusively LWCRA Funds.

1.3.5 NLPWF agrees to provide on-going loan quality monitoring for the businesses, which are approved and supported by the LWCRA. NLPWF shall provide an impartial evaluation by October 31<sup>st</sup> of each year regarding the state of each Loan, including an on-site physical inspection. The purpose of said monitoring is to insure that every business financed meets and maintains the projected financial performance, and high quality standards that are expected from the CRA. NLPWF will provide a credit Review Memo, and a Site Inspection Report highlighting the financial performance and the condition of the business over the preceding year.

1.3.6 All disbursement records by NLPWF shall be fully documented and retained by NLPWF so as to be available, upon request of the LWCRA, for the purpose of inspection or audit in accordance with the provisions of this Agreement and applicable law.

1.3.6 NLPWF will provide a comprehensive review of the entire portfolio of loans in the LWCRA/NLPWF loan program, showing overall performance and statistical and

impact data.

1.3.7 NLPWF will establish, monitor, and report on the adequacy of loan loss reserves to the approved loan committee, and LWCRA on a quarterly basis. The funding of the loan loss reserve will come from the loan capital being provided by LWCRA.

1.3.8 Technical Assistance - NLPWF will administer a technical assistance program provided by approved non-profit agencies whose programs provide services within the Redevelopment Area. LWCRA will issue an RFP to establish a pool of potential providers. NLPWF will provide an analysis of each applicant, and select one or more providers to provide technical assistance.

1.4 The following services shall be provided by LWCRA:

1.4.1 LWCRA shall provide NLPWF with One Hundred Fifty Thousand and 00/100 (\$150,000.00) ("Loan Funds") for each year during the term of this Agreement. The Loan Funds shall be utilized as a revolving loan fund for loans approved in accordance with the Program Guidelines. NLPWF shall utilize the Loan Funds to make Loans meeting the requirements and approval process of Lake Worth CRA. Each Loan shall be secured by a promissory note in favor of NLPWF, and documentation and collateral as approved by loan committee. Loans shall be made only to businesses in the designated Redevelopment Area. Any Loan Funds not disbursed to borrowers as of the termination date of this Agreement, shall be returned to the LWCRA.

1.4.2 LWCRA shall provide business referrals and marketing for this small business program.

1.4.3 LWCRA will provide at least two members, the Director and a Board member, to the loan committee.

1.4.4 LWCRA will participate in review and approval of portfolio reviews/analysis and in the establishment of policies related to portfolio and loan loss reserve management.

1.4.5 LWCRA will approve referrals for Community Development Service counseling.

## ARTICLE 2. TERM:

The term of this Agreement shall be for three (3) years commencing January 1, 2015, and shall be subject to renewal annually upon the written agreement of each party hereto, subject further to the termination provisions as provided herein.

## ARTICLE 3. FUNDING AND METHOD OF PAYMENT

3.1 Subject to receiving Borrower's monthly payments pursuant to applicable Loan documentation, NLPWF will retain the Interest Rate Spread as a servicing fee to sustain the operation, monitoring, and reporting of the Program. The interest rate spread will be defined as the difference between the cost of funds to NLP and the interest rate charged to the Borrower. The

program income will be reviewed annually by NLPWF and LWCRA to determine the level of expense not being compensated by the Program revenue. At such time as the program becomes profitable, NLP will share the interest revenue with LWCRA on a pro rata basis, after NLP is compensated for the loan servicing and portfolio administration.

3.2 NLPWF will charge and retain a \$250 application fee for each transaction.

3.3 As compensation for underwriting and originating Project Loan(s) NLPWF shall be entitled to charge each borrower and retain for NLPWF's account, an origination fee between two and four percent (2-4%) of each Project Loan.

3.4 The LWCRA shall not be liable to NLPWF for any uncollected origination or program administration fees on any Project Loan, the risk of collection being borne solely by NLPWF.

3.5 LWCRA agrees to pay to NLPWF an amount not to exceed Forty Thousand and 00/100 Dollars (\$40,000.00) for payment to the Technical Assistance Providers.

#### ARTICLE 4. MODIFICATION; AMENDMENTS

Any program modification requested by NLPWF must be requested at least ninety (90) days prior to end of the term of this Agreement. No modification or amendment of this Agreement shall be binding on either party unless in writing and signed by both parties.

#### ARTICLE 5. COMPLIANCE WITH LAWS AND REGULATIONS

In the performance of this Agreement, NLPWF shall comply with the rules and regulations of the Revolving Loan Program as well as laws and regulations pertaining to the State of Florida, Palm Beach County, the LWCRA of Lake Worth, and with those state, and federal laws, ordinances, rules, regulations, and resolutions to the extent applicable to each loan extended hereunder (the "Governmental Requirements").

#### ARTICLE 6. INDEMNITY, INSURANCE

6.1 NLPWF shall indemnify and hold the LWCRA and all its departments, officers, agents and employees harmless from and against all costs, expenses, liabilities, suits, claims, losses, damages, and demands by or on behalf of any person or persons arising out of or resulting from NLPWF's, gross negligence or willful misconduct in NLPWF's performance of this Agreement.

6.2 Any person seeking indemnification hereunder shall give NLPWF timely notice of and shall forward to NLPWF any and every demand, notice, summons or other process, any other writing received with respect to any claim or legal proceedings within the purview of this Article, or, if such claim is oral, a written summary thereof. In the event that any action or proceeding is brought against any person with respect to which indemnity may be sought under this Article, NLPWF upon written notice from such indemnified party (which notice shall be given within an appropriate time period so as not to impair NLPWF's rights or ability to defend or make claims regarding any such proceeding), shall assume the investigation and defense of the action or proceeding, including the employment of counsel selected by NLPWF, subject to the approval of such person seeking indemnification, which approval shall not be unreasonably withheld or delayed, and shall assume the

payment of all expenses related to the action or proceeding, with full power to litigate, compromise or settle the same in its sole discretion; provided, however, that such indemnified party shall have the right to review and approve or disapprove any such compromise or settlement (which approval shall not be unreasonably withheld or delayed). Any person who has made a claim for indemnification under this Article shall cooperate with NLPWF in the defense of such claim. Notwithstanding the foregoing, NLPWF shall have no obligations under this Article to indemnify or hold any person harmless from any violation of law, or the negligent or willful act of such person or its departments, officers, employees or agents.

6.3 NLPWF shall obtain and keep in force general liability insurance in the minimum amount of \$100,000.00 per person and \$300,000.00 aggregate for bodily injury liability for any one occurrence and a minimum limit of \$50,000.00 for property damage liability for a combined single limit of \$300,000.00. The LWCRA shall be named an additional insured under the general liability policy in connection with duties performed by NLPWF pursuant to this Agreement. The insurance policy shall remain in full force and effect through the term of this Agreement and shall contain an endorsement that the policy shall not be canceled or restricted without at least thirty (30) day's prior written notice to LWCRA.

6.4 NLPWF shall maintain, during the life of this Agreement, Directors and Officers liability insurance, including errors and omissions insurance in an amount of \$3,000,000.00 to protect NLPWF from claims or damages relating to any negligent act or omission by any Director, Officer, employee or agent, which may arise from any operations under this Agreement.

## ARTICLE 7. MAINTENANCE AND INSPECTION OF RECORDS

7.1 NLPWF shall maintain all records required by Section 119.07, Florida Statutes ("Florida's Public Records Law, the Revolving Loan Fund Program, and all applicable laws. NLPWF shall also maintain records, accounts, property records, and personnel records described on Schedule 3 attached hereto and made a part hereof (the "Retained Records").

7.2 The LWCRA is public agency subject to Chapter 119, Florida Statutes. The NLPWF shall comply with Florida's Public Records Law. Specifically, the NLPWF shall:

- 7.2.1 Keep and maintain public records that ordinarily and necessarily would be required by the LWCRA in order to perform the service;
- 7.2.2 Provide the records to the LWCRA so that the LWCRA may provide the public with access to such public records on the same terms and conditions that the LWCRA would provide the records and at a cost that does not exceed that provided in Chapter 119, Fla. Stat., or as otherwise provided by law;
- 7.2.3 Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and
- 7.2.4 Meet all requirements for retaining public records and transfer to the LWCRA, at no cost, all public records in possession of the NLPWF upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the LWCRA in a format that is

compatible with the information technology systems of the agency.

7.2.5 The failure of NLPWF to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement and the LWCRA shall enforce the Default in accordance with the provisions set forth herein.

7.3 Florida Information Protection Act. NLPWF agrees and understands that the services and/or goods provided under this Agreement consist, at least in part, of "customer records" that contain "personal information," as defined in the Florida Information Protection Act, section 501.171, Florida Statutes (the "Act"). Accordingly, as required by the Act, NLPWF agrees to implement safeguards to protect customer records containing personal information, in whatever form retained and stored, from a breach of security. If customer records in NLPWF's possession are breached in the manner set forth in the Act, NLPWF shall immediately notify LWCRA as required by law, and NLPWF shall work with LWCRA as required by the Act to assist in any of the following actions:

A. Investigate the alleged breach and determine if an actual breach has occurred, which may include the use of law enforcement officials as needed and as determined by LWCRA;

B. Provide notice to any and all consumers whose personal information has been breached;

C. Provide any and all other notices to governmental agencies that may be applicable under the Act, if a breach has reached a particular threshold, as defined in the Act, which may include but is not limited to: credit reporting agencies and the Florida Department of Legal Affairs;

D. Ensure that NLPWF's third-party agents are made aware of the Act and any requirements to comply with the Act, and require that those third-party agents that store customer records of LWCRA who experience a breach notify LWCRA immediately, and work with NLPWF and LWCRA as outlined in this section of the Addendum.

The procedures specified herein shall not supersede any requirements specified by the Act. The provisions of the Act, as may be amended from time to time, shall prevail in the event of any conflict.

## ARTICLE 8. AUDIT REQUIREMENTS

8.1 NLPWF agrees to maintain financial procedures and supporting documents as required by the Revolving Loan Fund Program, in accordance with generally accepted accounting principles, to account for the receipt and expenditures of funds under this Agreement.

8.2 The foregoing records shall be available at reasonable times for inspection, review, copying or audit by personnel duly authorized by the LWCRA, upon two (2) business days' prior notice to NLPWF. LWCRA covenants to use its best efforts to coordinate its records inspection activities with State auditors in order to minimize duplicate inspections and audits. "Reasonable" shall be construed according to the circumstances, but ordinarily shall mean normal business hours of 8:30 a.m. to 5:00 p.m., local time, Monday through Friday, except holidays.

8.3 LWCRA shall have the right to obtain and inspect, upon prior notice as aforesaid, any audit pertaining to the performance of this Agreement made by any local, state or federal agency; provided, however, that the LWCRA's right to inspect any examination of NLPWF's business and affairs by any federal bank regulatory agency or the Florida Department of Banking and Finance having supervisory authority over the members of NLPWF (collectively, the "Banking Agencies") shall be in accordance with the rules and requirements of such Banking Agencies. NLPWF shall retain all of its records and supporting documentation required under this Agreement for a period of three (3) years.

8.4 NLPWF shall provide the LWCRA with an annual financial audit report, which report shall include all management letters, if required, and NLPWF's response to all findings including corrective actions to be taken, and a schedule of financial assistance specifically identifying all revenue received by NLPWF from grants pursuant to this Agreement, which report shall be sent directly to the LWCRA at the following address:

Lake Worth Community Redevelopment Agency  
29 South "J" Street  
Lake Worth, FL 33460

#### ARTICLE 9. CONTRACT LIABILITY

LWCRA shall not be liable to any person, firm, or corporation who contracts with or who provides goods or services to NLPWF in connection with the services it has agreed to perform or for debts or claims accruing to such parties against NLPWF, and there is no contractual relationship, either expressed or implied, between LWCRA and any other person, firm or corporation supplying any work, labor, services, goods, or materials to NLPWF as a result of its services to LWCRA hereunder.

#### ARTICLE 10. SUSPENSION OR TERMINATION

10.1 LWCRA may suspend or terminate this Agreement upon NLPWF's failure to correct, within sixty (60) days after receipt of written notice from the LWCRA, (i) any purported failure of NLPWF to comply with the terms and conditions of this Agreement, or (ii) improper use of LWCRA funds.

10.2 This Agreement may also be terminated by the written mutual consent of the parties. Upon termination of this Agreement, any undisbursed funds relating to approved, closed loans, shall be retained by NLPWF and disbursed to the borrower in accordance with the provisions of the Revolving Loan Program Guidelines. Any sums remaining in the Loan Pool that are designated for loans for projects in the CRA shall be returned to the CRA.

10.4 In the event of LWCRA's termination of this Agreement following an uncured breach by NLPWF, LWCRA shall be entitled to petition a court of competent jurisdiction for the appointment of a receiver who, upon order of the court, shall receive payments of principal and interest due under developer notes; remit to LWCRA and NLPWF their respective shares of principal and interest; provide periodic accountings as directed by the court; and otherwise enforce the obligations of the obligors under the developer notes and mortgages.

## ARTICLE 12. PROJECT PUBLICITY

Any news release or other type of publicity pertaining to the services performed by NLPWF pursuant to this Agreement must recognize the LWCRA Board of Commissioners as the project participant.

## ARTICLE 13. MISCELLANEOUS

13.1 NLPWF shall not assign any interest in this Agreement nor enter into any subcontract pursuant to this Agreement without the prior written consent of the LWCRA. No forbearance on the part of either party shall constitute a waiver of any item requiring performance by the other party hereunder. A waiver by one party of the other party's performance shall not constitute a waiver of the subsequent performance required by such party. No waiver shall be valid unless it is in writing and signed by authorized representatives of both parties. Should any section or any part of any section of this Agreement be rendered void, invalid or unenforceable by any court of law, for any reason, such determination shall not render void, invalid or unenforceable any other section or any part of any section of this Agreement. This Agreement may be executed in counterparts, all such counterparts together constituting a single document.

13.2 Independent Contractor. This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the NLPWF is an independent contractor under this Agreement and not the LWCRA's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. The NLPWF shall retain sole and absolute discretion in the judgment of the manner and means of carrying out NLPWF's activities and responsibilities hereunder. The NLPWF agree that it is a separate and independent enterprise from the LWCRA, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the NLPWF and the LWCRA and the LWCRA will not be liable for any obligation incurred by NLPWF, including but not limited to unpaid minimum wages and/or overtime premiums.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the day set forth in the Preamble.

**LAKE WORTH COMMUNITY  
REDEVELOPMENT AGENCY**  
a Florida Public Agency

ATTEST:

BY: \_\_\_\_\_  
Cary Sabol, Chair

BY: \_\_\_\_\_  
Joan Oliva, Executive Director/Secretary

CONSULTANT

NEIGHBORHOOD LENDING PARTNERS  
OF WEST FLORIDA, INC., a Florida not-for-  
profit corporation

ATTEST:

BY: \_\_\_\_\_  
Debra Reyes, CEO

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(CORPORATE SEAL)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_, as \_\_\_\_\_ (name of officer or agent, title of officer or agent), of \_\_\_\_\_ (name of corporation acknowledging), a \_\_\_\_\_ (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name

**EXHIBIT "A"**

**LOAN FUND GUIDELINES AND PARAMETERS GUIDELINES**

**EXHIBIT "B"**

**LOAN REVIEW, SCREENING AND ORIGINATING**