

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:	July 21, 2015	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing
Department:	Department of Economic Sustainability		
Submitted For:	Housing Finance Authority of Palm Beach County		

I. EXECUTIVE BRIEF

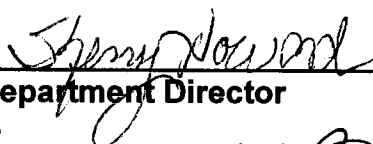
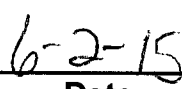

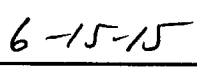
Motion and Title: Staff recommends motion to approve: a Program Administration Agreement between the Housing Finance Authority of Palm Beach County, Florida (Authority), and Housing and Development Services, Inc. d/b/a eHousingPlus (eHousing).

Summary: The Authority was established by the Board of County Commissioners (BCC) in 1979 in accordance with Part IV, Chapter 159, Florida Statutes. Section 2-189 of the Palm Beach County Code of Ordinances, as amended, requires that all contracts of the Authority for the purchase of goods and services in excess of \$10,000 be approved by the BCC. The Agreement sets forth the terms under which eHousing will provide program administration services to the Authority in connection with its 2015 Mortgage Credit Certificate Program benefiting first time homebuyers. Under this Program, an eligible first time homebuyer issued a Mortgage Credit Certificate will be entitled to claim a dollar-for-dollar reduction of Federal income tax liability of up to \$2,000 per year for the term of their mortgage as long as they reside in the home as their principal place of residence. eHousing is one of two firms in Florida providing this specialized service and was selected by the Authority on May 8, 2015, based on their lowest cost proposal. **No Match from County General Funds is required.** (HFA of PBC) Countywide (PFK)

Background and Justification: The approval of the above by the BCC would constitute the approval required by Palm Beach County Code Section 2-189, as amended.

Attachments:

1. Program Administration Agreement

Recommended By:		
	Department Director	Date
Approved By:		
	Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	*				

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included In Current Budget? Yes _____ No X
 Budget Account No.:

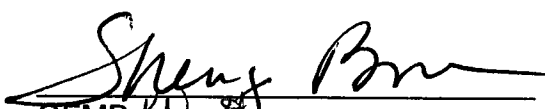
B. Recommended Sources of Funds/Summary of Fiscal Impact:

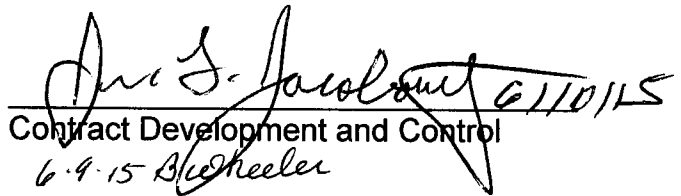
* All costs will be borne by the Housing Finance Authority. No fiscal impact to Palm Beach County.

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:


 OFMB RD _{6/3} ^{RA} _{6/14}


 Contract Development and Control
 6-9-15 Blueheeler

B. Legal Sufficiency:


 Assistant County Attorney

C. Other Department Review:

 Department Director

HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY

("ISSUER")

AND

**HOUSING AND DEVELOPMENT SERVICES, INC. D/B/A
EHOUSINGPLUS**

("ADMINISTRATOR")

PROGRAM ADMINISTRATION AGREEMENT

2015 MORTGAGE CREDIT CERTIFICATE PROGRAM

PROGRAM ADMINISTRATION AGREEMENT

This Program Administration Agreement (the "Agreement") is entered into as of _____, 2015, (the "Effective Date") by and between **HOUSING AND DEVELOPMENT SERVICES, INC. d/b/a eHousingPlus** (the "Administrator"), a Florida corporation located at 3050 Universal Boulevard, Suite 190, Weston, Florida 33331, and the **HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY**, (the "Issuer"), located at 100 Australian Avenue, Suite 410, West Palm Beach, FL 33406 (together the "Parties").

WHEREAS, the Issuer is authorized by the Act to borrow money through the issuance of bonds for single family housing or, in lieu of issuing qualified mortgage bonds, to issue mortgage credit certificates to qualifying individuals; and

WHEREAS, the Issuer has received private activity bond allocation for the issuance of single family mortgage revenue bonds; and

WHEREAS, pursuant to Section 25 of the Code (as defined herein), the Issuer may make an election under Section 25 of the Code to exchange some of its private activity bond allocation for the authority to issue Mortgage Credit Certificates ("MCCs") to persons of low and moderate income acquiring owner-occupied residences; and

WHEREAS, in furtherance of the purposes of the Act, the Issuer has determined to implement a Mortgage Credit Certificate program (the "Program") to assist persons in Palm Beach County (the "County") of low and moderate income to afford the costs of acquiring and owning decent, safe and sanitary housing, and in connection therewith, has made an election under Section 25 of the Code to issue mortgage credit certificates to persons of low and moderate income acquiring owner-occupied residences in the County as specified in Addendum C attached to and incorporated herein; and

WHEREAS, for the MCC's to be qualified for federal income tax purposes under applicable sections of the Code and the regulations promulgated thereunder, the Issuer is required to establish reasonable investigative procedures in connection with the issuance of the MCC's to determine that mortgagors receiving MCC's satisfy the various requirements of the Code; and

WHEREAS, the Issuer desires the Administrator to perform procedures on its behalf and to perform certain other duties as described in this Agreement; and

WHEREAS, the Administrator will, subject to the terms hereof, administer the Program of the Issuer, on behalf of the Issuer.

NOW, THEREFORE, in consideration of the representations, warranties and mutual agreements herein contained, the Administrator and the Issuer agree as follows:

1. DEFINITIONS

Unless otherwise indicated, all words and terms defined in this Agreement, as of the Effective Date hereof, are used herein as so defined.

"Acquisition Cost Limit" means federally adjusted limits on the maximum purchase price of a home, by area, as established by the United States Department of Housing and Urban Development ("HUD") and the IRS.

"Administration Fee" or "Fee" means the fee earned by the Administrator for services rendered hereunder as provided in Addendum A.

"Administrator" or "Program Administrator" means HDS Inc. d/b/a eHousingPlus.

"Administrator's Guidelines" means the manual prepared by the Administrator addressing the compliance requirements and processes to be utilized by Lenders.

"Certified Indebtedness Amount" means the amount of indebtedness of the mortgage loan for which an MCC will be issued.

"Code" means the Internal Revenue Service Code of 1986, as amended, and the regulations promulgated thereunder.

"Data Analysis and Reporting Module" or "D.A.R.M." means the Administrator's proprietary web-based System which allows authorized users to access Program information via the internet.

"Election Date" or "MCC Election Date" means the date the Issuer elected to issue MCCs in lieu of qualified mortgage bonds for the Program.

"First-Time Homebuyer" means a taxpayer who has not owned a principal residence at any time during the three years prior to the date of purchase of a home.

"HDS, Inc." means Housing and Development Services, Inc. and its subsidiary Housing and Development Software, LLC, and eHousingPlus LLC.

"Income Limits" means the federally adjusted income limits for a borrower(s), by household size, by area.

"IRS" means the United States Internal Revenue Service.

"IRS Form 8329" means the IRS form used by Lenders to report all Mortgage Credit Certificates originated under that program on an annual basis.

"IRS Form 8330" means the IRS form used by Issuers (states, counties, and political subdivisions) of MCCs issued on a quarterly basis.

"Lender" or "Participating Lender" means a home mortgage lending institution approved by the Issuer for the Program and that has executed and delivered to the Issuer a Participation Agreement.

"MCC" or "Mortgage Credit Certificate" means a certificate issued under a qualified mortgage credit certificate program by states, districts, or political subdivisions having the authority to issue qualified mortgage revenue bonds to provide financing for the acquisition, qualified rehabilitation, or qualified home improvement of a taxpayer's principal residence.

"Mortgage Certificate Credit Rate" means the rate specified by the Issuer for the MCC Program.

"Non-Issued Bond Amount" means the amount of tax exempt Bond Authority that has not been issued for a program and remains un-allocated.

"Participation Agreement" means the agreement between the Issuer and each Participating Lender.

"Program" means the Issuer's MCC Program, not in combination with any other issuer's loan program, as more specifically described in Addendum C attached to and incorporated herein.

"Program Documents" means the Administrator's Guidelines, program forms and this Program Administration Agreement.

"Recapture Tax" means the IRS tax liability for a homebuyer who utilizes MCC proceeds if they sell or cease to occupy a home purchased under the Program before the required nine year occupancy period expires.

"Recapture Notice" or "Recapture Brochure" means the notification to First Time Homebuyers of the specific IRS Recapture Tax regulation.

"Revocation of MCC" means the forfeiture, cancellation, or voidance of any MCC certificate issued which may be found to be ineligible under the Program for any reason.

"Re-Issued MCC" means an MCC which has been re-designated to a new qualifying homebuyer(s), wherein the new qualifying homebuyer(s) has acquired a qualified property that was previously eligible for a tax credit.

"System" means the web-based software system, any derivatives thereof, and all rights, owned by Housing and Development Services, Inc. and licensed to the Administrator to carry out its duties herein.

"Targeted Area" means a federally designated area, identified by specific census tracts and block groups, where higher incomes and acquisition limits may be permitted, and whereby the First Time Homebuyer requirement is not mandatory.

"Working Group Professionals" means specific professionals approved strictly by the Issuer who are directly involved in the Program, and who are authorized by the Issuer to access on-line Program information. This may include Issuer, financial advisors, underwriters, investment bankers, and others.

2. ADMINISTRATOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS

The Administrator represents that it is a Florida Minority Business Enterprise Corporation duly organized, validly existing and in good standing under the laws of the State of Florida, is duly qualified and in good standing to transact business in the State, and a Women's Business Enterprise National Council ("WBENC") certified firm, which possesses all requisite authority, power, licenses, permits and franchises to conduct any and all business contemplated by this Agreement and to execute, deliver and comply with its obligations under the terms thereof, the

execution, delivery and performance of which have been duly authorized by all necessary corporate action.

The execution and delivery of this Agreement by the Administrator in the manner contemplated herein and the performance and compliance with the terms hereof by it do not require the consent or approval of any board or governmental authority, or if such consent or approval is required, it has been obtained.

With respect to its duties hereunder, the Administrator will comply with the applicable nondiscrimination provisions of the Civil Rights Act of 1964, the Fair Housing Act, U.S.C. Section 3601 et. seq., the regulations promulgated there under, Executive Order 11246, Equal Employment Opportunity, dated September 24, 1965 and the Fair Housing Amendments Act of 1988.

The Administrator agrees that so long as it shall continue to serve in the capacity contemplated under the terms of this Agreement, it will remain in good standing under the laws of its state of incorporation and qualified under the laws of the State to do business in the State.

3. RELIANCE ON DOCUMENTS

The Administrator may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions furnished to the Administrator by the Issuer. The Administrator shall not be liable for any error of judgment made in good faith, unless the Administrator was negligent in ascertaining the pertinent facts.

The Administrator may rely on acting in good faith and shall be protected in acting or refraining from acting in good faith upon any affidavit, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, certificate, note, security, or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties. The Administrator shall not be bound to make any investigation into the facts or matters stated in a resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, certificate, note, security or other paper or document supplied by the Issuer.

No information, statement or report of the Administrator furnished in writing and required hereunder delivered to Lenders or the Issuer will, to the knowledge of the Administrator, contain any untrue statement of a material fact or omit a material fact necessary to make the information, statements, or report not misleading.

The Administrator and its officers, directors and principal shareholders, are not an affiliate of the Issuer or any Lender or any of their respective affiliates.

4. ISSUER'S AND ADMINISTRATOR'S RESPONSIBILITIES

A. Issuer's Responsibilities

The Issuer shall manage the Program, including, without limitation, (i) determining the amount and type of funding available for the Program; (ii) determining the loan products permitted under the MCC Program Allocation and Credit Rate; (iii) providing Election Date and Final Certificate Date; (iv) determining Non-Issued Bond Amount; (v) determining Target Set Aside Areas; (vi) selecting and approving the Lenders to participate in the Program; and (vii)

creating and updating the applicable documents, including the Program forms, and other related documents.

B. Administrator's Responsibilities

The Administrator shall have the general responsibility for administering the Program in accordance with this Agreement on behalf of the Issuer. The Administrator shall be and is hereby irrevocably authorized and empowered by the Issuer to execute and deliver for and on behalf of the Issuer any and all instruments, documents and writings necessary or desirable to fulfill its duties and responsibilities hereunder; provided, that the consummation of the foregoing shall not be inconsistent with or prejudice the rights and interests of the Issuer. The Administrator shall collaborate with the Issuer regarding the Program goals and structure, and will provide the services listed herein, in its capacity as Administrator.

The Administrator shall use commercially reasonable efforts, utilizing industry-approved processes and best practices to ensure file compliance in accordance with Sections 25 and 143, as applicable, of the Code, in addition to the Issuer's Program parameters, if applicable.

The Administrator will track the MCC allocations and shall not allow Lenders to reserve an MCC if there is no available allocation. In addition, the Administrator shall reserve twenty percent (20%) of the total issuing authority for MCC allocations for residences located in Target Areas for a period of one (1) year from the Election Date. The qualifying Targeted Areas for the State are attached as Addendum B hereto. The Administrator will use its internal System functions to set up the Issuer's MCC allocation, set up and update Income Limits, Acquisition Cost Limits, and new mortgage requirements; and track and monitor its funds, pipeline, and Program constraints, where applicable.

The Administrator's Guidelines which explain the Program specifics are published via Administrator's Web System.

The Administrator will review information provided by the Participating Lenders including all documents and information pertaining to loans, with respect to which an MCC is issued sufficient to determine the eligibility of such loans, including, without limitation, a review of information, certifications and other documents regarding (i) the First-Time Homebuyer requirement; (ii) residence requirement; (iii) Income Limits; (iv) Acquisition Cost Limits; (v) Targeted Area requirement; and any information that the Administrator deems necessary to ensure eligibility as defined in Sections 25 and 143 of the Code.

The Administrator will follow its process guidelines and System features to provide the services detailed herein. Any request for changes to these processes or the System will be analyzed for feasibility and cost. The Issuer will be advised accordingly.

i. Compliance Review Duties

Administrator will be provided files from each Lender after closing, which file(s) will contain all documents required in the Administrator's Guidelines. Administrator will track files, review contents for accuracy and compliance with Administrator's Guidelines as set forth by the Issuer, update System information, and note any file deficiencies which need to be cured. The Administrator will contact Lenders via its online System, e-mails, phone or other means as necessary for Lenders to correct file deficiencies as soon as possible. Ultimately the Lender is responsible for curing the deficiencies, and if not cured within a reasonable time, the

Administrator will not compliance-approve the MCC file, and will reject the MCC. Administrator reserves the right to charge Lenders who continuously submit erroneous files and cause the delay of MCC's to be approved under the Program.

Files will be processed and reviewed within 24-48 business hours after the day the file is received. The Lender will be immediately informed of any exceptions via the Administrator's System. Approved Lenders will have easy access to the Administrator's System where status of the MCC can also be reviewed at any time.

ii. **Available System Functions for Lenders**

Lenders are provided secure access to the Administrator's System, whereby they can process, review and manage their MCC reservation detail. Lenders will not have access to any other company's activities or book of business. The available System functions are:

- View available funds and allocations
- Reserve MCCs
- Print confirmations once an MCC is reserved, and other System reports
- Ability for Lenders to update MCC information or add other data to the MCC record as it moves through the pipeline
- Underwriter Certification/Commitment (Pre-Compliance) functionality that gives the Lenders' underwriter the ability to certify and update that they have personally verified information prior to closing
- A Lender pipeline that provides a detailed picture of how MCCs are moving through each stage in the Program
- A Program pipeline that provides a Program-level view of the MCCs moving through the required stages, and includes a variety of detail
- Ability to view file deficiencies/exceptions, which are items posted by the Administrator that need to be corrected
- Access to Program forms, which Lenders can easily print and reprint as needed as soon as the documents are ready to be packaged for closing
- Feature to easily allow lenders to cancel an MCC reservation, which immediately re-appropriates funds back to the Program
- Access to a varied selection of e-reports for Lenders to view, print or download.

iii. Additional Working Group Functionalities and Tools on the Web

Approved Working Group Professionals shall execute the attached Confidentiality and Non-Disclosure Agreement in order to access the system and data, on behalf of the Issuer. This data includes personal, private, non-public and other confidential information. The Issuer shall have the responsibility of ensuring that approved Working Group Professionals execute the Confidentiality and Non-Disclosure Agreement ("Attachment 1") and take the necessary measures to protect such information.

Available features for Working Group Professionals are:

- Access to the System's data view and download tool, a web-based module that provides the ability to download data directly from the System. This data includes over 80 fields such as rates, funds, Lenders, borrower, property and other key data related to Program activity. Specific criteria can be filtered to display more narrow data groups as needed.
- Working Group Professionals can save specific groupings of data, and re-download as many times as needed in a variety of formats.
- Access to the System's Data Analysis and Reporting Module (D.A.R.M.), a graphical analysis and dashboard module that takes data reporting and analysis to a new level. The System provides a comprehensive dashboard view of program metrics, specifically designed for the market. The analysis portion of the module provides the ability for the user to select from all key data groupings and summaries, from Program, to rate, to lender, and much more, and create multi-dimensional analysis outputs. The module gives the user the ability to save their own unique views, and download the data for reporting. Additional filtering and grouping abilities make this tool extremely powerful for Working Group Professionals.

iv. Reporting Tools and Forms

The Administrator will provide secure access to its Web-System to the Issuer, Participating Lenders, and other approved professionals, to access reporting and analysis tools which contain Program and Borrower information. These include Program demographics, loan activities, Program pipeline, Program funds and other key Program indicators. Access to the System is provided via approved users who have executed the Confidentiality and Non-Disclosure ("Attachment 1") on behalf of the Issuer.

Administrator shall not be liable for any access approvals granted by the Issuer, nor any breach of program-related confidential data based on the negligence of third party use by Authority's approved professionals.

The Administrator will incorporate standard Program forms into its web-based System for Lenders to access. These may include automated affidavits, the Administrator's Guidelines and other forms which the Lender may use to complete the required loan submittal package. The Administrator will also provide a Recapture Brochure which the Lender can access on behalf of the borrower.

For MCC Programs, the Administrator will provide the reports necessary to execute the IRS 8329 on an annual basis, and send to the Lenders on a timely basis. Additionally, the Administrator will provide the reports necessary to execute the IRS 8330 on a quarterly basis, and send to the Issuer on a timely basis.

The Administrator will issue the MCC, Final Recapture Notice and related instructions to the borrower(s) as applicable.

v. Training

Program-wide trainings are scheduled on specific date(s), where all Program features and processes are explained to Participating Lenders. This will include a full training of the System features. Periodic trainings are added later based on need, and the Administrator will advise the Lenders of any such dates. In addition, the Administrator will provide "eHP University Training", which includes origination and programmatic information, where Lenders can review Program criteria and steps using a web-based, self-paced tool. One-on-one support is also provided by the eHousingPlus staff when trained and approved Lenders are in the System and are having technical difficulty. The Administrator requires that Program and System training be mandatory for all users before they are issued usernames and passwords. Any Lender who shows continuous deficiencies or inability to understand processes will be required to attend additional trainings to ensure that they are both promoting the Program accurately and taking the necessary steps to ensure compliance with the guidelines. Lender users who repeatedly fail to attend training or follow the Program guidelines may be subject to additional training fees.

The Issuer's staff will be trained to use the reporting and analysis web-based tools separately. This will be done after Program commencement and can be scheduled thereafter as needed.

vi. Customer Support and Holiday Schedule

The Administrator, as part of its duties, provides on-going support to the Lenders who need assistance in processing Program loans. This includes assistance in determining eligibility factors such as income, total acquisition costs, system assistance, documents, and additional support Lenders require in the successful origination of these loans. Lenders will be required to attend trainings in order to become better educated on eligibility factors, and how to efficiently navigate the process, including the Administrator's System. The Administrator's System also includes an on-line help.

The Administrator will require certain down times for routine maintenance of its system. These will be scheduled during off-peak times whenever possible. The Administrator will also publish on its website its holiday schedule annually, when the offices will be closed and services will not be available.

5. ADMINISTRATOR'S SYSTEM, DATABASE AND QUALITY ASSURANCE

During the term of this Agreement, and for the purpose of managing the Program, the Administrator will grant the Issuer and the Working Group Professionals the right to use its Web-System via the Internet. The System consists of a proprietary web-based, multi-function,

security controlled software application, owned and licensed by Housing and Development Services, Inc. The System is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Issuer shall comply with all applicable laws regarding use of the System, including but not limited to: (i) The Issuer, and all users to which it approves for access to the System, agree not to remove or alter any copyright notices on any and all copies of the System; (ii) The Issuer, and all users to which it approves for access to the System, shall not copy, reverse engineer, model or distribute information related to the Administrator's system and processes for its own use or that of any third party. The system refers to any part thereof, administrator's website, reports, forms, schematics, database, scripts, code and/or any derivatives thereof.

All of the web areas of the System are secure using SSL / enTRUST, and data is encrypted. Users are assigned security roles based on their approved access level, i.e., originators, underwriters, etc. Users are not required to purchase any part of the System. The process may require a one-time downloading of (free) Adobe Reader to print and view reports and forms. There are no additional license costs to access the System.

The Administrator's website is www.ehousingplus.com. This website is structured to house Program information. The Issuer can link to any of the Administrator's website areas, and vice versa, in order to provide a more seamless process for Lenders. Information necessary to link and create the Program Summary page will be requested from the Issuer when the Program is being set up. The Secure System is also accessible from the Program pages.

6. **COMPENSATION OF ADMINISTRATOR; LIABILITY FOR EXPENSES. As compensation for the performance of its duties hereunder, the Administrator is entitled to receive a fee(s) as detailed in Addendum A. Fees may be increased annually, after notification of no less than 90 days.**

Interaction with Working Group Members. Administrator will interact closely with all Working Group Professionals in order to provide the scope of services to the Issuer. The Administrator shall provide the services herein based on its own processes and systems, and shall not be responsible to modify, alter or change its system or processes for the benefit of the Working Group Professionals. The Administrator is not a bank, mortgage company, or governmental entity, and as such is not subject to any other requirement other than those named in this Agreement.

7. **LIMITATIONS**

A. **Limitation on Liability of Directors, Officers, Employees and Agents of the Administrator**

No director, officer, employee or agent of the Administrator shall be under any personal liability to the Issuer or Lender for any action taken in good faith or for refraining from the taking of any action in good faith pursuant to this Agreement, or for errors in judgment.

8. **WARRANTIES AND REMEDIES**

A. **Performance Warranty**

Administrator warrants that work performed will be performed by qualified personnel in a professional, workmanlike manner, consistent with the prevailing standards of the industry; and it will use commercially reasonable efforts to perform under this Agreement.

Administrator shall not be held responsible for carrier, telecommunications, or Internet access outages.

Administrator will not be liable for unauthorized access to, or alteration, theft or destruction of the Issuer's data files, programs, procedures or information through accident, fraudulent conduct, or any other method, unless such access, alteration, theft or destruction is caused as a result of the Administrator's negligence or intentional misconduct. Administrator agrees to protect said information in a manner and at a level that is widely accepted and consistent with prevailing industry standards.

Administrator shall not be held responsible for the breach of any warranty or indemnification provided by third party software providers, however, Administrator agrees it shall attempt to enforce all warranties and indemnifications provided by third party software providers. Administrator shall not be held responsible for and does not warrant the functionality of any Issuer programs or modifications not originated by Housing and Development Software, LLC.

THERE ARE NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT AND THE HDS SYSTEM PROVIDED OR ANY MAINTENANCE, TECHNICAL SUPPORT OR SERVICES TO BE PROVIDED OR ANY SYSTEM ENHANCEMENTS PROVIDED INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

B. Remedies

Whenever any failure referred to in Section 9 hereof shall have happened and be continuing, the Issuer may, upon the expiration of any applicable cure period, take any one (1) or more of the following remedial steps:

i. By notice in writing, the Issuer may, subject to applicable State and federal law, terminate this Agreement.

ii. On or after the receipt by the Administrator of such written notice, all authority and power of the Administrator under this Agreement shall pass to and be vested in a substitute administrator, which such substitute administrator may be the Issuer. The Issuer shall have the responsibility of coordinating the activities of the substitute Administrator.

iii. The Administrator agrees to cooperate with the Issuer in effecting the termination of the Administrator's responsibilities hereunder, at no additional cost to the Administrator.

iv. The Administrator shall have the right to terminate this Agreement with 90 days notification. Should there be any breach of confidentiality or disclosure related to the Administrator's system and/or data, the Administrator shall notify the Issuer in writing of the event within three (3) business days of its findings, and the Issuer shall be responsible to provide immediate relief. This relief can come in the form of immediate denial of access to system from source of known risk.

v. Unless otherwise expressly provided, no remedy herein conferred upon or reserved is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Agreement or existing at law or in equity. No delay or omission to exercise any right or power accruing under this Agreement upon the happening of any event set forth herein shall impair any such right or

power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed pertinent.

10. CONFIDENTIAL INFORMATION; NON-DISCLOSURE

The data collected by the Administrator's System is in part private, non-public information, and the Administrator will use its best efforts to protect it at all times. An electronic backup of the data will be provided to the Issuer at any point in time it is requested by the Issuer. Through normal administration activities, including the tracking of file deficiencies, the Parties may sometimes obtain non-public personal and financial information concerning the mortgagors and their single family residences. Such information or non-public personal and financial information may be used by the Parties or by its officers, employees, agents or affiliates, only as contemplated by the Program. All such information shall only be used in a manner consistent with any applicable laws or regulations regarding disclosure of credit information and/or non-public personal and financial information. Access to data will be restricted to Issuer approved participants. It shall be the responsibility of the Issuer to notify the Administrator of any such approvals/denials/updates as required. Issuer shall provide Administrator approvals for any Working Group Professionals who will be granted access to Program data. Administrator shall not be liable for any access approvals granted by the Issuer.

At times, Issuer and its assigns may obtain confidential information of the Administrator. Confidential information includes any information, not generally known in the relevant trade or industry, obtained from the Administrator, HDS, Inc., its affiliates, or their vendors or licensors or which falls within any of the following general categories: (a) information relating to trade secrets of HDS, Inc. or its vendors or licensors; (b) information relating to existing or contemplated products, services, technology, designs, processes, formulae, computer systems, computer software, reports, algorithms in research or developments of HDS, Inc. or its vendors or licensors; (c) information related to the business of HDS, Inc. or that of its vendors or licensors, including but not limited to business forms, handbooks, policies, documents, business plans, business processes and procedures, sales or marketing methods, methods of doing business, customer lists, customer usage and/or requirements; (d) information marked "Confidential" or "Proprietary;" and (e) this Agreement.

Duty to Maintain Confidentiality: Each Party, on behalf of itself, its employees, agents and representatives, agrees to keep the confidential information of the other Party in the strictest confidence, in the manner set forth below:

i. Neither Party shall copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer confidential information or anything containing or embodying such confidential information of the other party (except in performance of services by HDS, Inc.) and shall not directly or indirectly, disclose, divulge, reveal, report or transfer such confidential information of the other to any party other than as a Permitted Party. Permitted Party(ies) include any officers, directors, managers, administrators, executive directors, and employees of the Parties.

ii. Neither Party shall use any confidential information of the other or the concepts therein for its own benefits or for the benefit of a third party or for any purpose other than the purpose for which such confidential information is being disclosed, including all proprietary systems and material accessed via the Administrator's System, website, or distributed materials. Issuer shall accept responsibility to maintain confidentiality on their behalf, and on behalf of those it authorizes to act on its behalf, including any Working Group

Professionals designated to access such information. Working Group Professionals may be required to execute separate confidentiality agreements.

iii. Neither Party shall remove any proprietary legends or notices, including copyright notices, appearing on or in the confidential information of the other Party.

iv. Each Party shall take appropriate action with respect to each and every person who is permitted access to any confidential information of the other to ensure that each such person complies with the confidentiality provisions hereof. Each Party shall use its best efforts to enforce the proprietary rights of the other Party and the other Party's vendors, licensors and suppliers (including but not limited to seeking injunctive relief or other reasonably necessary action) against any person who has possession of or discloses confidential information in a manner not permitted by this Agreement.

v. Any materials which are, or which relate to or derive from any confidential information of the other Party shall be kept confidential, and all such materials shall be returned to the disclosing Party (or destroyed, if return is not possible or economically feasible) upon satisfaction of the purpose for the disclosure of such information.

vi. The Parties may disclose confidential information to their attorneys in the course of representation on a matter reasonably requiring the attorneys to receive the confidential information and may also disclose confidential information to their certified public accountants and to the extent necessary to enable those accountants to prepare financial statements or reports required by law.

vii. In the event that any demand is made in litigation, arbitration or other proceeding for disclosure of confidential information, the party upon which the demand is made shall not disclose the confidential information, and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of confidential information.

11. MISCELLANEOUS PROVISIONS

A. Books and Records

The Administrator agrees to keep proper books, records and accounts sufficient to comply with IRS reporting requirements applicable to the Program. The Administrator shall make such books and records available for inspection by the Issuer upon ten (10) days written request by the Issuer, during normal business hours and under reasonable conditions.

B. Files

The Administrator agrees to keep Program related documents and files for a period of three (3) years from loan closing. At the end of that period, the Administrator shall have the right to destroy the files. The Administrator will notify the Issuer of its intent to destroy the files, and the Issuer shall have the right within 60 days of receipt of said notification to request the files, at its own expense. In the event that this Agreement is terminated by either Party, the Issuer shall have the option to request the loan files, and the Administrator shall ship them to the Issuer at the Issuer's expense. After the three (3) year period, the Administrator will notify the Issuer of its intent to destroy the documents, and Issuer shall have the option to request the loan files and the Administrator shall ship them to the Issuer at the Issuer's expense.

C. Transfer of Duties

Upon termination of this Agreement, the Administrator shall promptly, but not later than thirty (30) days after such termination, supply loan data in its standard format to Issuer or its successor(s). Administrator shall use its best efforts to ensure the orderly and efficient transfer of all information required by the Program to the Issuer or its successor(s), or, to a new program administrator designated by the Issuer. Costs associated with such transfer shall not be borne by the Administrator, unless this Agreement is terminated for cause, in which case, costs associated with such transfer shall be borne by the Issuer or its assigns.

Administrator shall use commercially reasonable efforts to wrap up Program activities to the Issuer. Any costs associated with such transfer shall not be borne by the Administrator.

D. Amendments, Changes and Modifications

Subsequent to the commencement of the Program, this Agreement may be amended, changed, modified, altered or terminated only with the written consent of the parties hereto. Requests for Amendments should be notified as indicated in Section 11, Item F "Notices".

E. Governing Law

This Agreement shall be construed in accordance with the laws of the State of Florida, and the obligations, rights and remedies of the Parties hereunder shall be determined in accordance with such laws without reference to the laws of any other state or jurisdiction, except applicable federal laws, rules and regulations.

F. Notices

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified or registered mail, or electronic mail, return receipt requested, addressed to the appropriate notice address below. The Issuer or the Administrator may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

The Administrator shall exercise due diligence in reporting to the Issuer and its designees any occurrences observed in the administration of the Program which in the reasonable judgment of the Administrator would be of interest to the Issuer or its designees, or which would have the effect of violating the terms and conditions of the Program, as set forth in the Program Documents.

All notices shall be addressed to:

- (a) As to the Program Administrator

As to this Agreement, scope of work, fees and related notifications:

Cristina M. Gilson
Housing and Development Services, Inc. (eHousingPlus)
3050 Universal Boulevard, Suite 190
Weston, FL 33331
(954) 217-9597
(954) 217-9598 Fax
Cristina.Gilson@hdsoftware.com

Elena Miranda
Housing and Development Services, Inc. (eHousingPlus)
3050 Universal Boulevard, Suite 190
Weston, FL 33331
(954) 217-9597
(954) 217-9598 Fax
Elena.Miranda@hdsoftware.com

Hannah Miller
Housing and Development Services, Inc. (eHousingPlus)
3050 Universal Boulevard, Suite 190
Weston, FL 33331
(954) 217-9597
(954) 217-9598 Fax
Hannah.Miller@hdsoftware.com

As to Program guidelines, and changes:

Paloma Miranda
eHousingPlus
3050 Universal Boulevard, Suite 190
(954) 217-0817 Ext 210
(206) 888-2725 Fax
Paloma.Miranda@ehousingplus.com

AND

Patricia Denihan
eHousingPlus
3050 Universal Boulevard, Suite 190
Weston, FL 33331
(954) 430-6072 Direct
(206) 888-2725 Fax
Patt@ehousing.cc

Sue Denihan
eHousingPlus

3050 Universal Boulevard, Suite 190
Weston, FL 33331
(813) 244-1097 Direct
Sue@ehousing.cc

(b) As to the Issuer:

David Brandt, Executive Director
Housing Finance Authority of Palm Beach County
100 Australian Ave, Suite 410
West Palm Beach, FL 33406
(561) 233-3652
dbrandt@pbcgov.org

G. Severability

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

H. Further Assurances and Corrective Instruments

To the extent permitted by law, the Issuer and the Administrator agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance of this Agreement.

I. Term of Agreement; Termination

This Agreement shall be in full force and effect from the Effective Date forward unless it is earlier terminated. In addition to the other provisions of this Agreement, either Party may terminate this Agreement with or without cause, by providing at least ninety (90) days written notice of termination to the other Party. In the case of the Administrator, no termination shall be effective until the Issuer engages a substitute administrator (which may be the Issuer), given that the timeframe to select a substitute administrator is reasonable.

J. No Rights Conferred on Others. Nothing in this Agreement shall confer any right upon any person other than the Issuer and the Administrator.

K. Members of the Issuer Not Liable. This Agreement is executed by the directors, officers, or executive directors of the Issuer in their capacities as said directors, officers, or executive directors. No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future directors, agent, counsel, officers, employee, or executive director of the Issuer in his or her individual capacity, and none of the directors of the Issuer, any officers, or executive directors executing this Agreement shall be liable personally with respect to this Agreement or be subject to any personal liability by the execution thereof.

L. Compliance with §119.0701, Florida Statutes (Public Records)

1. To the extent records are created and/or maintained by Administrator that meet the definition of "Public Records" in §119.011(12), Florida Statutes, Administrator agrees that it shall comply with the applicable provisions of §119.0701, Florida Statutes. Specifically, Administrator shall:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the Issuer in order to perform the services provided for in this Agreement ("Public Records").

(b) Provide the public with access to Public Records on the same terms and conditions that the Issuer would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that Public Records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining Public Records and transfer, at no cost, to the Issuer all Public Records in possession of the Administrator upon termination of the Agreement or as otherwise provided herein and destroy any duplicate Public Records that are exempt or confidential from public records disclosure requirements. All records stored electronically must be provided to the Issuer in a commonly accepted industry format.

(e) Promptly notify the Issuer upon receipt of a Public Records request.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, we have set our hands as of the date first written above.

**HOUSING AND DEVELOPMENT
SERVICES, INC. d/b/a eHousingPlus**

By: _____
Cristina M. Gilson, its President

IN WITNESS WHEREOF, we have set our hands as of the date first written above.

**HOUSING FINANCE AUTHORITY OF PALM
BEACH COUNTY**

By: _____
Name:
Title:

**Addendum A
Fees**

Fees are paid by the borrower, seller, Lender or builder of each loan. The Administration Fee is non-refundable, and submitted at the time the compliance file is sent to the Administrator. The Administrator's Fee can be paid by company check or cashier's check. These fees are exclusive to this agreement and are not applicable for or with any other program, unless otherwise stated.

- | | |
|---|-------------------------|
| • MCC Processing/Compliance Fee | \$275.00 per file |
| • MCC Processing/Compliance Fee – Reissue | \$300.00 per file |
| • MCC Replacement/Lost Certificate | \$75.00 per certificate |
| • Penalty for Chronically deficient file | \$100.00 per file |
| • Other services available upon request | TBD |

Addendum C
MCC Program Scope

Program Name: 2015 Mortgage Credit Certificate Program

Election Date: expected fall 2015

Amount of Private Activity Bonds: (Allocation) up to \$100M

Credit Rate: TBD

Non-Issued Bond Amount: up to \$25M of MCC authority

Final Certificate Date: December 31, 2017

Attachment I
Confidentiality and Non-Disclosure Agreement for
the Working Group Professionals

This Confidentiality and Non-Disclosure Agreement ("Agreement") is entered into as of _____, 2015, between Housing and Development Services, Inc. "HDS" a private company having an address at 3050 Universal Boulevard, Suite 190, Weston, FL 33331 and the entities whose names and addresses are set forth below (the "System Users"). HDS is performing certain professional services (the "Services") on behalf of the Housing Finance Authority of Palm Beach County (the "Issuer") for the administration of the Issuer's 2015 Mortgage Credit Certificate programs; and

WHEREAS during the term of this agreement, the System Users and their representatives shall have the occasion to access the proprietary web-based HDS software, related processes, and confidential data; and

WHEREAS HDS wishes to take additional steps to ensure the protection of its proprietary and other Confidential Information (hereafter defined) which may be accessed during the normal course of business by third parties performing work on behalf of the Issuer and its single family programs.

NOW, THEREFORE, in consideration of the performance of the Services by eHP, and for other valuable consideration, the System Users and HDS agree to the following:

1. Definitions.

- a. "Confidential Information" is herein defined as all proprietary information, whether in tangible or intangible form, whether disclosed or obtained by the Issuer and its affiliates orally, in writing, in graphic or machine-readable form, and whether or not it is designated as confidential, including but not limited to proprietary processes, source code, technology, computer programs, computer systems, software, designs, inventions, trade secrets, specifications, techniques, data, documentation, manuals, non-public financial information and other business information, third-party information that any party to this Agreement is obligated to keep confidential, oral statements, notes, analysis, compilations, studies, interpretations, or other documents prepared by HDS or its representatives which contain, reflect, or are based upon, in whole or in part, the information furnished to the System Users or their representatives by HDS, and any other information, tangible or intangible, that is disclosed or made available to the System Users and their representatives by HDS as a result of the performance of the Services. Per HDS information security program, confidential information shall also include, in any and all forms, any non-public personal information, consumer reports, or other information pertaining to individuals, protected by federal or State law.
- b. "State" is herein defined as the State of Florida.

2. Information Security Program.

- a. Federal and State laws require that HDS maintain an information security program to protect certain personal information related to individuals whose information is collected in HDS systems, and where HDS is the Administrator of

the Issuer's single family programs. This information includes the following: (1) non-public personal information protected by the Safeguards Rule of the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 *et. seq.*) and implementing regulations (16 C.F.R. Part 314); (2) consumer reports protected under the federal Fair Credit Reporting Act, as amended by the 2004 FACT Act (15 U.S.C. § 1681 *et. seq.*); and (3) any other information pertaining to individuals subject to data security, data security breach notification, and identity theft prevention laws.

- b. If HDS grants the System Users and their representatives access to its systems and to view personal information related to individuals who are customers, business partners, vendors, or others, the System Users shall comply with and ensure that any representatives acting on its behalf comply with all federal and State laws protecting such information while utilizing any HDS systems, while using HDS protected information, and while connected to any HDS system or website.
 - c. The System Users shall comply by (1) implementing and maintaining measures designed to meet the information security objectives of federal and State laws; (2) using and disclosing customer information solely for the purposes of performing this Agreement; and (3) providing HDS with the results of any internal and external audits or findings of any breach thereof.
3. Disclosure. The Issuer agrees that any and all Confidential Information of HDS is the sole property of HDS, is to be held in strict confidence, and shall not be disclosed by the System Users or any of their employees or agents to any third party, or for any benefit other than the fulfillment of this Agreement. The System Users further agree to notify HDS of any actual or suspected misuse, misappropriation, or unauthorized disclosure by any party of Confidential Information that may come to the System Users' attention. Disclosure of Confidential Information does not include the disclosure of information which is known or made known to the public through no act or failure to act on the part of the System Users, but only to the extent such information is known to the public through the act or failure to act on the part of the System Users or their representatives. Disclosure of Confidential Information does not include any information required by law or court order to be disclosed, but only to the extent of such required disclosure, and provided HDS is first given notice of such required disclosure and an opportunity to contest such required disclosure.
4. Use of Information. The System Users and their representatives shall use the Confidential Information of HDS solely as it relates to the Services being performed, unless HDS/eHP provides express written consent authorizing use of such information for other purposes, and shall use such information only during the term for which HDS is to perform the Services.
5. Return of Materials. Confidential Information shall continue to remain the sole property of HDS even after the completion of the Services and shall be held in the strictest confidence by the System Users and their representatives. Confidential Information furnished in tangible form shall not be duplicated by the System Users except as may be permitted by this Agreement. The System Users agree to return to HDS any Confidential Information in tangible form (including copies thereof) within 10 days of request by HDS or within 10 days of termination of the Services by either party, whichever is sooner, or to certify that such Confidential Information has been destroyed.

6. Modifications. No amendments or modifications to this Agreement may be made without the written agreement of HDS and the System Users.
7. Entire Agreement. This Agreement is the entire and complete understanding between the parties in regard to the covered subject matter. The certain terms of this Agreement replaces and supersedes all predecessor agreements between the parties whether written or oral.
8. Severability. If any provision or provisions of this Agreement shall be determined to be invalid or unenforceable, the validity and effect of the other provisions of this Agreement shall not be affected thereby.
9. Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Florida.
10. Authority. Each person executing this Agreement on behalf of HDS and the System Users, respectively, warrants his or her authority to do so.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties to this Agreement have, by their duly authorized officers, executed this Agreement under seal and on the date first above written.

HOUSING AND DEVELOPMENT
SERVICES, INC. (HDS)

By: _____

Name: Cristina M. Gilson
Title: President

HOUSING FINANCE AUTHORITY OF PALM
BEACH COUNTY

By: _____

Name:
Title:

Additional Working Group:

[COMPANY]

(System User)

By: _____

Name:
Title:
Address:

[COMPANY]

(System User)

By: _____

Name:
Title:
Address: