



# Notice of Funding Availability (NOFA) for

## Affordable Housing Development & Preservation Program - Multifamily Round 2: Multifamily Housing Development

NOFA Released  
April 2, 2024

Applications Due  
June 26, 2024

Applications must be submitted via online portal.

Instructions for application completion are contained in this Notice of Funding Availability.

**It is the responsibility of the applicant to ensure application(s) arrive prior to the due date and time. Applications received after 11:59 pm on June 26, 2024 will be returned to the applicant and will not be considered.**

This Document can be made available in alternative accessible formats upon request.

## Record of Amendments

The following table summarizes amendments to Lee County Florida's Notice of Funding Availability (NOFA) for Affordable Housing Development & Preservation Program – Multifamily Round 2: Multifamily Housing Development.

<b>DATE OF AMENDMENT</b>	<b>AMENDMENT NUMBER</b>	<b>DESCRIPTION OF AMENDMENT</b>

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Lee County Office of Strategic Resources and Government Affairs

Affordable Housing Development & Preservation (AHD&P) – Round 2:  
Multifamily Housing Development

Funding Available

Program Name	Eligible Uses of Funds	Minimum funding	Maximum Funding	Maximum Subsidy Per Unit/Other Criteria
Affordable Housing Development and Preservation– Multifamily Development	New Construction – Acquisition/New Construction of multifamily rental housing, large scale.  (more than 5 units)	\$4,000,000	\$20,000,000	\$250,000 per unit subsidy cap  51% or more of units must be occupied by Low/Moderate Income households  30-year Affordability and Restrictive Use Period

If additional funding opportunities become available to the Program following the issuance of this NOFA, Lee County reserves the right to select eligible activities(s) submitted in response to this NOFA without issuing an additional NOFA(s).

The total amount of funding available through this NOFA is \$150,000,000.00.

This NOFA contains information and required forms for potential applicants to apply and compete for grant funds. Potential applicants are advised to read the materials carefully.

The material in this NOFA does not represent all of the particular priorities, program components, or funding sources currently/potentially available through local, state, or federal funders and may change upon the release of NOFAs/ for the various funding sources.

Lee County reserves the right to match funding opportunities to ensure alignment of resources with community needs and appropriate target populations. All applications received will be evaluated for their eligibility for each funding opportunity that may be available.

All applicants are strongly advised to review the following documents provided by Lee County Florida as administrative guidelines and regulatory requirements associated with CDBG-DR Affordable Housing Development & Preservation Program (AHD&P) funding.

CDBG-DR AHD&P - Multifamily Policies and Procedures:  
<https://cdbgdr.leegov.com/pages/policies-and-procedures>

## Program Purpose, Priorities and Funding Special Considerations

The purpose of this NOFA is to offer funding to units of local government, private non-profit and for-profit entities and Public Housing Authorities to create new affordable rental housing units (5 or more units).

Special consideration will be given to Activities that include the following:

- **Project Design and Approach:** The extent to which the project demonstrates long term sustainability and affordability period. The project's pro-forma budget demonstrates an affordability period meeting or exceeding the prescribed period for the project type, with adequate reserves for maintenance, repayment, and ongoing operating expenses. **Applications proposing affordability period of greater than 30 years, and long-term financial viability will receive priority.** The applicant proposes a financing structure that yields to repayment of CDBG-DR funds within the affordability period, or sooner. **Applicants who propose 100 percent repayment of CDBG-DR funds within the affordability period will receive priority.**
- **Sustainability and Resilience Measures:** The extent to which the proposed Activity integrates adaptable and reliable technologies. The extent to which the proposed Activity will integrate mitigation measures and strategies to reduce natural hazard risks, including climate related risks. The extent to which the proposed Activity design/approach is reasonable, efficient, and durable. The extent to which the proposed Activity utilizes alternative materials and innovative design options, including designing with broadband in mind. Meeting or exceeding the ICC Standard for Residential Construction in High Wind Regions. Measures include: integration of green/energy efficient, resilient design- *NOTE: See Construction Standards Manual and Green Building Requirements in the Subrecipient Manual for more information.*
- **Timeliness and Urgency:** Number of months estimated to complete and lease units.
- **Cost Effectiveness and Leveraged Funds:** The extent to which the proposed Activity will use other funding sources to leverage the amount of CDBG-DR funding requested. The CDBG-DR per unit subsidy will be used to measure cost effectiveness in most cases. Applicants should demonstrate the ability to align financing and capital from a variety of sources, including but not limited to Low Income Housing Tax Credits and Bonds. Applicants should consider leveraging increases for eligible tax credit basis by developing in difficult to develop areas, qualified census tracts, and opportunity zones. Priority will be provided to applicants with the lowest per unit subsidy, and clear repayment plan for CDBG-DR funds.
- **Meeting Community Needs:** The extent to which the proposed Activity provides affordable housing units for extremely-low and very-low income households, age dependent households, and/or other special needs populations. The extent to which the applicant has engaged with the community in project design, especially those who are expected to reside in planned housing units.
- **Proximity to Public and Private Amenities:** The extent to which the proposed Activity

provides the opportunity for community engagement through access to parks, community centers, bike paths, health care, shopping, schools, public transportation, and human/family services.

- **Supportive Services:** The extent to which the proposed Activity provides on-site, or referrals for, supportive services including, but not limited to the following:
  - *Health and Wellness:* mental health support, case management, traveling medical and physical health services,
  - *Economic Mobility:* job placement assistance, job fairs, financial literacy, job training,
  - *Education:* childcare, after-school, summer academic enrichment programs, colleges, technical training, college readiness, and GED programs.
- **Proposal Presentation:** The proposal is complete, has required attachments, and provides a clear demonstration of organizational capacity, activity details, and budget requirements.

### Questions Regarding this NOFA

Questions from applicants must be submitted via the online application portal and be received no later than May 17, 2024. Lee County will compile all questions and answers and publish them on the Lee County CDBG-DR webpage as well as sending them to all interested applicants no later than 5:00 pm on May 22, 2024.

Successful applications must meet the guidelines provided in this NOFA. To submit an application for consideration, complete the submission requirements listed here within.

## Section I: General Information

### Strategic Use and Alignment of Resources

Lee County is designated as an entitlement community by HUD. Congress appropriated supplemental funding for 2022 disasters through Public Law 117-328, of which HUD allocated \$1,107,881,000 in CDBG-DR funding to Lee County to support long-term recovery efforts following Hurricane Ian (FEMA-4673-DR), through the Federal Register, 88 FR 32046 (May 18, 2023), [www.hud.gov/sites/dfiles/CDP/ducmnts/6393-N-01CDBG-DR-Allocations.pdf](http://www.hud.gov/sites/dfiles/CDP/ducmnts/6393-N-01CDBG-DR-Allocations.pdf).

Lee County's Hurricane Ian Community Development Block Grant – Disaster Recovery (CDBG-DR) Action Plan was approved by the U.S. Department of Housing and Urban Development (HUD) on November 7, 2023.

This NOFA makes up to **\$150,000,000** in CDBG-DR funding available for the creation of new affordable rental housing units through new construction (with or without acquisition) or acquisition and rehabilitation.

Lee County's Department of Strategic Resources and Government Affairs (SRGA) is the lead and responsible department for administering the CDBG-DR funds allocated to Lee County. SRGA is responsible for ensuring that resources available to the community are strategically utilized to maximize impact and effectiveness are awarded to eligible activities and meet a



## CDBG-DR National Objective.

Specific to this NOFA, Lee County is guided by the Affordable Housing Development & Preservation Program Standard Operating Procedures - Multifamily (AHD&P-Multifamily SOP). The AHD&P-Multifamily SOP provides specific regulatory requirements as set forth by HUD as well as identification of the specific intention of the use of the CDBG-DR funding allocated to this Activity, and any additional priorities identified by Lee County. The AHD&P SOP can be found at the Lee County CDBG-DR website: <https://cdbgdr.leegov.com/>

## Performance Measures

Lee County has identified the following performance measures to ensure compliance with federal requirements and strategic use of the funding to produce intended outcomes:

1. Total number of housing units produced.
2. Number of low / moderate housing units produced.
3. Number of low / moderate income households assisted.

While Lee County is required to maintain compliance with applicable federal regulation concerning the structure of all awards of funding, **the County desires to offer maximum flexibility to applicants of this Program by requesting that all applicants submit their desired loan structure and unit mix at the time of application.** Applicants' proposed repayment terms will be evaluated during the underwriting process to determine feasibility. Repayment will support the County's goal to create renewable funding sources for community revitalization, including the development and preservation of affordable housing. Applicants that propose repayment will receive special consideration during application scoring.

## Activity Completion Timeframes

The Proposed Activity should commence with architectural/engineering services (if applicable) or construction within 6 months following the award of funding/Notice to Proceed/execution of the Subrecipient/Developer Agreement. Specific timelines for completion of each project and terms of subrecipient or developer agreement must be submitted with the application and will be reviewed during application scoring. Applicants that demonstrated construction readiness will receive special consideration during application scoring.

## Critical Dates and Timeline

The projected dates and timelines are subject to change. Lee County will publish all updates to the timeline in Vista Trak and online at <https://cdbgdr.leegov.com/>

Date	Time	Action
April 2, 2024	Before 5:00 pm	Lee County Issues Notice of Funding Availability (NOFA)

April 10, 2024	10:00-12:00 am	Pre-Application Conference #1 ( <b>attendance is required</b> ) <b>Attendance may be in-person or via Teams.</b> <a href="https://app.smartsheet.com/b/form/a96a49cb07c94357915506131d9a0d87">https://app.smartsheet.com/b/form/a96a49cb07c94357915506131d9a0d87</a>
April 18, 2024	2:00 – 4:00 pm	Pre-Application Conference #2 ( <b>attendance is required</b> ) <a href="https://app.smartsheet.com/b/form/a96a49cb07c94357915506131d9a0d87">https://app.smartsheet.com/b/form/a96a49cb07c94357915506131d9a0d87</a>
April 23, 2024	10:00 am – 12:00 pm	Office Hours: NOFA Technical Session #1 (Optional) The link to participate will be sent to registered applicants.
May 9, 2024	2:00 – 4:00 pm	Office Hours: NOFA Technical Session #1 (Optional) The link to participate will be sent to registered applicants.
May 17, 2024	5:00 pm	Deadline for submission of questions regarding NOFA
May 22, 2024	5:00 pm	Responses to NOFA questions sent to Applicants (posted on webpage and sent to all Applicants)
<b>June 26, 2024</b>	<b>11:59 pm</b>	<b>SUBMISSION DEADLINE</b>
July 19, 2024	9:00 – 11:00 am	<a href="#">Evaluation Committee Meeting</a> Members will meet to rank each Proposed Activity application
September 3, 2024	9:30 am	Board of County Commissioners Activity Review

### Mandatory Pre-Application Conferences

Lee County will host two conferences for potential applicants to attend to understand the rules and requirements of the NOFA. **Attendance at ONE of the available conferences is mandatory.** These conferences will be available virtually. Applicants are required to attend at least one of the two scheduled Pre-Application Conferences.

### Office Hours: NOFA Technical Assistance Sessions

Lee County will host at least two public Office Hours sessions, which are not mandatory. Lee County will answer questions or will compile questions from potential applicants and will post all final questions and answers in Vista Trak and send via email to registered applicants.

### Applicant Eligibility

Applicant must meet all the following requirements:

- Applicant is a unit of general local government, private non-profit or for-profit entity, or Public Housing Authority that owns property suitable for development of new multifamily affordable housing units (5 or more units) OR intends to acquire property suitable for development of new multifamily affordable housing units (5 or more units) in Lee County;

- Applicant must be a legally formed entity qualified to do business in the State of Florida as of the application deadline;
- Applicant has been in operations for 12 months prior to the application deadline and has experience operating, managing or developing affordable housing within 36 months prior to the application deadline;
- Applicant owns, or has established site control the project site (*site control may be considered if there is a contract for the purchase of the property*);
- Applicant may not be presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in federal programs, as indicated by System for Award Management ([www.SAM.gov](http://www.SAM.gov)). **Any Applicant on the excluded parties list ([www.sam.gov/SAM/](http://www.sam.gov/SAM/)) will be considered ineligible for funding;**
- Applicant must be in good standing with state and federal taxes (SUTA, FUTA, income, etc.) or in an approved and executed repayment plan;
- Applicants may not be, at time of application, party to any active legal or court action and must disclose all legal or court actions in which the applicant is currently involved.

Activity must meet all the following requirements:

- Proposed Activity must be located in Lee County, FL, must be CDBG-DR eligible, and meet a national objective;
- Proposed Activity is feasible and complies with CDBG-DR construction and elevation standards;
- 51 percent of the rental housing units produced must be rented at an affordable rent to households with 80 percent AMI or less;
- Proposed activities may not exceed project or per unit caps and must demonstrate proof of committed funding from other sources.

### Subrecipients & Developers

A subrecipient is defined by 2 CFR 200.93 as a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

A developer is a for-profit or private nonprofit entity that the grantee provides CDBG-DR assistance to for the development, acquisition and/or rehabilitation of affordable housing units. Developers are program beneficiaries and thus distinct from subrecipients, grantee employees, and contractors. Developers may receive CDBG-DR funds from either the grantee or a subrecipient. Public Housing Authorities are public agencies and therefore are unable to be a Developer.

Lee County may make awards to eligible subrecipients or developers to administer eligible activities. By entering into a written Agreement, the organization agrees to:

- Assume all areas of responsibility for administering the scope of work compliantly, within approved budget, and within the approved timeline.
  - Submit Tenant Selection Process that includes, but is not limited to:
    - Intake Procedures;

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- Initial Eligibility Screening;
- Income Certification (using IRS 1040 Adjusted Gross Income method);
- Demonstration of compliance with affirmative marketing and outreach efforts.
- Actively participate in Lee County-provided technical assistance sessions and regulations scheduled meetings;
- Provide complete reports on time;
- Ensure staff are available for Lee County, HUD, HUD OIG, and other monitoring visits or audits;
- Recordkeeping;
  - Submit all required documentation into Lee County’s system of record, ensuring files are always compliant and updated
  - Maintain local records for post-closeout compliance requirements
- Contact Lee County if they need additional technical assistance to meet all compliance and performance requirements.

	Subrecipients	Developers
Definition	2 CFR 200.1 defines a subrecipient as a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program.	A for-profit or private nonprofit individual or entity that: (1) acquires homes and residential properties to rehabilitate for use or resale for residential purposes, and (2) constructs new housing in connection with the redevelopment of demolished or vacant properties.
Method of Distribution	Receives funds from Lee County through a NOFA and application selection process.	
Award Structure	Receives a subaward from Lee County to carry out part of a Federal program. They are not program beneficiaries.	Developers are program beneficiaries and can receive funds directly from Lee County or its subrecipients.
Procurement	Must adhere to all 2 CFR 200 requirements	Developers are not subject to 2 CFR 200- Procurement Standards, and do not have to procure subsequent entities/services (including contractor.)
Construction Management	Provides oversight to ensure cost reasonableness and compliance with cross-cutting federal requirements.	Manage all activities related to constructing, rehabilitating or purchasing real estate for the purposes of developing affordable housing.

<b>Activity Delivery</b>	Can only charge actual costs to deliver activity and administration funds for all direct costs	May charge a developer's fee.
<b>Public Facilities</b>	May procure contractors to construct public facilities	May not construct public facilities (this is related to ownership); this is distinct from public improvements.
<b>Program Income</b>	Any excess funds are treated as Program Income.	Excess revenues not treated as Program income; not required to return, may retain.

### Public Records

By submitting an application, the applicant acknowledges that any material submitted in response to this NOFA is a public record pursuant to the Florida Public Records Law, Chapter 119, Florida Statutes, and may be subject to public inspection.

## Section II: Scope of Activities and Program Requirements

### Eligible Activities

Housing activities eligible within this program NOFA include:

1. Acquisition of land and development of affordable multifamily housing (minimum of 5 new multifamily housing units);
2. New construction of affordable multifamily housing on land previously owned by applicant (minimum of 5 new multifamily housing units);
3. Acquisition/rehabilitation and conversion of existing market rate housing or non-residential building(s) to affordable multifamily housing units (minimum of 5 new multifamily housing units)

### Additional Requirements

#### *Rent Limits*

Multifamily rental projects must have rent and occupancy requirements that ensure that the units are affordable to and occupied by Low/Moderate Income households. Projects may elect to use either:

- Annually published HUD Fair Market Rent for the Cape Cora/Fort Myers Metropolitan Statistical Area (MSA)  
[https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2024\\_code/2024summary.odn](https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2024_code/2024summary.odn); or
- Rent that does not exceed 30 percent of the adjusted gross income (plus utility allowance) of a household whose annual income equals 65 percent of the Area Median Income (AMI), as determined and published annually by HUD (High HOME Rents)  
[https://www.huduser.gov/portal/datasets/home-datasets/files/HOME\\_RentLimits\\_State\\_FL\\_2023.pdf](https://www.huduser.gov/portal/datasets/home-datasets/files/HOME_RentLimits_State_FL_2023.pdf)

#### *Utility Allowance*

If the tenants within the affordable rental housing units pay utilities (electricity, natural gas, propane, fuel oil, wood or coal, water and sewage service, as well as garbage collection), then, calculation of the Tenant Rent must include a utility allowance that deducts these utilities from

the net Tenant Rent.

Local Public Housing Authorities (PHAs) are required to calculate and annually update the utility allowance used by their agency to calculate net Tenant Rent for their agency’s tenants. HUD permits the use of this local PHA utility allowance calculation, however, the local PHA is under no obligation to share this information with other agencies or developers.

If the PHA utility allowance cannot be obtained from the local PHA agency, HUD recognizes another tool, the HUD Utility Schedule Model (<https://tools.huduser.gov/husm/uam.html>) that will effectively create a utility allowance for an affordable rental housing project.

Please note that the utility allowance must be updated annually by the Applicant during the entire term of the Affordability Period.

Additional training and/or technical assistance regarding utility allowance calculation will be provided to Applicants upon request.

#### State and Federal Administrative Requirements

Activities must meet all federal, state and local requirements, including all applicable requirements outlined in the following regulations, statutes, memoranda, policy and guidance documents:

File Name	File Location/Link
<b>Uniform Administrative Requirements (2 CFR 200)</b>	<a href="https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1">https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1</a>
<b>CDBG Program Regulations (24 CFR 570)</b>	<a href="https://www.ecfr.gov/current/title-24/subtitle-B/chapter-V/subchapter-C/part-570">https://www.ecfr.gov/current/title-24/subtitle-B/chapter-V/subchapter-C/part-570</a>
<b>CDBG Federal Crosscutting Requirements</b>	<a href="https://sites.hudexchange.info/cdbg-dr-consolidated-notice/cross-cutting-requirements/">https://sites.hudexchange.info/cdbg-dr-consolidated-notice/cross-cutting-requirements/</a>
<b>Federal Register, 88 FR 32046 (May 18,2023)</b>	<a href="https://www.hud.gov/sites/dfiles/CPD/documents/FR-6393-N-01-AAN.pdf">https://www.hud.gov/sites/dfiles/CPD/documents/FR-6393-N-01-AAN.pdf</a>
<b>Applicable additional Federal Register Notices and Memoranda</b>	<a href="https://www.hud.gov/program_offices/comm_planning/cdbg-dr/regulations">https://www.hud.gov/program_offices/comm_planning/cdbg-dr/regulations</a>
<b>Lee County’s CDBG-DR Construction/Green/Resilient/Broadband/Elevation Standards</b>	<a href="https://cdbgdr.leegov.com/">https://cdbgdr.leegov.com/</a>
<b>CDBG Income Limits</b>	<a href="https://www.hudexchange.info/resource/5334/cdbg-income-limits/">https://www.hudexchange.info/resource/5334/cdbg-income-limits/</a>
<b>CDBG-DR Subrecipient Manual</b>	<a href="https://cdbgdr.leegov.com/">https://cdbgdr.leegov.com/</a>
<b>Affordable Housing Development &amp; Preservation Program – Multifamily Standard Operating Procedure</b>	<a href="https://cdbgdr.leegov.com/">https://cdbgdr.leegov.com/</a>
<b>Affirmatively Furthering Fair Housing</b>	<a href="https://cdbgdr.leegov.com/">https://cdbgdr.leegov.com/</a>

### National Objective, Benefit Area and Activity Beneficiaries

The CDBG National Objective for the Affordable Housing Development & Preservation Program – Multifamily is Benefit to LMI persons. More specifically, under the LMI National Objective, the Affordable Housing Development & Preservation Program - Multifamily will be identified as a Low/Moderate Housing (LMH) activity.

The housing category of LMI national objective qualifies activities that are undertaken for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied primarily by LMI households.

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## Section III: Funding Guidelines

### Administrative Costs

Administrative costs are not an eligible expense under this program.

### Activity Delivery Costs

Staff and overhead costs directly related to carrying out approved activities are eligible under 24 CFR 570.201 and 570.204 as activity delivery costs (ADCs). All ADCs must be allocable to the approved activity and are limited to direct costs integral to the delivery of the final CDBG-DR assisted activity.

ADCs are only permitted for Subrecipients. Developer partners are not permitted to include ADCs in their budget. Subrecipient applicants under this NOFA are permitted to include the cost of delivering the funded activity (ADC) in an amount not to exceed of the total award amount.

<b>File Name</b>	CPD-23-06: Allocating Costs between Program Administration Costs, Activity Delivery Costs, and Planning Costs for Community Development Block Grant Disaster Recovery (CDBG-DR) Grantees
<b>File Location/Link</b>	<a href="https://www.hud.gov/sites/dfiles/OA/images/2023-06cpdn.pdf">https://www.hud.gov/sites/dfiles/OA/images/2023-06cpdn.pdf</a>

### Cost Reimbursement

All contracts will be on a cost reimbursement basis. Subrecipient/Developer will be required to submit proper back-up documentation for activity eligible expenses as determined by the funding source regulations and requirements. **Funding is reimbursement-based and the applicant must be able to pay for activity costs prior to requesting payment.**

### Maximum/Minimum Funding Request

For CDBG activities, Lee County reserves the right to award more or less than the amount of funds requested based on funding available.

- The minimum number of multifamily units to be constructed: **5**
- The minimum funding request is **\$4,000,000**.
- Maximum funding available for CDBG-DR for this NOFA is **\$20,000,000**

### Pre-Award Costs

Pre-Award Costs are not an eligible expense under this NOFA.

### Eligible Costs

Eligible costs for this Program include, but are not limited to, the following:

- Activity delivery costs for Subrecipients to implement their program, including staff time and environmental reviews for funded activities;
- Land acquisition costs
- Architectural and engineering design;
- Permitting fees;
- Developer fees (Developer fees are limited to 15%);

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- The developer fee cap applies ONLY to CDBG-DR awarded funds and does not impose any restriction on the amount of developer fee that may be available from other leveraged funding sources used to support the proposed activity.
- General Contractor fee (if developer is also acting as general contractor);
- Mobilization
- Site preparation/Clean-up
- Construction hard costs

### Ineligible Costs

Ineligible costs for this Program include the following:

- Pre-application costs and application development costs;
- Advances of any type, including construction;
- Infrastructure that does not result in the production of housing;
- Funding for supportive services;
- Maintenance or operating costs

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## Section IV: Application Evaluation and Selection

Applications must receive at least 80% of the total available points to be forwarded to the evaluation committee for consideration.

In order for a proposed Activity to be evaluated under this NOFA, the Activity must meet threshold requirements in **Appendix 6 – Scoring Rubric**.

Applicants that do not meet one or more of the threshold requirements will have a maximum of 5 business days from submission deadline to cure any deficiencies. Any applications with uncured deficiencies will not be considered for scoring.

### **ACTIVITIES MUST MEET ALL FEDERAL, STATE, AND LOCAL REQUIREMENTS**

CDBG Program Regulations (24 CFR 570): <https://www.ecfr.gov/current/title-24/subtitle-B/chapter-V/subchapter-C/part-570>

Uniform Administrative Requirements (2 CFR 200): <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1>

CDBG Income Limits: <https://www.hudexchange.info/resource/5334/cdbg-income-limits/>

The applicant must also comply with:

1. requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended,
2. the provisions of Contract Work Hours and Safety Standards Act, the Copeland “Anti-Kickback” Act (40 U.S.C. 276a-276a-5; 40 U.S.C. 276c)
3. Section 3, a provision of the HUD Act of 1968 found at 12 U.S.C. 1701u. The regulations are found at 24 CFR Part 75.

### **Underwriting, Cost Reasonableness, and Other Requirements**

Please refer to the Standard Operating Procedures for the Affordable Housing Development & Preservation Program (AHD&P) – Multifamily for details regarding all underwriting, cost reasonableness and other requirements at the following link: <https://cdbgdr.leegov.com/>

### **Developer Fees**

Developer fees are intended to compensate a developer for oversight of an activity, routine monitoring of the development team, and carrying the activity to completion. The developer fee for activities under this program will be capped at 15%. The developer fee cap applies ONLY to CDBG-DR awarded funds and does not impose any restriction on the amount of developer fee that may be available from other leveraged funding sources used to support the proposed activity.

### **Threshold Requirements**

Lee County will use the Threshold Checklist in **Appendix 6 – Scoring Rubric** to perform a review of all applications submitted to ensure that the applications are complete and meet the thresholds required to determine eligibility for scoring. Lee County will determine if missing

Notice of Funding Availability (NOFA) for Affordable Housing Development & Preservation: Multifamily Housing Development

Updated and Version: April 2, 2024; 1.0

threshold requirements are curable or incurable deficiencies (fatal flaws).

An applicant who submitted an application with a curable deficiency will receive an RFI that outlines the deficiencies and the steps required to cure the same. The applicant has 5 business days from the date of the RFI to respond and submit all missing information.

An applicant who submitted an application with a fatal flaw will receive an ineligibility determination. Applicants who receive an ineligibility determination may review the program Appeals Policy and Procedure (**Appendix 1 – NOFA Appeal Policy and Procedure**) to determine if they want to submit an appeal.

Complete applications that pass the threshold review move to an initial Duplication of Benefits review.

### Fatal Flaws

Deficiencies that are incurable or are not cured within the Request for Information period are considered fatal flaws. Those include but not limited to:

- Applicant is not an eligible entity;
- Proposed Activity is not eligible; or
- Proposed use of funds is not eligible.

### Request for Information (RFI)

During the application review process, when Lee County, the Evaluation Committee, and/or the BoCC have clarifying questions or if the information provided by the applicant is incomplete, Lee County staff will issue **Requests for Information (RFI)** to the applicant. All RFIs will include a due date for submitting the requested information and documentation.

RFIs will be managed through Lee County's system of record. Applicants will receive a notification through the system of record of the RFI. Applicants have **5 business days** from the date the RFI was sent to respond and submit the missing information into the system of record.

### Application Technical Score by Lee County Technical Review Team

Lee County will designate no fewer than three (3) Lee County staff – or their designated representatives – to serve as the Technical Review Team. The Technical Review Team will independently score and rank all eligible applications using the **Scoring Rubric** in the program system of record. Members of the Technical Review Team are technical specialists with the subject matter expertise needed to review applications against the program scoring criteria.

After performing the initial score and gathering their comments, members of the Technical Review Team will meet for discussion and complete a final technical Activity score together. Based on the final technical Activity scores, staff will list activities from highest to lowest score and assemble review packages for the Evaluation Committee.

All eligible applications will move forward to the Evaluation Committee for review.

## Duplication of Benefits (DOB) Review

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. § 5121 et seq., prohibits any person, business concern, or other entity from receiving Federal funds for any part of such loss as to which he/she has received financial assistance under any other program, from private insurance, charitable assistance, or any other source.

Lee County will assess assistance from other federal, state, local, or other sources available to applicants for the same purpose as the applicant's Activity and determine if any of the assistance is duplicative. The purpose of other assistance may apply to the entire plan or a portion of the plan. A duplication of benefits occurs when assistance for the same purpose has been received or will be received, and applicants must agree to notify Lee County if they are awarded or receive additional assistance for the same purpose after they apply to the program. Awarded subrecipients will be required to execute a subrogation agreement, through which the subrecipient agrees to repay any duplicative assistance received after program award.

Lee County will review the applicant's duplication of benefits section and all attachments, using the **Duplication of Benefits Checklist** to determine the value of the applicant's duplicative assistance.

Any assistance determined to be duplicative will be deducted from the calculation of the applicant's total need prior to moving forward to being scored.

Lee County will notify applicants through the system of record when their DOB review is complete. Applicants will have 5 business days to confirm the DOB amount is accurate or request an adjusted DOB calculation based upon additional verifiable information or documentation.

## Evaluation Committee

The Evaluation Committee (EC) is a group of members who understand the recovery and resilience needs in their communities and who are responsible for reviewing applications put forward by Lee County after the technical score and ranking. The evaluation committee will be comprised of appointed members. The applicable BoCC resolution will define the membership, terms, and other protocols related to the evaluation committee. Evaluation Committee Application Package Review and Recommendation

Upon completion of the threshold requirements review and technical Activity score and ranking, Lee County staff will, provide the following materials to the EC members for review:

- Instructions for accessing Lee County's system of record to perform the review,
- Summary sheet providing an overview of the requirements and priorities for funding,
- Completed scoring tool for each activity, and
- Activity applications.

The Committee shall have no less than fourteen (14) calendar days to review all of the Activity's materials. During this time, each member of the Committee shall compile their questions, comments, and initial recommendation of whether to adopt or adjust the ranking. Each member shall bring their materials to the Committee meeting for discussion and ranking recommendation.

Evaluation Committee meetings will be facilitated by Lee County staff initiating discussion regarding each application before the Committee makes their final recommendation. Committee members will have the opportunity to ask questions and provide feedback regarding the applications. Each committee member will have the opportunity to recommend adjustments to the ranking. If for any reason a committee member recommends an adjustment to Lee County's technical rank, the committee member must provide the rationale or justification for the Activity moving up or down in rank. The Evaluation Committee meeting date will be published on Lee County's website, will be open to the public and will allow time for public comment. After discussion concludes the committee members will submit their final ranking recommendations to go forward to the BoCC for final award determinations.

#### **Board of County Commissioners Activity Approval**

All eligible applications will be submitted to the BoCC for final award. The BoCC will receive a list of the submitted activities, scores, ranks, and a summary of comments from both the Lee County Technical Review Team and the Evaluation Committee. The packet presented to the BoCC will also include the following for each Activity: a project summary, the recommended award amount, and if applicable, the justification from the Evaluation Committee for their recommended adjustments to the Technical Review Team's ranking.

The BoCC meeting date will be published on Lee County's website, will be open to the public and will allow time for public comment after the final selection decisions are complete.

#### **Selection and Notification**

All applicants whose applications were reviewed by the EC will be notified of their conditional selection or rejection via email within five (5) business days following the EC meeting. All applicants have the right to appeal a decision in accordance with the appeal process outlined in **Appendix 1 – NOFA Appeal Policy and Procedure**.

All awards are conditional upon the following elements:

- Program Level:
  - Reasonable completion of the overall program appeals process and timeline to confirm the final awards are made within the program budget.
- Activity Level:
  - Confirmation of availability of other leveraged funds and duplication of benefits, if applicable. Awards may be adjusted based on this final analysis, subject to the

- availability of funds and program maximum and minimum award limits.
- Submission of any certifications or resolutions.
- Completion of the awarded applicant's risk and capacity assessment and agreement from the subrecipient/developer to implement Lee County's requirements.
- Once all conditions have been met, Lee County will formalize the award and commit funding through a subrecipient agreement or Memorandums of Understanding for interdepartmental agreements, as applicable.

### **Subrecipient/Developer Agreement**

If awarded, a Subrecipient/Developer Agreement will be executed by the Lee County Board of County Commissioners and administered by the SRGA (See Sample Subrecipient Agreement in **Appendix 2** and Sample Developer Agreement in **Appendix 3**).

The Agreement will be based upon the information submitted in the application, all accompanying exhibits/attachments and any additional information that is requested/received during the review phase. Agreement language is not negotiable.

Modifications and updates to application exhibits may be required prior to Agreement execution. Applicants should review the attached, applicable Sample Agreement to ensure their ability to comply with all requirements and expectations, including potential increased insurance coverage and financial audits.

## Section V: Application

All forms must be complete for application to be considered for conditional award.

### Creating and Submitting an Application

Applicants will register to submit an application via the online application portal. Link to the portal will be provided to all applicants that attend a mandatory pre-application conference.

Once registration is complete applicants will be sent access to the application portal by email. Applicants will apply and upload all supporting documentation online.

### Applicant Information

Applicant Name:	Organization Type:
Applicant Address:	Telephone:
Authorized Organization Representative Name/Title:	Organization Website:
Contact Person Name/Title:	UEI (SAM.gov):
Contact Person E-mail:	Federal Employer ID #:

### Applicant Capacity and Experience

Provide narrative evidence of the organization's financial management systems to include the following key components: **budgeting, internal controls, federal cost principles, accounting and record keeping, procurement, reporting, and audits.** Description must address the following:

1. Capacity to perform financial management and oversight;
2. Capacity to perform grant management functions as demonstrated through prior experience managing grants with in-house staff or with a grant management consultant;
3. Internal auditing capability;
4. Administrative staffing;
5. Monitoring and control of timely expenditure of funds;

6. Does applicant have prior experience regarding compliance with Davis-Bacon and Related Acts? If yes, please provide description of experience.
7. Does applicant have prior experience with outreach and/or contracting to small, minority, women and/or veteran-owned businesses when fulfilling a federally-funded project's scope of work? If yes, please provide description of experience.
8. Does applicant have prior experience with Section 3 of the Housing and Community Development Act of 1968, pertaining to expansion of economic opportunities to low- and very low-income persons (especially recipients of government assistance) within federally-funded projects? If yes, please provide description of experience.

Subrecipient applicants Only:

1. Describe your experience procuring goods and services in compliance with 2 CFR 200

If the applicant is applying in partnership with other applicants, such as the property owner, local government, or another developer, complete the table below. The primary applicant stated above will be the responsible party designated in the subrecipient/developer agreement and will be accountable for all compliance requirements. Partner applicants will be noted in the subrecipient/developer agreement to ensure clarity regarding Activity ownership structure and assigned responsibilities.

Other Entity(s) in Partnership with Applicant Name:	Organization Type:
Address:	Telephone:
Authorized Partner(s) Representative Name/Title:	Authorized Partner(s) Website:
Contact Person Name/Title:	UEI (SAM.gov):
Contact Person E-mail:	Federal Employer ID #:
Does Partner(s) have prior experience regarding compliance with Davis-Bacon and Related Acts? <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, please provide description of experience.	



<p>Does Partner(s) have prior experience with outreach and/or contracting to small, minority, women and/or veteran-owned businesses when fulfilling a federally-funded project's scope of work?</p> <p><input type="checkbox"/> YES      <input type="checkbox"/> NO</p> <p>If yes, please provide description of experience.</p>
<p>Does Partner(s) have prior experience with Section 3 of the Housing and Community Development Act of 1968, pertaining to expansion of economic opportunities to low- and very low-income persons (especially recipients of government assistance) within federally-funded projects?</p> <p><input type="checkbox"/> YES      <input type="checkbox"/> NO</p> <p>If yes, please provide description of experience.</p>

### Project Information

Project Name:
Project Address:
Total Number of Housing Units in Project Location:
Total Project Cost: \$_____
Total CDBG-DR Funding Requested: \$_____
<p>Is the Project a Low-Income Housing Tax Credit Project?</p> <p><input type="checkbox"/> YES      <input type="checkbox"/> NO</p>
<p>Is the Project located within the 100-year floodplain?</p> <p><input type="checkbox"/> YES      <input type="checkbox"/> NO</p> <p>If yes, please provide a description of how the project will comply with HUD CDBG-DR regulations and requirements of housing built within the 100-year floodplain.</p>
<p>Has any work commenced on the project site?</p> <p><input type="checkbox"/> YES      <input type="checkbox"/> NO</p> <p>If yes, please provide a detailed description of what has occurred on the project site.</p>

### Project Location(s)

Target Service Location ( <i>check as many as applicable below</i> ):	
<input type="checkbox"/> City of Cape Coral <input type="checkbox"/> City of Fort Myers <input type="checkbox"/> City of Bonita Springs <input type="checkbox"/> City of Sanibel	<input type="checkbox"/> Town of Fort Myers Beach <input type="checkbox"/> Village of Estero <input type="checkbox"/> Unincorporated Lee County

## Project Design, Approach, and Budget

Provide a description of:

1. The scope and projected outcome(s) of the project.
2. The total cost of the project and leveraged funding sources already committed to the project.
3. A description and justification of proposed costs.
4. A description of the timeframe, dependencies, and methods for obligating grant funds, and how the applicant plans to ensure funds are spent timely. A description of how the applicant will address and control dependencies, if applicable.
5. A description of what professional and construction services will need to be procured for the project and how the organization will complete the procurement in compliance with 2 CFR 200.
6. Evidence of readiness to proceed. (Completion of zoning/planning approvals [if required]; commitment of all other funding sources; construction/permanent financing commitments; final architectural/engineering drawings; environmental reviews or other pre-development procurement)
7. A description of what professional and construction services will need to be procured for the project and how the organization will complete the procurement in compliance with 2 CFR 200 (Subrecipients Only).
8. A description of steps that will be taken to assure that small, minority- and woman-owned businesses have the opportunity to provide supplies, equipment, construction and services and maintain the proper solicitation documentation.
9. The organization's plan to the greatest extent feasible, provide opportunities and training to low- and very low-income persons, especially recipients of government assistance for housing, and to businesses that provide economic opportunities to low- and very low-income persons and comply with Section 3 requirements outlined in 24 CFR Part 75.
10. A description of how the project will comply with Davis-Bacon and Related Acts.
11. The organization's plan to meet affordability period requirements, include ongoing maintenance and operating expenses.
12. The proposed unit mix and rents to be charged.
13. The proposed timeline for affordability (minimum 30-years), and structure for repayment of CDBG-DR funds.

### **Budget Form**

Applicants must submit a completed detailed budget. The budget form template will be available for download and the completed document is then required to be uploaded as an attachment within the Vista Trak application.

*If selected for a program award, Lee County may request an updated budget based on adjustments needed to comply with program award minimums, maximums, an analysis of unmet need, budget requirements and/or eligible costs.*

### Duplication of Benefits

In the table below, list each source of available assistance that was awarded to the applicant for the same purpose as the Activity included in this application. If the funding was provided for

multiple purposes, only include the amount provided for the same purpose as the Activity in this application in the “Grant Amount” field. However, in such cases include a narrative description indicating how much was provided and list all the purposes.

Source of Funding		Amount	Purpose of Funding (describe all if funding provided for more than one purpose)
1	FEMA Public Assistance (PA)	\$	
2	FEMA Hazard Mitigation Grant Program (HMGP)	\$	
3	FEMA Building Resilient Infrastructure and Communities (BRIC)	\$	
4	Private Insurance		
5	Resilient Florida	\$	
6	Small Business Administration	\$	
7	State Housing Initiatives Partnership Program (SHIP)	\$	
8	Local (Municipal) Funds	\$	
9	Other CDBG-DR Funds (from FL COM)	\$	
10	Other State Funds	\$	
11	Other Assistance (not specified above)	\$	
<b>Total Leveraged Funds</b>		<b>\$</b>	

**Sustainability and Resilience Measures**

Provide a description of:

1. The planned integration of adaptable and reliable technologies, mitigation measures, and durable materials to prevent displacement and protect tenants/owners, specifically for vulnerable populations.
2. The how the project will design with broadband in mind to ensure high-speed internet access is available for current/future tenants.

3. The planned integration of green/energy efficient design for new construction
  - Describe how the project will use Florida Green Building Coalition standards or other HUD-approved green building certification for new construction of the units.
  - *NOTE: See Construction Standards Manual for more information.*

### Timeliness and Urgency

Provide a description of:

1. Major project milestones and the timeline associated with each, including, but not limited to the following milestones:
  - Financing Closings (list all closing dates anticipated to occur after CDBG-DR award, if any)
  - Acquisition (if applicable)
  - Design/Engineering (if required)
  - Procurement of Construction Services
  - Permitting
  - Construction Start
  - Construction 50% Complete
  - Construction Completion
  - Tenant Occupancy

### Meeting Community Needs

1. Enter the projected number of housing units, the total number of beneficiaries (total tenant households), the number of LMI beneficiaries (Low/Mod tenant households), and the number of total beneficiaries who will benefit from the Activity.

<b>Total Number of Housing Units</b>
<b>Total Number of Beneficiaries</b>
<b>Total Number of LMI Beneficiaries (Low/Mod tenant households)</b>

2. Describe how the Activity will provide housing set-asides for tenants with income less than 80% AMI or other special needs sub-populations.
3. Complete the target populations from the table below to indicate who would benefit from the Activity.

**Target Population (check as many as applicable below):**

*NOTE: Populations may overlap.*

Populations presumed by HUD to be LMI persons:

- Abused children,
- Elderly persons (62 and older),
- Battered spouses,
- Homeless persons,
- Severely disabled adults (as defined by the Census),
- Illiterate adults,
- Persons living with AIDS, and
- Migrant farm workers.

Protected classes (groups protected from discrimination under federal civil rights law) based on the following:

- Race
- Color
- National origin
- Sex (including sexual orientation and gender identity)
- Religion
- Familial status
- Disability
- Age

Vulnerable populations, as defined by HUD in the Consolidated Notice:

- Groups or communities whose circumstances present barriers to obtaining or understanding information or accessing resources, based on such factors of the following:
  - Geography
  - Markets
  - Prevalent housing stock and tenure
  - History
  - Prejudice

Underserved communities, as defined by HUD in the Consolidated Notice:

- Populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life.

4. Provide description of the community outreach and engagement that has happened to date, including a description of the stakeholders and approaches to outreach and engagement.
5. A description of additional community outreach, engagement, and partnerships that will occur as part of this Activity, including the approach to engaging new stakeholders, and those who are expected to or currently reside in the housing units.
6. Describe how the Activity will engage low-to-moderate income households and vulnerable populations in planning, design, and construction.

## Supportive Services

Provide a description of:

1. How the Activity will facilitate the provision of on-site supportive services, including, but not limited to services that promote health and wellness, economic mobility, and educational attainment.
2. How the Activity will ensure tenant access to off-site supportive services, including, but not limited to services that promote health and wellness, economic mobility, and educational attainment.

DRAFT

## Required Support Documentation (attachments)

Document Checklist		
	Document Name	Document Description/Requirements
<input type="checkbox"/>	Signature Authority & Approval to Apply	A resolution or other documentation demonstrating approval to apply by the council, board, or other authorizing body. Documentation designating signatory authority to the person signing the application (must include name and job title). Note, if an authorized signatory of the applicant changes (due to elections, illness, resignations, etc.) the resolution must be updated.
<input type="checkbox"/>	Organization Chart of Key Development Staff	Organizational chart of Key Project Staff, including a description of duties and qualifications, and how staff are collaborating on the plan. Include key staff from all partner organizations.
<input type="checkbox"/>	Single Audit, <i>If applicable</i>	Provide most recent single audit,
<input type="checkbox"/>	Independent Audit, <i>if Single Audit not required</i>	Examination of the financial records, accounts, business transactions, accounting practices, and internal controls.
<input type="checkbox"/>	Partnership Agreement(s) <i>if applicable</i>	Agreement(s) between developer/applicant and any partner organizations, e.g. housing counseling organizations.
<input type="checkbox"/>	Evidence of Site Control <i>if applicable</i>	Contingent contract or proof of ownership for project site.
<input type="checkbox"/>	Proof of Zoning Compliance	Documentation that indicates the current zoning for the project site
<input type="checkbox"/>	Marketing and Outreach Plan	The plan that details how homebuyers will be made aware of available units.
<input type="checkbox"/>	Plans/Specs/Work Write-Up	Provide any preliminary or final plans, specs, or work write-ups.
<input type="checkbox"/>	Land Valuation or Vacant Land Appraisal <i>if applying for acquisition</i>	A copy of appraisal for property being acquired.
<input type="checkbox"/>	Phase I/Phase II Environmental Site Assessment <i>if applicable</i>	A copy of the Phase I/Phase II site assessment, if completed.
<input type="checkbox"/>	Service Area Map(s)	GIS overlays reflecting floodplain, social vulnerability, and/or other relevant data to support the narratives in the Meeting Community Needs section.
<input type="checkbox"/>	Proximity Map(s)	A map of the project location indicating the proximity of housing units to parks, community centers, bike paths, health care, shopping, schools, public transportation, and human/family services.

Document Checklist			
	Document Name	Document Description/Requirements	
<input type="checkbox"/>	Fiscal Year-end Statement/Annual Operating Budget	Copies of the most recent 3 years fiscal year-end financial statement or year-end income statement.	
<input type="checkbox"/>	Financial Statements	Interim financial statements showing current financial status	
<input type="checkbox"/>	Multi-Family Housing Development Budget Workbook	Total Project Budget	This will need to include the estimated cost of the entire Activity including the per unit cost.
		Sources and Uses	Provide sources and uses of funds (grants, subsidies, construction loans) for the Activity for determining that the costs are reasonable.
		Unit Mix-Rents	Distribution of affordable units
		30-Year Operating Pro-Forma	Demonstrate that the Activity will meet or exceed the prescribed period with adequate reserves for maintenance, repayment, and ongoing operating expenses.
<input type="checkbox"/>	Project List	A list of all outstanding financial projects and all anticipated pipeline projects.	
<input type="checkbox"/>	Past Projects	List of past projects of a similar size / scope to verify capacity to carry out proposed project.	
<input type="checkbox"/>	Documentation of other Funding Sources	Letters of commitment, award documentation, and/or contracts for funds provided in whole or in part for the same purpose as the plan described in the application.	

### Required Forms

Form Checklist		
	Form Name	Description/Requirements
<input type="checkbox"/>	Conflict of Interest and Disclosure <i>If applicable</i>	The applicant lists any real or potential conflicts of interest (for use by officers, directors and board members of the applicant or project owner, as applicable)
<input type="checkbox"/>	Single-Audit Certification	Provide the Single Audit Certification Form to certify if a nonprofit or governmental organization expended more than \$750,000 in federal/state funding in a given fiscal year. All federal and state funded contracts from which funds were expended must be included.
<input type="checkbox"/>	Subrecipient Certification <i>Exhibit B</i>	Certification that the applicant certifies they do and will comply with all applicable regulations that apply to CDBG-DR funds.
<input type="checkbox"/>	Section 504 Certification	Certifying that grant requests will comply with reasonable accommodations and modification guidelines in housing, programs, and activities.



## Appendix 1 – NOFA Appeal Policy and Procedure

### Policy

An appeal is a written dispute requesting a reversal or revision of a determination that affects eligibility and/or assistance. Policies that have been approved and incorporated by a program, statutory and regulatory requirements/guidelines, may not be appealed.

Appeals to rating and ranking decisions are limited to factors related to a violation of established process or program policies. Disagreement with the results of a ranking that followed appropriate processes will be deemed invalid and the appeal will not be considered. Appeals are limited to:

- Technical error of eligibility determination, award calculation, or scoring, such as a mathematical miscalculation by the technical or Evaluation Committee. Errors in data submitted by the applicant do not qualify for an appeal.
- Violation or variation from established policies or processes.

An appeal can only be made by an applicant regarding their own application. Applicants may ask for summary scoring information prior to the submission of the appeal letter. Individual ranking committee member scores will not be released to applicants. No applicant shall have the right to appeal a decision from Lee County or the Evaluation Committee relating to another applicant's eligibility, point score, award, denial of award, or any other matter related thereto.

Applicants that do not meet the threshold requirements are not eligible for an appeal.

All applicants may request a de-briefing meeting with Lee County staff to discuss the feedback received on their applications and understand how to make improvements to future applications.

### Procedure

1. Appeals must be submitted in writing with supporting documentation within three (3) business days of receiving the preliminary NOFA Results Notification.
2. All appeals must be based on the information submitted by the application due date. No new or additional information will be considered, and omissions from the application cannot be appealed.
3. The appeal should include a written statement specifying detailed grounds for the appeal. No additional information can be submitted to supplement the application submitted in response to the NOFA.
4. The appeal must be limited to one single-spaced page in 12-point font, presented as a letter on the applicant's agency's letterhead. It should clearly state the reasons for the appeal and specify all the contested issues.
5. Once the written appeal is submitted, no further information or materials will be accepted or considered.

## Evaluation of Appeals

1. All valid appeals will be read, reviewed, and evaluated by the Lee County SRGA Technical Review Team within 5 business days.
2. If a technical error of eligibility determination, award calculation, or scoring, such as a mathematical miscalculation or variation from established policies or processes is NOT found, the appeal will be denied by the SRGA Technical Review Team. The applicant will receive a written denial from Lee County.
3. If a technical error of eligibility determination, award calculation, or scoring, such as a mathematical miscalculation or variation from established policies or processes is identified, the Technical Review Team will compile all documentation related to the application for presentation to the Lee County administration team.
4. Lee County Administration will review all documentation related to the application process and appeal and issue a final determination to approve or deny the appeal.
5. Approved appeals will be presented to the BoCC for recommendation to adjust awards, as applicable.
6. The appealing applicant and other applicants whose awards may be impacted by the appeal will receive a written decision from the Lee County SRGA Technical Review Team within two (2) business days of the BoCC meeting.
7. The decision made during the appeal process will be final.

## Appendix 2 – Sample Subrecipient Agreement

### CDBG-DR SUBRECIPIENT AGREEMENT TEMPLATE

*The following information is provided pursuant to 2 CFR 200.332(a)(1)*

<b>Federal Award Identification Number (FAIN)/ HUD CDBG-DR Grant No.:</b>	B-23-UN-12-0002
<b>Assistance Listing Number (formerly CFDA #):</b>	14.218 Community Development Block Grants/Entitlement Grants
<b>Federal Register Notice Docket No.:</b>	FR-6393-N-01
<b>Federal Award (HUD Grant Agreement) Date:</b>	
<b>Agreement No.:</b>	
<b>Responsible Entity (RE):</b>	Lee County
<b>Funding Agency (Pass-Through Entity):</b>	Lee County, Department of Strategic Resources and Government Affairs
<b>CDBG-DR Funding Source/Program:</b>	US Department of Housing and Urban Development
<b>Subrecipient Name:</b>	
<b>Subrecipient ID (Unique Entity Identifier via SAM.gov):</b>	
<b>Subrecipient Period of Performance (Start Date):</b>	
<b>Subrecipient Period of Performance (End Date):</b>	
<b>Total Amount Obligated via Agreement:</b>	
<b>Total CDBG-DR Obligation to Subrecipient (all Agreements, including this obligation):</b>	
<b>Project/Activity ID(s), if known:</b>	
<b>Federal Award Program/Project/Activity Description:</b>	
<b>Is the award for Research &amp; Development (R&amp;D)?</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>Does the Federal award include an Indirect Cost Rate for Subrecipient?</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>
	<input type="checkbox"/> <b>Negotiated Rate</b>
<b>If Yes, is the Indirect Cost Rate a:</b>	<input type="checkbox"/> <b>De Minimis Rate</b>

**Official County Contact for Award:** Glen Salyer, Assistant County Manager; 2115 Second St., Fort Myers, FL 33901; Phone: (239) 533-2315; Email: [GSalyer@leegov.com](mailto:GSalyer@leegov.com)

**SUBRECIPIENT AGREEMENT BETWEEN  
THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
AND**

**{ENTER SUBRECIPIENT NAME HERE}**

**THIS AGREEMENT** between Lee County, a political subdivision and Charter county of the State of Florida, hereinafter referred to as “**COUNTY**,” and {Enter SUBRECIPIENT Name Here}, a {SELECT ONE}, (1) Local Government/Municipality registered under the laws of Florida Statute, Chapters 165 and 166 (2) Nonprofit Corporation registered under the laws of Florida Statute, Chapter 617 (3) Public Utility (4) School District operating under the laws of the State of Florida and, hereinafter referred to as “**SUBRECIPIENT**” will become effective upon the date (“Effective Date”) approved by the Board of County Commissioners (BOCC).

**SECTION I: RECITALS**

**WHEREAS**, pursuant to Public Law (P.L.) 117-328, the “Department of Housing and Urban Development Appropriations Act, 2023” (hereinafter referred to as the “Appropriation Act”), and the “Allocations for Community Development Block Grant Disaster Recovery and Implementation of the CDBG–DR Consolidated Waivers and Alternative Requirements Notice,” 88 Federal Register (FR) 32046 (May 18, 2023); 88 FR 3198 (January 18, 2023); 87 FR 31636 (May 24, 2022); and 87 FR 6364 (February 2, 2022) (hereinafter collectively referred to as the “Federal Register Guidance”), the U.S. Department of Housing and Urban Development (hereinafter referred to as “HUD”) has awarded \$1,107,881,000 (a \$963,375,000 allocation for unmet disaster recovery needs with an additional \$144,506,000 mitigation set aside) of Community Development Block Grant – Disaster Recovery (CDBG-DR) funds to the **COUNTY** for activities authorized under Title I of the Housing and Community Development Act of 1974 (42 United States Code (U.S.C.) 5301 *et seq.*) and described in the *Lee County Action Plan for CDBG-DR Funds* (hereinafter referred to as the “Action Plan”) for the Consolidated Appropriation Act (P.L. 117-328). The **COUNTY** is also hereinafter referred to from time to time as “Grantee.”

**WHEREAS**, the **COUNTY** believes it to be in the public interest to serve as a pass-through entity by awarding and/or providing CDBG-DR funding for certain activities to the **SUBRECIPIENT** for the benefit of Lee County residents, and CDBG-DR funds made available for use by the **SUBRECIPIENT** under this Agreement constitutes a subaward of the Grantee’s Federal award, of which the use of funds follows the **COUNTY’S** intent as stated in the applicable {S} (1) Notice of Funding Availability (NOFA), (2) Application, (3) Request for Funding Form, or (4) Award process, competitive or otherwise, and attachments, and/or exhibits, and all other terms and conditions as specified.

**WHEREAS**, the **COUNTY** has legal authority to disburse funds as a subaward under and enter into this Agreement with the **SUBRECIPIENT**, and by signing this Agreement, the **SUBRECIPIENT** represents and warrants to the **COUNTY** that it will comply with all the requirements of the subaward described herein.

**WHEREAS**, the Action Plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families and the aggregate use of CDBG-DR funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent (or another percentage permitted by HUD in a waiver) of the grant amount is expended for activities that benefit such persons.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, and representations contained herein this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the **COUNTY** and the **SUBRECIPIENT**

agree as follows:

## SECTION II: SCOPE OF WORK AND ACTIVITIES

The **COUNTY** provides the **SUBRECIPIENT** with the award in this Agreement to perform activities under one project as a provision of the **COUNTY'S** CDBG-DR *{SELECT ONE PROGRAM ACTIVITY THAT APPLIES}* (1) Affordable Multifamily Housing Development and Preservation, (2) HMGP Infrastructure Match, (3) Critical Infrastructure, (4) Unmet Needs Long Term Recovery Group, (5) Behavioral Health Services and System of Care Implementation, (6) Recovery and Resiliency Planning Program. Any proposal/application submitted which resulted in this CDBG-DR funding award are binding and incorporated herein as a part of this Agreement, including all conditions and projected levels of activity performance.

For federally funded CDBG-DR activities, all requirements and conditions as described in *Exhibit A – Scope, Budget, Performance and Reporting Requirements*, must also be followed.

For all activities funded by a CDBG-DR award contained within this Agreement, the **SUBRECIPIENT** must provide activity data in relation to performance and the schedule of work completion in accordance with 24 CFR 570.503. The **SUBRECIPIENT** must also participate in requests from the **COUNTY** to provide such data in a manner further prescribed by the **COUNTY** under *Exhibit A – Scope, Budget, Performance and Reporting Requirements*.

With respect to *Exhibit A – Scope, Budget, Performance and Reporting Requirements*, the **SUBRECIPIENT** shall submit to the **COUNTY** such information and documentation for completion of the Exhibit in conformity with the current examples and templates attached hereto, as necessary and appropriate. Provided further, if there is a disagreement between the **COUNTY** and **SUBRECIPIENT**, with respect to the formatting and contents contained in the Exhibit, then the **COUNTY'S** decisions with respect to same shall prevail, at the **COUNTY'S** sole and absolute discretion.

The **SUBRECIPIENT** agrees to abide by all applicable State and Federal laws, rules and regulations, including but not necessarily limited to, the Federal laws and regulations set forth at 24 CFR 570, 2 CFR 200, the Federal Register Guidance, and the **COUNTY'S** Action Plan. This includes core CDBG-DR tenets and requirements as stated below:

**SUBSECTION II.A. – MID REQUIREMENT:** The **SUBRECIPIENT** must conduct all activities and expend all CDBG-DR award funds granted by the **COUNTY** in the “most impacted and distressed” (MID) areas resulting from the qualifying major disaster in 2022, which is in response to Hurricane Ian (Federal Emergency Management Agency (FEMA) Disaster No. 4673 – DR). As noted in the Federal Register Guidance (88 FR 32046), the HUD-identified MID area for this disaster allocation is all of Lee County.

**SUBSECTION II.B. – ELIGIBLE ACTIVITIES:** CDBG–DR funds are provided for necessary expenses for activities authorized under title I of the Housing and Community Development Act of

1974 (HCDA), as amended (42 United States Code (U.S.C.) 5391 et seq.), related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation of risk associated with activities carried out for these purposes. The SUBRECIPIENT must utilize CDBG-DR funds in completion of an eligible activity as prescribed under Section 105(a) of the HCDA, 24 CFR 570 Subpart C – Eligible Activities, and alternative requirements and waivers on eligible activities as prescribed within the Federal Register Guidance. Furthermore, the SUBRECIPIENT shall conduct its project to align with the approved eligible activity(ies) found under the most-recent approved Action Plan for the COUNTY’S CDBG-DR {*SELECT ONE PROGRAM ACTIVITY THAT APPLIES*} (1) Affordable Multifamily Housing Development and Preservation, (2) HMGP Infrastructure Match, (3) Critical Infrastructure, (4) Unmet Needs Long Term Recovery Group, (5) Behavioral Health Services and System of Care Implementation, (6) Recovery and Resiliency Planning Program.

**SUBSECTION II.C. – NATIONAL OBJECTIVE:** The SUBRECIPIENT must meet the criteria for one of the CDBG-DR program’s national objectives. For this scope of work, the SUBRECIPIENT must adhere to the following national objective type, as defined at 24 CFR 570.208 and alternative requirements under the Federal Register Guidance, and as reflected as an approved national objective type for this CDBG-DR program within the Action Plan {*SELECT ALL THAT APPLY*}:

- Activities benefitting low- and moderate-income persons (“LMI”);
- Activities which aid in the prevention or elimination of slums or blight (“Slum & Blight”);
- Activities designed to meet community development needs having a particular urgency (“Urgent Needs”); or
- Activities expended for planning and administrative costs under 24 CFR 570.205 and 24 CFR 570.206, which are considered to address the national objectives.

**SUBSECTION II.D. – CDBG-DR MITIGATION SET-ASIDE AND STORM “TIE-BACK”:** The COUNTY is responsible for informing the SUBRECIPIENT of whether CDBG-DR funding is awarded for an activity(ies) to address an unmet recovery need, a mitigation and resilience measure, or both. Depending on the recovery or mitigation designation by the COUNTY, the SUBRECIPIENT is responsible for documenting proof of the designation. For recovery activities, the SUBRECIPIENT must demonstrate that their activities “tie-back” to the specific disaster and address a specific unmet recovery need for which the CDBG-DR funds were appropriated. For mitigation set-aside activities, the SUBRECIPIENT must document how its activity(ies) (1) meet the definition of mitigation activities; (2) address the current and future risks as identified in the COUNTY’S mitigation needs assessment in the MID areas under its Action Plan; (3) is a CDBG-eligible activity under title I of the HCDA (or otherwise eligible pursuant to a waiver or alternative requirement); and (4) still meets a national objective. In some cases, the COUNTY may require the SUBRECIPIENT to provide evidence of the activity meeting both the CDBG-DR “tie-back” and mitigation measures justification. The COUNTY will spell out specific requirements for the SUBRECIPIENT, its project, and the project’s eligible activity under *Exhibit A – Scope, Budget, Performance and Reporting Requirements* or *Exhibit B – CDBG-DR Compliance Provisions*.

**SUBSECTION II.E. – USE OF FUNDS AND ORDER OF ASSISTANCE:** *CDBG–DR Appropriations Acts generally include a statutory order of assistance for Federal agencies which require Grantees to verify whether funds made available by FEMA or the U.S. Army Corps of Engineers (USACE) are available for an activity, or the costs are reimbursable by FEMA or the USACE, before awarding CDBG-DR assistance for the cost of carrying out the same activity. The*

**SUBRECIPIENT shall not use CDBG–DR funds for activities reimbursable by or for which**

*funds are made available by FEMA or the U.S. Army Corps of Engineers (USACE). The **SUBRECIPIENT** must verify and inform the **COUNTY** if FEMA and USACE funds are available prior to award or expenditure of CDBG-DR funds to an eligible activity within the Scope of Work contained under Exhibit A. Failure to do so can result in a return of funds as further outlined within this Agreement under **SUBSECTION V.B. – DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS)** and **SUBSECTION XII.D. DUPLICATION OF BENEFITS**.*

### SECTION III: TERM OF AGREEMENT

This Agreement shall begin on {Enter Actual Date} (“the Effective Date”) and end on {Enter Actual Date}, unless suspended or terminated as specified in SECTION XI. SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION.

The **COUNTY** and the **SUBRECIPIENT** agree that this Agreement shall be electronically signed, and that any electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. The **COUNTY** and **SUBRECIPIENT** shall maintain this Agreement, including any amendments, in its files.

The **COUNTY** shall not grant any extension of the Agreement unless the **SUBRECIPIENT** provides justification satisfactory to the **COUNTY** in its sole discretion, and the **COUNTY’S** authorized officer approves such extension in accordance with SECTION IV. AGREEMENT MODIFICATIONS AND AMENDMENTS of this Agreement.

### SECTION IV: AGREEMENT MODIFICATIONS AND AMENDMENTS

**SUBRECIPIENT** must submit a written request (email is acceptable) for an Agreement amendment which details the nature of and justification for the requested change and the desired effective date of the change(s). **COUNTY** reserves the right to approve or deny all Agreement amendments on the basis that such approval or denial is in the **COUNTY’S** best interest. An approved amendment shall be documented on the Agreement amendment form and signed by both parties.

The Assistant County Manager over the **COUNTY’S** Office of Strategic Resources and Government Affairs (SRGA) or their designee may approve amendments to the Agreement, which do not substantially change the original agreed-upon scope of service and statement of work, including extensions to the end date of the contract as identified in SECTION III. TERM OF AGREEMENT. The BOCC must approve amendments which (1) increase Agreement funds; (2) significantly changed program design including target population or major changes in outcomes; and (3) change or add to the standard Agreement language, which is not for the purpose of correcting original omissions or clarifying original Agreement intent.

As noted in the **COUNTY’S** Action Plan, substantial amendments to the Action Plan are defined as (1) a change in program benefit or eligibility criteria; (2) the addition or deletion of an activity(ies); (3) the allocation or reallocation of funds which exceeds or is expected to exceed 5 percent of the current total approved budget; (4) a material change occurs which impacts information and analysis on which the Action Plan was based on to fund certain priority activities (e.g., impact on anticipated beneficiaries, project or activity scope, significant demographic changes, or new significant contributing factors on unmet needs in the jurisdiction); and/or upon HUD’s written notification specifying a material change that requires the revision. The **SUBRECIPIENT** understands that requests for Agreement amendments of the nature described herein, and which involve new or alteration of existing activities that will significantly change the scope, location, or objectives of the approved activity or beneficiaries must first receive HUD

approval before consideration by the **COUNTY** to amend the Agreement.

#### SECTION V: COMPENSATION AND ALLOWABLE PAYMENTS

SUBSECTION V.A. – AGREEMENT PAYMENT: The COUNTY will make payments on a reimbursement basis to the SUBRECIPIENT and the SUBRECIPIENT agrees to accept as full compensation the total amount not to exceed \$ [REDACTED]. Payments will be authorized only for work completed and/or services delivered during the term of the Agreement as stated in SECTION III: TERM OF AGREEMENT and prior to the payment request date; however, the COUNTY may consider any written request from the SUBRECIPIENT on potential needs for advanced payments in accordance with 2 CFR 200.305 and 24 CFR 570.502. The SUBRECIPIENT will provide support documentation of eligible expenses as stated within this Subsection and the applicable exhibits, forms, and attachments contained with this Agreement. Payment is subject to the provisions of SUBSECTION V.B. DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS) and SECTION XI. SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION. Funding is contingent upon the availability of CDBG-DR funds and the obligation of said CDBG-DR funds through the COUNTY'S annual fiscal year (FY) budget appropriation process.

The **COUNTY** has agreed to reimburse the **SUBRECIPIENT** for approved budget line items listed for the project and its activities under the **COUNTY'S** CDBG-DR {*SELECT ONE PROGRAM THAT APPLIES*} (1) Affordable Multifamily Housing Development and Preservation, (2) HMGP Infrastructure Match, (3) Critical Infrastructure, (4) Unmet Needs Long Term Recovery Group, (5) Behavioral Health Services and System of Care Implementation, (6) Recovery and Resiliency Planning Program. Further, "not to exceed" line items and activity budgets under this Agreement shall be identified within the approved budget under *Exhibit A – Scope, Budget, Performance, and Reporting Requirements*.

Once funding is approved and an Agreement issued by the **COUNTY'S** Office of Strategic Resources and Government Affairs (SRGA), the **SUBRECIPIENT** must sign and return it for execution within 30 days. In addition, the **SUBRECIPIENT** must begin to draw down funds within 60 days of Agreement execution unless the Agreement Coordinator authorizes additional time. Failure to return the signed Agreement or begin spending funds within the allocated time frame may result in reduction or forfeiture of funds.

By execution of this Agreement, the **SUBRECIPIENT** certifies that necessary written administrative procedure, processes and fiscal controls are in place for the operation of its CDBG-DR program for which the **SUBRECIPIENT** received funds from the **COUNTY**. These written administrative procedures, processes and fiscal controls must, at a minimum, comply with applicable state and federal law, rules, and regulations, Federal Register Guidance, and the terms of this Agreement.

The **SUBRECIPIENT** shall request all funds in the manner prescribed by the **COUNTY**, utilizing the payment request form(s) as outlined under *Exhibit A*. Except as set forth herein, or unless otherwise authorized in writing by the **COUNTY**, costs incurred for eligible activities or allowable costs prior to the Effective Date of this Agreement are ineligible for funding with CDBG-DR funds.



If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the Federal Office of Management and Budget, the **COUNTY** or under SECTION XII. ASSURANCE, CERTIFICATIONS, AND COMPLIANCE, all obligations on the part of the **COUNTY** to make any further payment of funds will terminate and the **SUBRECIPIENT** shall submit its administrative closeout report within thirty (30) calendar days from the receipt of notice from the **COUNTY**.

**SUBSECTION V.B. – DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS):** The **SUBRECIPIENT** shall expend CDBG-DR funds only for allowable costs and eligible activities which were incurred during the Agreement period, in accordance with federal cost principles at 2 CFR 200 Subpart E and 24 CFR 570 Subpart C, respectively. The **SUBRECIPIENT** shall ensure that its contractors, subcontractors, and consultants only expend funding under this Agreement for allowable costs resulting from the obligations incurred during the Agreement period as specified under SECTION III. TERM OF AGREEMENT.

The **SUBRECIPIENT** shall refund to the **COUNTY** any funds paid in excess of the amount to which the **SUBRECIPIENT** or its contractors, subcontractors, or consultants are entitled under the terms and conditions of this Agreement.

The **SUBRECIPIENT** shall refund to the **COUNTY** any funds received for an activity if the activity does not meet an approved National Objective in accordance with 24 CFR 570.208 and the terms of this Agreement.

The **SUBRECIPIENT** shall refund to the **COUNTY** any funds not spent in accordance with the conditions of this Agreement or applicable law. For the scenarios detailed above, such reimbursement shall be sent to the **COUNTY**, by the **SUBRECIPIENT**, within thirty (30) calendar days from the **SUBRECIPIENT'S** receipt of notification of such noncompliance.

The **COUNTY** may also defer payment to the **SUBRECIPIENT** for noncompliance with Agreement deliverables, program performance requirements, or sufficient documentation of meeting regulatory and statutory requirements, including cross-cutting requirements. If, as a result of monitoring or audit, the **COUNTY** determines that incurred costs are not documented, a payment may be deferred. If costs are found to be unallowable, no future payments will be made until the full amount of overpayment is remitted to the **COUNTY** or a repayment agreement is accepted by the **COUNTY**. If the monitoring or audit occurs after the term of this Agreement, the **SUBRECIPIENT** will be required to remit funds to the **COUNTY** in accordance with the repayment conditions below.

The **SUBRECIPIENT** agrees to return to the **COUNTY** any overpayments due to funds disallowed, pursuant to the terms of this Agreement and/or Federal requirements. Such funds shall be considered **COUNTY** funds and must be refunded to the **COUNTY** within thirty (30) days of receiving notice from the **COUNTY** in writing regarding the overpayment. Should repayment not be made in a timely manner, the **COUNTY** will charge interest of one (1) percent per month compounded on the outstanding balance after forty (40) calendar days after the date of notification or discovery. The **SUBRECIPIENT** will be required to reimburse the **COUNTY** for any acts of noncompliance resulting in disallowed costs or fines.

The **COUNTY'S** determination that an expenditure is eligible does not relieve the **SUBRECIPIENT** of its duty to repay the **COUNTY** in full for any expenditures that are later determined by the **COUNTY** or the Federal Government, in each of its sole discretion, to be

ineligible expenditures or the discovery of a Duplication of Benefits.

If requested by the **COUNTY**, all refunds, return of improper payments, or repayments due to the **COUNTY** under this Agreement are to be made payable to Lee County and mailed directly to the **COUNTY**, pursuant to SECTION XVIII. NOTICES and this Agreement.

The **SUBRECIPIENT** has responsibility for identifying and recovering grant funds that were expended in error, disallowed, or unused. The **SUBRECIPIENT** will also report all suspected fraud to the **COUNTY**.

#### SECTION VI: REPORTS

**SUBSECTION VI.A – REPORTING DELIVERABLES:** The **SUBRECIPIENT** shall provide the **COUNTY** with all reports and information set forth in *Exhibit A*, which is done in accordance with alternative requirements under the Federal Register Guidance that quarterly performance reports are submitted by the Grantee within HUD’s Disaster Recovery Grant Reporting (DRGR) system. Therefore, any submission of monthly and/or quarterly reporting from the **SUBRECIPIENT**, as well as administrative activity or program closeout reports, must include the status and process of the **SUBRECIPIENT**, and all contractors, subcontractors, and other entities under contract or agreement with the **SUBRECIPIENT**, in completing the work described under *Exhibit A* and within the expenditure of funds under this Agreement. Upon request from the **COUNTY**, the **SUBRECIPIENT** shall provide additional program or activity updates and information. If all required reports and copies are not sent to the **COUNTY** within the agreed-upon submission schedule or are otherwise not completed in a manner acceptable to the **COUNTY**, payments may be withheld until the reports are completed in accordance with **SUBSECTION V.B. DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS)**. If the **COUNTY** withholds such payments, it shall notify the **SUBRECIPIENT** in writing of its decision and the reasons for withholding payment for unsatisfactory reporting. The **COUNTY** may also take other action as stated within this Agreement or allowable by law.

The **SUBRECIPIENT** is required to immediately report to the **COUNTY** any incident of suspected criminal misapplication of CDBG-DR funds associated with this Agreement.

The **COUNTY** notates the required forms and reports which the **SUBRECIPIENT** must provide within *Exhibit A*. This information is captured under, but not limited to, activity performance reports, payment request forms, program information forms, budget analysis reports, and closeout reports, and periodic certifications by the **SUBRECIPIENT**.

The **SUBRECIPIENT** should submit all reports and forms electronically (via email or uploaded into a database provided by the **COUNTY**, if applicable). All documents must be computer-readable. An electronic signature is acceptable for all reports, forms, and attachments within the *Agreement Exhibits*.

**SUBSECTION VI.B. – EXTERNAL REPORTING AND ORGANIZATIONAL DOCUMENT REQUIREMENTS:** The **COUNTY** may also require the **SUBRECIPIENT** to submit additional reports and forms which are beneficial to determine the **SUBRECIPIENT’S** ability to perform under this Federal award. The **COUNTY** may request external reports, including but not limited to, prior and current FY audits, other agency monitoring reports for reviews under other funding sources, organizational documents, and prior grant closeout reports. The **SUBRECIPIENT** agrees to provide such reports, forms, or other documentation which the **COUNTY** deems necessary.

## SECTION VII: AUDITS, MONITORING, AND RECORDS

**SUBSECTION VII.A. – AUDITS AND INSPECTIONS:** The **SUBRECIPIENT** will make all records referenced in **SUBSECTION VII.D. RECORDS** and all items included on financial statements available for audit or inspection purposes at any time during normal business hours and as often as the **COUNTY** deems necessary.

The Clerk of Courts Internal Audit Division, Lee County employees, HUD, or any of their duly authorized representatives have the right of timely and reasonable access to any books, documents, papers, or other records, including electronic storage media, of the **SUBRECIPIENT** or Certified Public Accountant (CPA) that are pertinent to the Agreement, in order to make audits, examinations, excerpts, transcripts and copies of such documents in accordance with 2 CFR 200.332, 2 CFR 200.337, and 24 CFR 570.508.

If noncompliance with this Agreement or material weaknesses in the organization are noted, the **COUNTY** or other authorized representatives have the right to unlimited access to records during an audit or inspection. This includes timely and reasonable access to the **SUBRECIPIENT'S** personnel for the purpose of interview and discussion related to such documents.

**SUBSECTION VII.B. – INDEPENDENT AUDIT REQUIREMENTS:** Under the Single Audit Act and in accordance with the provisions of 2 CFR 200.501, the **SUBRECIPIENT** shall conduct a single or program-specific audit if it expends \$750,000 or more in Federal awards from all sources during its fiscal year.

The **SUBRECIPIENT** shall also comply with the Federal Audit Clearinghouse (FAC) rules and directives, including but not limited to the pertinent report submission provisions of 2 CFR 200.512, when such provisions are applicable to this Agreement.

For **SUBRECIPIENTS** who are Nonprofit Corporations and do not trigger the Single Audit Act requirements or provisions under 2 CFR 200.501, the **SUBRECIPIENT** must submit an independent certified, audited financial statement of the most recent or immediate prior fiscal year, including the management letter and written response. The **COUNTY** may consider exceptions on an individual basis, to include other supporting audit documents, such as a current CPA's peer review letter or monthly financial statements within the last 60 days, to meet this requirement.

A complete, independent financial audit of the **SUBRECIPIENT'S** financial accounting statements, in accordance with Generally Accepted Accounting Principles (GAAP) and/or current Generally Accepted Government Auditing Standards (GAGAS), as applicable, is required and must include the following:

1. Auditor's opinion;
2. Requisite reports on internal control and compliance, if required;
3. Management letter addressing internal controls (Note: If there were no items to be addressed, the letter must still be completed and state that no comments were noted);
4. Management's response to such letter;
5. The programs that are funded by this Agreement either in the statement of functional expenses, revenues and expenditures, footnotes, schedule of Federal awards and State financial assistance or as supplemental data in the financial statements. The

statement should be consistent with programs detailed in the corresponding proposal(s), exhibit(s), and attachment(s).

The **SUBRECIPIENT** must submit the audit electronically to the **COUNTY** within the earlier of thirty (30) calendar days after receipt of the auditor's report(s), or within nine months after the end of the **SUBRECIPIENT'S** audit period. If applicable, any corrective action plan must be submitted. Failure to submit the report within the required time frame can result in the withholding of payment, or termination of the Agreement by the **COUNTY**.

The audit must be conducted by an independent, licensed certified public accountant with an unmodified opinion on their current peer review and must be in accordance with the General Accounting Office (GAO) Yellow Book, Generally Accepted Government Auditing Standards, 2 CFR 200 Subpart F – Audit Requirements, as applicable, the Florida Single Audit Act (F.S. 215.97) as applicable, and the Auditor General Rule 10.550 (Government) or 10.650 (Not For Profit) as applicable.

**SUBSECTION VII.C. – MONITORING:** The **SUBRECIPIENT** agrees to permit persons duly authorized by the **COUNTY**, HUD, and other Federal, State, or local agencies, as applicable, or any authorized representatives under these agencies, to have access to and inspect all records, papers, documents, facility's goods and services, and project activity sites of the **SUBRECIPIENT** and/or interview any clients and employees of the **SUBRECIPIENT** to be assured of satisfactory performance and compliance of the full terms and conditions of this Agreement, in accordance with 2 CFR 200 (specifically 200.332), 24 CFR 570, and the Federal Register Guidance and to the extent permitted by the law, after giving the **SUBRECIPIENT** reasonable notice of such inspection.

The **SUBRECIPIENT** must submit to monitoring of its project activity by the **COUNTY**, as necessary, to ensure the CDBG-DR subaward is used for authorized purposes in compliance with Federal statutes, regulations and the terms and conditions of this Agreement.

Monitoring must include: (1) Reviewing financial and performance reports required by the Grantee; (2) following up and ensuring that the **SUBRECIPIENT** takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the **SUBRECIPIENT** from the Grantee detected through audits, on-site reviews, and other means; and (3) issuing a management decision for audit findings pertaining to this Federal award provided to the **SUBRECIPIENT** from the Grantee as required by 2 CFR 200.521. Any limited monitoring review scope of the terms and conditions within this Agreement does not relieve the **SUBRECIPIENT** of its obligation to manage the grant in accordance with all applicable rules and sound management practices.

Following such monitoring and in accordance with 2 CFR 200.521, the **COUNTY** will deliver to the **SUBRECIPIENT** a written report regarding management decisions which notate the manner in which activities are being conducted and whether corrective action(s) by the **SUBRECIPIENT** need to be taken to address deficiencies. The **SUBRECIPIENT** will rectify all noted deficiencies made by the **COUNTY** on performed activities within the specified period of time indicated in the monitoring report or provide the **COUNTY** with a reasonable and acceptable justification for not correcting the noted shortcomings. The **SUBRECIPIENT'S** failure to correct or justify the deficiencies within the time specified by the **COUNTY** may result in the withholding of payments, being deemed in breach or default,

or termination of this Agreement. Additionally, in response to audit deficiencies or other findings of noncompliance with this Agreement, the **COUNTY** may impose additional conditions on the use of the CDBG-DR funds, as noted in Exhibit C – Grant Conditions, to ensure future compliance and provide training and technical assistance as needed to correct or avoid noncompliance.

**SUBSECTION VII.D. – SUBRECIPIENT RISK ASSESSMENTS:** In accordance with 2 CFR 200.332, the COUNTY, as HUD’s Grantee and a pass-through entity, must evaluate each subrecipient’s risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for the purposes of determining the appropriate subrecipient monitoring. As a consideration of those periodic assessments, the SUBRECIPIENT shall provide information and documentation, as necessary, for the COUNTY to conduct these risk assessments to support the COUNTY’S determinations in developing monitoring, technical assistance, and training schedules and strategies.

**SUBSECTION VII.E. – RECORDS:** The SUBRECIPIENT must comply with the recordkeeping requirements of 24 CFR 570.506, as amended by the Federal Register Guidance’s Consolidated Notice waivers and alternative requirements, which describes the types of records which must be kept by the SUBRECIPIENT and the COUNTY for the Federal CDBG-DR award.

The **SUBRECIPIENT** must comply with records retention requirements contained within the Uniform Administrative Requirements (UAR) at 2 CFR 200.334, except that the **SUBRECIPIENT** must also:

1. Retain records for individual CDBG-DR activities for the longer of (1) 3 years after the expiration or termination of this Agreement, as prescribed under 24 CFR 570.503, or (2) 3 years after the submission of the annual performance and evaluation report, as prescribed in 24 CFR 91.520, in which the specific activity is reported on for the final time.
2. Maintain records for individual activities subject to the reversion of assets provisions at 24 CFR 570.503 or change of use provisions at 24 CFR 570.505 for as long as those provisions continue to apply to the activity(ies).
3. Maintain records for individual activities in which there are outstanding loan balances, other receivables, or contingent liabilities until such receivables or liabilities have been satisfied.

In accordance with 24 CFR 570.506, the **SUBRECIPIENT** shall also maintain books, records and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by the **COUNTY** under this Agreement. The **SUBRECIPIENT** must also retain all financial, client demographics, and programmatic records, supporting documentation, statistical records, and other records, which are necessary to document purchases, expenses, revenue, income and assets of the **SUBRECIPIENT** by funding source, program, and functional expenses category during the term of this Agreement.

If any litigation, claim, negotiation, audit, or other action involving the records has been initiated before the expiration of the retention period, the records shall be retained by the **SUBRECIPIENT** until all litigation, claims, or audit findings involving the records have been resolved and final action taken in accordance with 2 CFR 200.334. Additional types of records are further described under Exhibit B – CDBG-DR Compliance Provisions.

The records retention period, as described within this Subsection, may be longer depending on other funding sources for activities. It is the **SUBRECIPIENT'S** further obligation to comply with all Federal and State of Florida retention schedules if other schedules shall apply.

The **SUBRECIPIENT**, including all its employees or agents, contractors, subcontractors and consultants to be paid from CDBG-DR funds provided under this Agreement, shall allow access to its records at reasonable times for audits, inspections and monitoring as described in this Section and Subsections.

The **SUBRECIPIENT** specifically acknowledges its obligations under 2 CFR 200.338 (further detailed within SUBSECTION XII.K. PERSONALLY IDENTIFIABLE INFORMATION), and to comply with F.S., 119.0701, as amended from time to time, with regard to public records, and shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the **COUNTY** in order to perform the services required under this Agreement;
2. Upon request from the County's custodian of public records, provide the **COUNTY** with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 Florida Statutes or as otherwise provided by law;
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
4. Meet all requirements for retaining public records and transfer, at no cost to the **COUNTY**, all public records in possession of **SUBRECIPIENT** upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the **COUNTY** in a format that is compatible with the information technology system of the **COUNTY**.

**IF THE SUBRECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUBRECIPIENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, <http://www.leegov.com/publicrecords>.**

#### SECTION VIII: CONTRACTOR STATUS

SUBSECTION VIII.A. – INDEPENDENT CONTRACTOR: It is the Parties' intention that the SUBRECIPIENT will be an independent contractor and not the COUNTY'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, Florida revenue and taxation law, Florida Worker's Compensation law and Florida Unemployment Insurance Law. The SUBRECIPIENT will retain sole and absolute discretion in the judgment of the manner and means of carrying out the SUBRECIPIENT'S activities and responsibilities hereunder. The SUBRECIPIENT agrees that it is a separate and independent enterprise from the public employer, 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 SUBRECIPIENT and the COUNTY, and the COUNTY will not be liable for any obligation incurred by the SUBRECIPIENT, including, but not limited to, unpaid minimum wages and/or overtime premiums.

SUBSECTION VIII.B. – SUBCONTRACTS: Primary roles and responsibilities of the SUBRECIPIENT cannot be subcontracted. It is mutually agreed that any program component that is subcontracted by the SUBRECIPIENT must have a written contract upon execution of this Agreement. The SUBRECIPIENT must provide written notice to the COUNTY of all subcontractors as well as provide copies of all contracts entered into with subcontractors upon the COUNTY'S request. Procurement and/or bidding of non primary roles and responsibilities must be awarded on a fair and non collusive basis and must be in compliance with all applicable Lee County, State of Florida, and federal procurement standards at 2 CFR 200.318-327. The SUBRECIPIENT shall not enter into a transaction with a person or affiliate placed on the Florida Department of Management Services' Convicted Vendor List. For projects and services receiving federal funds, the SUBRECIPIENT shall also not enter into a transaction with debarred, suspended or ineligible contractors and participants included on the Federal Excluded Parties List, in accordance with 2 CFR 200.214. The SUBRECIPIENT must ensure each subcontractor conforms to the terms and conditions of this Agreement, *Exhibit B – CDBG-DR Compliance Provisions*, and *Attachment A – Program Guidelines*, as applicable, and must be subject to indemnification as stated in SUBSECTION X.A. INDEMNIFICATION AND LIABILITY below.

#### SECTION IX: CONFLICTS OF INTEREST

The **SUBRECIPIENT** agrees that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of activities required under this Agreement. The **SUBRECIPIENT** further agrees that no person having any such interest shall be employed or engaged for said performance. The **SUBRECIPIENT** agrees that no employee, officer, agent of the **SUBRECIPIENT** or its subrecipients shall participate in the selection, award, or administration of a contract or construction bid if a conflict-of-interest, either real or implied, would be involved. The **SUBRECIPIENT** or its subrecipient employees, officers and agents should refrain from accepting gratuities, favors or anything of monetary value from contractors or potential contractors based on the understanding that the receipt of such an item of value would influence any action or judgment of the **SUBRECIPIENT**.

The **SUBRECIPIENT** is subject to the requirements at 24 CFR 570.611 and 2 CFR 200.318, as applicable, which includes developing or maintaining written standards of conduct and a conflict of interest policy that complies with the process for promptly identifying and addressing such conflicts.

#### SECTION X: RISK MANAGEMENT

SUBSECTION X.A. – INDEMNIFICATION AND LIABILITY: To the fullest extent permitted by applicable law, SUBRECIPIENT shall protect, defend, indemnify, save and hold the COUNTY, the Board of County Commissioners, its agents, officials, and employees harmless from and against any and all claims, demands, fines, loss or destruction of property, liabilities, damages, for claims based on the negligence, misconduct, or omissions of the SUBRECIPIENT resulting from the SUBRECIPIENT'S work as further described in this Agreement and its attachments, which may arise in favor of any person or persons resulting from the SUBRECIPIENT'S performance or nonperformance of its obligations under this Agreement except any damages arising out of personal injury or property claims from third parties caused solely by the negligence, omission(s) or willful misconduct of the COUNTY, its officials, commissioners, employees or agents, subject to the limitations as set out in Florida general law, Section 768.28, Florida Statutes, as amended

from time to time. Further, the SUBRECIPIENT hereby agrees to indemnify the COUNTY for all reasonable expenses and attorney's fees incurred by or imposed upon the COUNTY in connection therewith for any loss, damage, injury, liability, or other casualty. The SUBRECIPIENT additionally agrees that the COUNTY may employ an attorney of the COUNTY'S own selection to appear and defend any such action, on behalf of the COUNTY, at the expense of the SUBRECIPIENT. The SUBRECIPIENT further agrees to pay all reasonable expenses and attorney's fees incurred by the COUNTY in establishing the right to indemnity.

The **SUBRECIPIENT** further agrees that it is responsible for any and all claims arising from the hiring of individuals relating to activities provided under the Agreement. All individuals hired are employees of the **SUBRECIPIENT** and not of the **COUNTY**.

The **SUBRECIPIENT** further agrees to assume sole responsibility, training and oversight of the parties it deals with or employs to carry out the terms of this Agreement to the extent set forth in Section 768.28, F.S. The **SUBRECIPIENT** shall hold the **COUNTY** harmless against all claims of whatever nature arises from the work and services performed by third parties under this Agreement. Nothing herein shall be construed as consent by the **SUBRECIPIENT** to be sued by third parties in any matter arising out of any agreement, contract or subcontract.

If the **SUBRECIPIENT** is a state agency or subdivision, as defined in Section 768.28, F.S., then the **SUBRECIPIENT** agrees to be fully responsible for its negligent or tortious acts of omissions, which result in claims or suits against the **COUNTY**. The **SUBRECIPIENT** agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in Section 768.28, F.S. Nothing herein shall be construed as consent by the state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any agreement, contract or subcontract.

Nothing herein is intended to serve as a waiver of sovereign immunity by the **COUNTY** or the **SUBRECIPIENT**.

The provisions of this SUBSECTION X.A. INDEMNIFICATION AND LIABILITY shall survive the termination of this Agreement.

#### SUBSECTION X.B. – INSURANCE REQUIREMENTS

##### **INSURANCE – NONPROFIT SUBRECIPIENTS**

The **SUBRECIPIENT** agrees to secure and maintain the insurance coverage outlined below during the term of this Agreement. The **SUBRECIPIENT** agrees that this insurance requirement shall not relieve or limit **SUBRECIPIENT'S** liability and that the **COUNTY** does not in any way represent that the insurance required is sufficient or adequate to protect the **SUBRECIPIENT'S** interests or liabilities but are merely minimums. It is the responsibility of the **SUBRECIPIENT** to ensure that all subcontractors comply with the insurance requirements.

Certificate(s) of Insurance  **naming Lee Board of County Commissioners as Certificate Holder and additional insured**  will be attached to this Agreement as an exhibit. Name and address for Certificate Holder should be: Lee Board of County Commissioners, P.O. Box 398, Fort Myers, FL 33902. Certificate(s) must be provided for the following coverages at the time of Agreement execution and upon policy renewal. Renewal certificates are due to the **COUNTY** on or before expiration date.

1. **Workers' Compensation:** Statutory benefits as defined by Section 440, F.S., encompassing all operations contemplated by this Agreement to apply to all owners, officers, and employees. Employers' liability will have minimum limits of:  
\$100,000 per accident



- \$500,000 disease limit
- \$100,000 disease limit per employee
- 2. **Commercial General Liability:** Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability, and broad form property damage exposures with minimum limits of:
  - \$500,000 bodily injury per person (BI)
  - \$1,000,000 bodily injury per occurrence (BI)
  - \$500,000 property damage (PD) or
  - \$1,000,000 combined single limit (CSL) of BI and PD

The General Liability Policy Certificate shall name "**Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials**" as "**Additional Insured**". The **SUBRECIPIENT** agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess.

- 3. **Business Auto Liability:** The following Automobile Liability will be required and coverage shall apply to all owned, hired, and non-owned vehicles used with minimum limits of:
  - \$100,000 bodily injury per person (BI)
  - \$300,000 bodily injury per occurrence (BI)
  - \$100,000 property damage (PD) or
  - \$300,000 combined single limit (CSL) of BI and PD
- 4. **Directors & Officers Liability:** Entity coverage to cover claims against the organization directly for wrongful acts with limits not less than \$100,000.
- 5. **Fidelity Bonding:** Covering all employees who handle the agency's funds. The bond amount must be equivalent to the highest daily cash balance or a minimum amount of \$50,000.

**INSURANCE – GOVERNMENT/MUNICIPALITY SUBRECIPIENTS**

Documentation of the above coverage requirements are not applicable to local governments or municipalities that are self-insured.

SUBSECTION X.C. – NOTICE OF CANCELLATION OR MODIFICATION: The COUNTY will be given thirty (30) days notice prior to cancellation or modification of any stipulated insurance. Such notification will be in writing by registered mail, return receipt requested and addressed to the Lee County Risk Manager, P. O. Box 398, Ft. Myers, FL 33902.

The COUNTY will be given thirty (30) days notice prior to cancellation or modification of any stipulated insurance. Such notification will be in writing by registered mail, return receipt requested and addressed to the Lee County Risk Manager, P. O. Box 398, Ft. Myers, FL 33902.

**SECTION XI: EVENTS OF DEFAULT, REMEDIES, AND TERMINATION**

In accordance with the Federal Register Guidance, 2 CFR 200.208, 2 CFR 200.339, Appendix II to 2 CFR 200, 24 CFR 570.503, and other rights which may be available under law, the following Subsections identify suspension and termination of the Agreement, with and without cause, the potential events of default by the **SUBRECIPIENT**, and potential remedies by the **COUNTY** for noncompliance by the **SUBRECIPIENT** of any and all requirements of this Agreement, including any exhibits, attachments, and terms and conditions herein:

**SUBSECTION XI.A. – SUSPENSION:** The COUNTY reserves the right to suspend funding for failure to comply with the requirements of this Agreement. If the SUBRECIPIENT fails to submit required documents by the due date, the COUNTY can suspend the Agreement and withhold payments until all requirements are satisfied.

In the event the **SUBRECIPIENT** ceases operation for any reason or files for protection from creditors under bankruptcy law, any remaining unpaid portion of this Agreement, less funds for expenditures already incurred, shall be retained by the **COUNTY** and the **COUNTY** shall have no further funding obligation to the **SUBRECIPIENT** with regard to those unpaid funds.

**SUBSECTION XI.B. – EVENTS OF DEFAULT:** If any of the following events occur (“Events of Default”), the COUNTY may, in its sole and absolute discretion, elect to terminate any obligation to make any further payment of funds, exercise any of the remedies set forth in **SUBSECTION XI.C. REMEDIES** or pursue any remedy at law or in equity, without limitation:

1. Any warranty or representation made by the **SUBRECIPIENT**, in this Agreement with the **COUNTY**, is or becomes false or misleading in any respect, or it the **SUBRECIPIENT** fails to keep or perform any of the obligations, terms, or covenants in this Agreement with the **COUNTY**, and/or has not cured them in a timely fashion and/or is unable or unwilling to meet its obligations under this Agreement and/or as required by statute, rule, or regulation;
2. Any material adverse change occurred in the financial condition of the **SUBRECIPIENT** at any time during the term of this Agreement and the **SUBRECIPIENT** fails to cure this adverse change within thirty (30) calendar days from the date written notice is sent by the **COUNTY**;
3. The **SUBRECIPIENT** fails to submit any required reports or submits any required report with incorrect, incomplete or insufficient information or fails to submit additional information as requested by the **COUNTY**;
4. The **SUBRECIPIENT** fails to perform or timely complete any of its obligations under this Agreement, including participation in the **COUNTY’S** measures for technical assistance and training;
5. Both the **SUBRECIPIENT** and the **COUNTY** agree that in the event the **COUNTY** elects to make payments or partial payments after any Events of Default, it does so without waiving the right to exercise remedies allowable herein or at law and without becoming liable to make any further payment; or,
6. Neither the **SUBRECIPIENT** nor the **COUNTY** (Parties) shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the **SUBRECIPIENT**, the **COUNTY**, or either Parties’ employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond both Parties’ control or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay from the foregoing causes, the **SUBRECIPIENT** shall take all reasonable measures to mitigate any and all resulting delay or disruption in the **SUBRECIPIENT’S** performance obligation under this Agreement. If the delay is excusable under this Subsection, the delay will not result in any additional charges or cost under the Agreement to either Parties. In the case of any delay the **SUBRECIPIENT** believes is excusable under this Subsection, the **SUBRECIPIENT** shall notify the **COUNTY** in writing of the delay or potential delay and describe the cause of the delay either (1) with ten (10) calendar days after the cause

that creates or will create the delay first arose, if the **SUBRECIPIENT** could reasonably foresee that a delay could occur as a result or (2) within five (5) calendar days after the date the **SUBRECIPIENT** first had reason to believe that a delay could result, if the delay is not reasonably foreseeable. The foregoing shall constitute the **SUBRECIPIENT'S** sole remedy or excuse with respect to delay. Providing notice in accordance with this Subsection is a condition precedent to such remedy. The **COUNTY**, in its sole discretion, will determine if the delay is excusable under this Subsection and will notify the **SUBRECIPIENT** of its decision in writing. No claim for damages, other than an extension of time, shall be asserted against the **COUNTY**. The **SUBRECIPIENT** shall not be entitled to an increase in the Agreement price or payment of any kind from the **COUNTY** for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist, the **SUBRECIPIENT** shall perform at no increased cost, unless the **COUNTY** determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to the **COUNTY**, in which case, the **COUNTY** may do any or all of the following: (1) accept allocated activity(ies) performance or deliveries from the **SUBRECIPIENT**, provided that the **SUBRECIPIENT** grants preferential treatment to the **COUNTY** with respect to products or services subjected to allocation; (2) purchase from other sources (without recourse to and by the **SUBRECIPIENT** for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity or (3) terminate the Agreement in whole or in part.

**SUBSECTION XI.C. – REMEDIES:** If an Event of Default occurs, the **COUNTY** may, in its sole discretion and without limiting any other right or remedy available, provide thirty (30) calendar days written notice to the **SUBRECIPIENT**, and if the **SUBRECIPIENT** fails to cure within those thirty (30) calendar days, the **COUNTY** may choose to exercise one or more of the following remedies, either concurrently or consecutively:

1. Terminate this Agreement upon written notice by the **COUNTY**, sent in conformity with SECTION XV. NOTICES;
2. Begin any appropriate legal or equitable action to enforce performance of this Agreement;
3. Withhold or suspend payment of all or any part of a request for payment;
4. Demand the **SUBRECIPIENT** return to the **COUNTY** any funds used for ineligible activities or unallowable costs under this Agreement or any applicable law, rule or regulation governing the use of the funds; and
5. Exercise any corrective or remedial actions, including but not limited to:
  - a. Request additional information from the **SUBRECIPIENT** to determine the reasons for or the extent of noncompliance or lack of performance;
  - b. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected; and/or
  - c. Advise the **SUBRECIPIENT** to suspend, discontinue or refrain from incurring costs for any activities in question.
6. Exercise any other rights or remedies which may be otherwise available under law.

Pursuit of any of the above remedies does not preclude the **COUNTY** from pursuing any other remedies in this Agreement or provided at law or in equity. Failure to exercise any right

or remedy in this Agreement or failure by the **COUNTY** to require strict performance does not affect, extend or waive any other right or remedy available or affect the later exercise of the same right or remedy by the **COUNTY** for any other default by the **SUBRECIPIENT**.

**SUBSECTION XI.D. – TERMINATION BY COUNTY:** Excluding those scenarios and exceptions as noted within **SUBSECTION XI.A. SUSPENSION**, **SUBSECTION XI.B. EVENTS OF DEFAULT**, and **SUBSECTION XI.C. REMEDIES**, the **COUNTY** may, at any time and for other reasons not mentioned above (“for convenience”), cancel this Agreement by giving twenty–four (24) hours written notice to the **SUBRECIPIENT** by Certified Mail, Process Server or Hand Delivery following a determination by the County Manager or designee, at its sole discretion, that such cancellation is in the best interest of the people of the **COUNTY**. From the date of cancellation, neither party shall have any further obligation unless specified in the termination notice.

If the financing for this project is contingent upon funding sources other than Lee County as identified in the **{SELECT ONE}** proposal/application for this Agreement, and such funds become unavailable, the obligations of each party hereunder may be terminated upon no less than twenty-four (24) hours written notice.

**SUBSECTION XI.E. – TERMINATION BY SUBRECIPIENT:** Excluding those scenarios and exceptions as noted within **SUBSECTION XI.A. SUSPENSION**, **SUBSECTION XI.B. EVENTS OF DEFAULT**, and **SUBSECTION XI.C. REMEDIES**, the **SUBRECIPIENT** may, at any time and for other reasons not mentioned above (“for convenience”), cancel this Agreement by giving seventy-two (72) hours prior written notice to the **COUNTY** by Certified Mail or Process Server of such and specifying the effective date.

The **COUNTY'S** obligation to make any payments under any provision of this Agreement shall cease on the effective date of termination.

In the event that this Agreement is terminated, the **SUBRECIPIENT** shall not incur new obligations under the terminated portion of the Agreement after the date the **SUBRECIPIENT** has received the notification of termination. The **SUBRECIPIENT** shall cancel as many outstanding obligations as possible. The **COUNTY** shall disallow all costs incurred after the **SUBRECIPIENT'S** receipt of the termination notice. The **COUNTY** may, to the extent authorized by law, withhold payments to the **SUBRECIPIENT** for the purpose of set-off until the exact amount of damages due to the **COUNTY** from the **SUBRECIPIENT** is determined.

Upon expiration or termination of this Agreement, the **SUBRECIPIENT** shall transfer to the **COUNTY** any CDBG-DR funds on hand at the time of expiration or termination and any accounts receivable attributable to the use of CDBG-DR funds.

Any real property under the **SUBRECIPIENT'S** control that was acquired or improved in whole or in part with CDBG-DR funds (including CDBG-DR funds provided to the **SUBRECIPIENT** in the form of a loan) in excess of \$35,000 must either (1) be used to meet a national objective until five years after expiration or termination of this Agreement, unless otherwise agreed upon by the Parties, or except as otherwise set forth herein or (2) if not used to meet a national objective, the **SUBRECIPIENT** shall pay to the **COUNTY** an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG-DR funds for the acquisition or improvement of the property for five years after expiration or termination of this Agreement.

The rights and remedies under this Section are in addition to any other rights or remedies provided by law or under this Agreement.

## SECTION XII: ASSURANCE, CERTIFICATIONS, AND COMPLIANCE

The **SUBRECIPIENT** agrees that compliance with these assurances and certifications constitutes a condition of continued receipt of or benefit from CDBG-DR funds provided through this Agreement, and that it is binding upon the **SUBRECIPIENT**, its successors, transferees, and assignees for the period during which services are provided and activities are performed. Additional requirements of the assurances, certifications, and compliance measures below can be further detailed or outlined in the Agreement's exhibits, forms, and attachments.

**SUBSECTION XII.A. – IMMIGRATION LAWS AND CITIZENSHIP STATUS:** The COUNTY will not intentionally award Agreements to any SUBRECIPIENT who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324 a(e) Section 274A(e) of the Immigration and Nationality Act (INA).

The **COUNTY** shall consider the employment by the **SUBRECIPIENT** of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of the Agreement by **COUNTY**.

Additionally, the **SUBRECIPIENT** must follow requirements to verify citizenship of CDBG-DR fund recipients in certain circumstances. In accordance with 49 CFR 24.408, the **SUBRECIPIENT** cannot provide relocation assistance cannot be provided to a person who has not provided certification of U.S. citizenship or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the **SUBRECIPIENT** that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States. The **COUNTY** may require the **SUBRECIPIENT** to follow other verification requirements as prescribed within the Federal Register Guidance, regulations, or within the Action Plan.

Furthermore, the **SUBRECIPIENT** shall ensure that CDBG-DR funds, which are passed through Lee County, are restricted to people legally able to reside in the United States.

**SUBSECTION XII.B. - E-VERIFY REQUIREMENTS:** The SUBRECIPIENT must verify employment eligibility of all new employees hired during the Agreement term through the U.S. Department of Homeland Security's E-Verify system.

Section 448.095, F.S., requires the following:

1. Every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.
2. A private employer shall, after making an offer of employment which has been accepted by a person, verify such person's employment eligibility. A private employer is not required to verify the employment eligibility of a continuing employee hired before January 1, 2021. However, if a person is a contract employee retained by a private employer, the private employer must verify the employee's employment eligibility upon the renewal or extension of his or her contract.

E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States. There is no charge to the employer to use E-Verify. The Department of Homeland Security's E-Verify system can be found at:

<https://www.e-verify.gov/>.

If the **SUBRECIPIENT**, or its contractors, consultants, or subrecipients, does not use E-Verify, they shall enroll in the E-Verify system prior to hiring any new employee or retaining any contract employee after the Effective Date of this Agreement.

**SUBSECTION XII.C. – NATIONAL OBJECTIVE:** All activities funded with CDBG-DR funds must meet the criteria for one of the CDBG program's National Objectives. The **SUBRECIPIENT** certifies that the activities carried out under this Agreement shall meet the stated national objective as outlined under **SUBSECTION II.C. NATIONAL OBJECTIVE**. Furthermore, the **SUBRECIPIENT** certifies and acknowledges that it understands documentation and records requirements for the stated national objective type(s), as defined at 24 CFR 570.208, 24 CFR 570.506, and any and all alternative requirements under the Federal Register Guidance in relation to relevant national objective type(s) as stated in the above Subsection.

**SUBSECTION XII.D. – DUPLICATION OF BENEFITS:** The **SUBRECIPIENT** certifies that it shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5155 et seq.) and described within Appropriations Acts and Federal Register Guidance. The **SUBRECIPIENT** must comply with HUD's requirements for Duplication of Benefits (DOB), as described in the Federal Register Guidance (Section IV.A.1. – Grant Administration; Duplication of Benefits (DOB)) and HUD guidance (including HUD training materials), including specific Order of Assistance requirements as noted under **SUBSECTION II.E. USE OF FUNDS AND ORDER OF ASSISTANCE**. The **SUBRECIPIENT** shall carry out the activities under this Agreement in compliance with the **COUNTY's** procedures to prevent DOB. The **SUBRECIPIENT** shall also sign a Subrogation Agreement (See *Attachment xx – Subrogation Agreement*).

In accordance with the Federal Register Guidance at 88 FR 32053 – Section IV.A.1.(d)(v) Applicable Rules, Statutes, Waivers, and Alternative Requirements: Reassess Unmet Need When Necessary, the **SUBRECIPIENT** certifies that they will notify the **COUNTY** immediately of any funding source changes and/or additions from other sources that are different from that shown in the **SUBRECIPIENT'S** {*SELECT ONE*} application/proposal. This notification must include a statement as to how this change in funding affects the provisions of the project and activity requirements as well as the use of and continued need for CDBG-DR funds through the **COUNTY**.

The **SUBRECIPIENT** shall either (1) maintain all funds provided under this Agreement in a separate bank account or (2) ensure that the **SUBRECIPIENT'S** accounting system shall have sufficient internal controls to separately track expenditure of all funds under this Agreement, in accordance with 2 CFR 200.302. In cases where the project and its activities are funded by more than one funding source (other funds besides CDBG-DR funds) where potential duplicative assistance could exist, the **SUBRECIPIENT** shall not commingle CDBG-DR funds provided under this Agreement with any other funds, projects or programs, when those funds are determined to be for the same purpose and same use, in accordance with the Federal Register Guidance. 88 FR 32050, Section IV.A.1.(a) – Overview of Grant Process, The Stafford Act – and Section 312 of the Stafford Act makes recipients of Federal disaster assistance liable for repayment of the amount of Federal disaster assistance that duplicates benefits available for the same purpose from another source (42 U.S.C. 5155(c)). The **COUNTY** may, in its sole discretion, disallow costs made with commingled funds that were designated as being available for the same purpose and use as the CDBG-DR funds

and require reimbursement for such costs as described herein (SUBSECTION V.B. – DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS)).

SUBSECTION XII.E. – CIVIL RIGHTS REQUIREMENTS: The SUBRECIPIENT further assures that all contractors, subcontractors, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs, projects, and activities are not discriminating against those participants or employees in violation of statutes, regulations, guidelines and standards. By acceptance of this CDBG-DR funding, the SUBRECIPIENT assures and certifies the following:

1. That they will comply with all applicable Federal, State and local anti-discrimination laws pertaining to nondiscrimination in programs receiving Federal financial assistance, including but not limited to:
  - a. Title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations – including that recipients/grantees of federal financial assistance are required to take reasonable steps to ensure meaningful access to persons who are Limited English Proficiency (LEP), as per Executive Order 13166 and the Federal Register Guidance, to items such as, but not limited to, project outreach, project or activity materials including communique in the form of digital (website) media and paper materials.
  - b. Section 109 - Title I of the Housing & Community Development Act of 1974
  - c. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)
  - d. Age Discrimination Act of 1975 (42 U.S.C. 610 et. seq.)
  - e. Fair Housing Act
2. That they will comply with the Americans with Disabilities Act of 1990 (“ADA”) (P.L. 101-336, as codified at U.S.C. 42.126 (sections 12101-12213) and as amended, and 28 CFR 35); the Florida Civil Rights Act, as amended, Chapter 76, F.S.; Title VII of the Civil Rights Act of 1964, as amended; and laws which gives civil rights protections to individuals with disabilities, guaranteeing equal opportunity for individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. A Single-Point-of-Contact shall be required if the agency employs 15 or more employees. The Single-Point-of-Contact will ensure effective communication with deaf or hard-of-hearing customers or companions in accordance with Section 504 and the ADA and coordinate activities and reports with the **SUBRECIPIENT’S** Single-Point-of-Contact.
3. That if clients are to be transported under this Agreement, **SUBRECIPIENT** will comply with the provisions of Chapter 427, Florida Statutes, which requires the coordination of transportation for the disadvantaged.
4. That if personnel in programs under this Agreement work directly with children/youths and vulnerable or disabled adults, the **SUBRECIPIENT** will comply with applicable provisions under Florida Statutes 943.0542; 943.04351; 393.0655; 402, regarding employment screening.
5. That activities under this Agreement shall provide for access to equal participation of religious or faith-based organizations, where applicable, in accordance with 24 CFR 570.200 and Executive Order 13279.

Additional requirement information can be accessed at the following websites:

- [Office of Fair Housing and Equal Opportunity \(FHEO\) Fair Housing Rights and Obligations](#)

- [FHEO main website](#)
- [Guidelines for promoting Fair Housing for individual with Limited English Proficiency \(LEP\)](#)

These requirements are designed to prevent discrimination in the delivery of benefits and services because of race, color, religion (creed), sex, national origin, age, familial status or disability. Affirmative marketing plans and use of universal design features for construction and rehabilitative projects should be incorporated when possible.

All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the home seeking public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, or national origin. The choice of logotype, statement or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. Different styles/types/sizes of logos and information regarding brochures and can be found on the Fair Housing and Equal Opportunities HUD website.

**SUBSECTION XII.F. – DETECTION AND PREVENTION OF FRAUD, WASTE, AND ABUSE:** In accordance with the Federal Register Guidance, the **SUBRECIPIENT** certifies that they will administer their programs under procedures, supervision, safeguards, and such other methods as may be necessary to prevent fraud, waste, and abuse, and that it will target its services and activities to those who most need them the most. Additionally, the **SUBRECIPIENT** certifies that their written standards of conduct and their conflict of interest policy will supplement their anti-fraud, waste, and abuse (AFWA) initiatives, and that the **SUBRECIPIENT** may be required to take part in fraud, waste, and abuse training and will work with the **COUNTY** to develop a FWA complaint and reporting process, including reporting such complaints to the **COUNTY**.

**SUBSECTION XII.G. – INELIGIBLE ACTIVITIES:** The **SUBRECIPIENT** assures that it will not conduct, or expend CDBG-DR funds on, any activities which are deemed ineligible by the Federal Register Guidance (88 FR 32077, Section III.G.), federal regulations (most notably at 24 CFR 570.207), the Action Plan, and all other applicable laws.

**SUBSECTION XII.H. – LOBBYING PROHIBITION:** The **SUBRECIPIENT** is prohibited from using contracted funds for the following purposes: (1) political activities; (2) lobbying; (3) political patronage; (4) nepotism activities; and (5) inherently religious activities such as worship, religious instruction, or proselytization. The **SUBRECIPIENT** will also comply with Chapter 216.347, Florida Statutes, which prohibits the expenditure of Agreement funds for the purpose of lobbying the legislature, State or county agencies.

Additionally and in accordance with 24 CFR 87, the **SUBRECIPIENT** certifies that it will not use CDBG-DR funds received from the **COUNTY** to directly or indirectly influence legislation or any other official action by the Florida legislature, any state agency, or other local government and county (BOCC) business, including through the use of Federal appropriated funds being paid to any person for influencing or attempting to influence an office or employee of any agency, a member of Congress, an office or employee of Congress or an employee of a member of Congress in connection with this Federal contract, grant, loan or cooperative agreement. If the **COUNTY** and/or the **SUBRECIPIENT** suspects such action of occurring, the **COUNTY** reserves the right to request that the **SUBRECIPIENT** disclose and certify such activities in accordance with reporting requirements noted within SECTION



## VI. REPORTS and SECTION VII. AUDITS, MONITORING, AND RECORDS.

SUBSECTION XII.I. – PROGRAM INCOME: The SUBRECIPIENT shall report to the COUNTY all program income (as defined at 24 CFR 570.500 or in the Federal Register Guidance governing the CDBG-DR funds) generated by activities carried out with CDBG-DR funds made available under this Agreement as part of the SUBRECIPIENT'S periodic reporting outlined under SECTION VI. REPORTS, SECTION VII. AUDITS, MONITORING, AND RECORDS, and *Exhibit A*.

The **SUBRECIPIENT** must return to the **COUNTY** program income generated by the project and its activities **prior to closeout**. The COUNTY certifies that it shall use program income in accordance with the applicable requirements of 2 CFR 200.307 and alternative requirements and waivers as prescribed under the Federal Register Guidance at 88 FR 32074, Appendix B: CDBG-DR Consolidated Notice - Section III.E. Program Income (in place of requirements at 24 CFR 570.500 and 24 CFR 570.504), and the terms of this Agreement. The **SUBRECIPIENT** shall return program income to the **COUNTY** if a program income balance exists or program income is generated after closeout. In all cases, any program income received that is not used to continue the disaster recovery activity will not be subject to the waivers and alternative requirements of the Federal Register Guidance or the **COUNTY'S** CDBG Entitlement program, if program income is transferred to that program.

SUBSECTION XII.J. – CITIZEN PARTICIPATION AND PUBLIC WEBSITE REQUIREMENTS: The COUNTY, as a Grantee, certified to HUD that it has a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 or 91.105 (except as provided for in waivers and alternative requirements under the Federal Register Guidance). Additionally, the COUNTY, as a Grantee, certified to HUD that it will maintain a comprehensive CDBG-DR public website that permits individuals and entities awaiting assistance and the general public to see how all grant funds are used and administered. The Action Plan also details how the COUNTY will adhere to both requirements.

The **SUBRECIPIENT** certifies that it will adhere to requirements by the **COUNTY** to provide documentation and information which informs both the citizen participation and public website requirements. Further details on information needed to meet these requirements are spelled out in the exhibits, attachments, and forms as part of this Agreement.

SUBSECTION XII.K. – PERSONALLY IDENTIFIABLE INFORMATION (PII): As previously referenced under SUBSECTION VII.E. RECORDS and in accordance with 2 CFR 200.1 and 2 CFR 200.338, Personally Identifiable Information (PII) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Protected PII means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII that is required by law to be disclosed.

PII must always be safeguarded, even in instances of public records requests. No Federal

awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the non-Federal entity pertinent to a Federal award, *except for protected PII or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency.*

The **SUBRECIPIENT** certifies that they understand the PII definitions as noted above, and in accordance with their internal controls under 2 CFR 200.303, the **SUBRECIPIENT** shall take reasonable measures to safeguard protected PII and other information HUD or the **COUNTY** designates as sensitive or the **SUBRECIPIENT** considers sensitive consistent with applicable Federal, State, and local laws regarding privacy and responsibility over confidentiality.

Additionally, the **COUNTY**, pursuant to the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a “covered entity,” as the law defines that term. Any “personal health information” (PHI) as defined by the law that the **COUNTY** receives pursuant to this Agreement in connection with this projects and its activities, as applicable, is subject to the disclosure and security requirements of HIPAA. Transfer of information to the **COUNTY** sufficiently “de-identified” to no longer be considered PHI is encouraged as being in the best interest of client PHI confidentiality to the extent that public services are unaffected. Particular methods to accomplish the highest levels of public service coupled with PHI confidentiality shall be an ongoing task of the affected staffs of the **COUNTY** and the **SUBRECIPIENT**.

**SUBSECTION XII.L. – NECESSARY AND REASONABLE REQUIREMENTS:** The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for the Federal Awards in 2 CFR 200 Subpart E (Federal Cost Principles) apply to all CDBG-DR Grantees and their Subrecipients. The **SUBRECIPIENT** certifies that all costs incurred under this Agreement are necessary and reasonable for the performance of its project and/or activities. The Cost Principles are made applicable to local governments through 24 CFR 570.502. The **SUBRECIPIENT** must consider factors described at 2 CFR 200.404(a-e) when determining which types and amounts of cost items incurred under this Agreement are necessary and reasonable.

**SUBSECTION XII.M. – COPYRIGHT, PATENT AND TRADEMARK:** In accordance with 2 CFR 200.1 and 2 CFR 200.135, trademarks, copyrights, patents and patent applications and property, are identified as intangible property, or property having no physical existence. The **SUBRECIPIENT** may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under this CDBG-DR award. HUD, through the **COUNTY** as its pass-through entity, reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. The **SUBRECIPIENT** is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR 401 (“Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements”).

Any and all patent rights accruing under or in connection with the performance of this Agreement are hereby reserved to the **COUNTY**. Any and all copyrights accruing under or in connection with the performance of this Agreement are hereby transferred by the **SUBRECIPIENT** to the **COUNTY**.

1. If the **SUBRECIPIENT** has a pre-existing patent or copyright, the **SUBRECIPIENT** shall retain all rights and entitlement to that pre-existing patent or copyright unless this Agreement expressly provides otherwise.
2. If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement or in any way connected with it, the **SUBRECIPIENT** shall refer the discovery or invention to the **COUNTY** for a determination whether the **COUNTY** will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the **COUNTY**. If any books, manuals, films or other copyrightable material are produced, the **SUBRECIPIENT** shall notify the **COUNTY**. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the **SUBRECIPIENT** to **COUNTY**. Within thirty (30) calendar days of execution of this Agreement, the **SUBRECIPIENT** shall disclose all intellectual properties relating to the performance of this Agreement which give rise to a patent or copyright. The **SUBRECIPIENT** shall retain all rights and entitlements to any pre-existing intellectual property which is so disclosed. Failure to disclose will indicate that no such property exists, and the **COUNTY** shall have the right to all patents and copyrights which accrue during performance of this Agreement.

SUBSECTION XII.N. – FEDERAL TERMS AND CONDITIONS: For Federal CDBG-DR funded programs, the SUBRECIPIENT has or will develop and maintain the capacity to carry out disaster recovery activities in a timely manner and will ensure compliance with applicable Uniform Administrative Requirements as described in 2 CFR 200, Community Development Block Grants (CDBG) regulations at 24 CFR 570, the Federal Register Guidance, the Action Plan, and all other established, applicable HUD regulations, acts, and statutes, as now in effect and as may be amended from time to time. The COUNTY outlines full CDBG-DR Compliance Provisions for the SUBRECIPIENT under *Exhibit B – CDBG-DR Compliance Provisions*.

SUBSECTION XII.O. – STATE AND LOCAL REQUIREMENTS: The SUBRECIPIENT agrees to the following statements as it relates to State and/or local requirements:

1. That they will comply with all applicable laws, ordinances, and regulations of the United States, the State of Florida, the **COUNTY**, and the municipalities as said laws, ordinances, and regulations exist and are amended from time to time. In entering into this Agreement, the **COUNTY** does not waive the requirements of any **COUNTY** or local ordinance or the requirements of obtaining any permits or licenses that are normally required to conduct business or activity contemplated by the **SUBRECIPIENT**.
2. That any products or materials purchased with Agreement funds shall be procured in accordance with the provisions of Chapter 403.7065, Florida Statutes, which refers to the procurement of products or materials with recycled content.
3. That they will comply with Chapter 39.201, Florida Statutes, that any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, shall report such knowledge or suspicion to the Florida Abuse Hotline (1-800-962-2873).
4. That they will comply with Chapter 415.1034, Florida Statutes, that any person who

knows or has reasonable cause to suspect that a vulnerable and or disabled adult has been abused, neglected, or exploited, shall immediately report such knowledge or suspicion to the Florida Abuse Hotline (1-800-962-2873).

5. That they will acknowledge support for activities funded wholly or in part by CDBG-DR funds provided by HUD and the **COUNTY**. In publicizing, advertising, or describing the program, state "Funding provided by Lee Board of County Commissioners and HUD."
6. That they will notify the **COUNTY** of any changes to the **SUBRECIPIENT** organization to include Board Membership (roster), Articles of Incorporation and Bylaws within ten (10) working days of the effective date.

### SECTION XIII: OTHER PROVISIONS AND CONDITIONS

If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then that provision shall be null and void only to the extent of the conflict or unenforceability, and that provision shall be severable from and shall not invalidate any other provision of this Agreement.

Any power of approval or disapproval granted to the **COUNTY** under the terms of this Agreement shall survive the term of this Agreement.

All bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

In the event travel is pre-approved by the **COUNTY**, any bills for travel expenses shall be submitted and reimbursed in accordance with section 112.061, F.S., the rules promulgated thereunder and 2 CFR 200.474.

If the **SUBRECIPIENT** is allowed to temporarily invest any advances of CDBG-DR funds under this Agreement, any interest income shall either be returned to the **COUNTY** or be applied against the **COUNTY'S** obligation to pay the Agreement award amount.

The **SUBRECIPIENT** acknowledges being subject to Florida's Government in the Sunshine Law (section 286.011, F.S.) with respect to the meetings of the **SUBRECIPIENT'S** governing board or the meetings of any subcommittee making recommendations to the governing board. The **SUBRECIPIENT** agrees that all such aforementioned meetings shall be publicly noticed, open to the public and the minutes of all the meetings shall be public records made available to the public in accordance with Chapter 119, F.S.

The **SUBRECIPIENT** shall comply with section 519 of P.L. 101-144, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990; and section 906 of P.L. 101-625, the Cranston-Gonzalez National Affordable Housing Act, 1990, by having, or adopting within ninety (90) days of execution of this Agreement, and enforcing, the following:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.

Upon expiration or termination of this Agreement, the **SUBRECIPIENT** shall transfer to the **COUNTY** any CDBG-DR funds remaining at the time of expiration or termination, and any accounts

receivable attributable to the use of CDBG-DR funds.

#### SECTION XIV: CITIZEN COMPLAINTS

The **SUBRECIPIENT** is responsible for tracking and reporting citizen complaints to the **COUNTY** under the following types of complaints and/or inquiries: (1) Program or Project Appeals, where applicable; (2) HUD complaints; (3) Fair Housing complaints; and (4) Fraud, Waste, and Abuse (FWA) complaints. The **SUBRECIPIENT** must adopt a written citizen complaint policy that provides citizens with the address, phone number, and times for submitting complaints and grievances. The policy must also provide that timely written answers to written complaints and grievances will be provided within 15 working days, where practicable, or the **SUBRECIPIENT** must document why additional time was for the response was required.

#### SECTION XV: CONTRACTS AND FEDERAL PROCUREMENT STANDARDS

If the **SUBRECIPIENT** contracts any of the work required under this Agreement, a copy of the proposed contract template and any proposed amendments, extensions, revisions, or other changes thereto, must be forwarded to the **COUNTY** Program Manager for prior written approval. For each contract, the **SUBRECIPIENT** shall report to the **COUNTY** as to whether that contractor or any subcontractors hired by the contractor, is a minority business and women's business enterprise, as defined in section 288.703, F.S. and in accordance with 24 CR 570.506, 24 CFR 570.507, and 2 CFR 200.321. The **SUBRECIPIENT** shall comply with the procurement standards at 2 CFR 200.318 - 200.327 and 2 CFR 200.330 when procuring property and services under this Agreement. The **SUBRECIPIENT** shall include the following terms and conditions in any contract pertaining to the work required under this Agreement:

1. The period of performance or date of completion;
2. The performance requirements;
3. That the contractor is bound by the terms of this Agreement;
4. That the contractor is bound by all applicable State and Federal laws, rules, and regulations;
5. That the contractor shall hold the **COUNTY** and the **SUBRECIPIENT** harmless against all claims of whatever nature arising out of the contractor's performance of work under this Agreement;
6. The obligation of the **SUBRECIPIENT** to document in the **SUBRECIPIENT'S** reports the contractor's progress in performing its work under this Agreement;
7. The requirements of Appendix II to 2 CFR 200 - Contract Provision for Non-Federal Entity Contract Under Federal Awards - (refer to *Exhibit B*)

The **SUBRECIPIENT** must comply with CDBG regulations regarding debarred or suspended entities (24 CFR 570.609 and 2 CFR 200.214), pursuant to which CDBG funds must not be provided to excluded or disqualified persons and provisions addressing bid, payment, performance bonds, if applicable, and liquidated damages.

The **SUBRECIPIENT** shall maintain oversight of all activities performed under this Agreement and shall ensure that its contractors perform according to the terms and conditions of the procured contracts or agreements and the terms and conditions of this Agreement.

#### SECTION XVI: LEGAL AUTHORIZATION

The **SUBRECIPIENT** certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The **SUBRECIPIENT** certifies that the undersigned person has the authority to legally execute and bind the **SUBRECIPIENT** to the terms of this Agreement. The **COUNTY** may, at its

discretion, request documentation evidencing the undersigned has authority to bind the **SUBRECIPIENT** to this Agreement as of the Effective Date; any such documentation is incorporated herein by reference.

Prior to the execution of this Agreement, the **SUBRECIPIENT** warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, investigation or any other legal or financial condition that would in any way prohibit, restrain or diminish the **SUBRECIPIENT'S** ability to satisfy its obligations. The **SUBRECIPIENT** shall immediately notify the **COUNTY** in writing if its ability to perform is compromised in any manner during the term of this Agreement.

**SECTION XVII: AGREEMENT DISPUTE RESOLUTION PROCEDURE**

Any dispute between the Parties with respect to provisions contained in a Lee County Office of Strategic Resources and Government Affairs Agreement or issues that arise pertinent to an Agreement shall be resolved as follows:

The Parties may, by mutual agreement, attempt to resolve their dispute in the following manner within a thirty (30) day period. If both parties are in agreement, the thirty (30) daytime period can be extended for an additional ten (10) days.

1. Duly authorized representatives shall meet as often as mutually agreeable to discuss in good faith the dispute and to negotiate a mutually agreeable resolution. Authorized representatives for SRGA include the Agreement Coordinator and Program Manager.
2. During the course of the dispute process requests made by one Party to the other for non-privileged information, reasonably related to the dispute, shall be responded to in good faith.
3. If the dispute is unable to be resolved between the authorized representatives within the specified time period, it will be forwarded to the Department Director for resolution. A decision by the Director will be issued within ten (10) days.
4. If the dispute remains unresolved after the Department Director's decision, the parties may proceed to litigation. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens. This Agreement and the rights and obligations of the Parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles. Unless otherwise agreed in writing, the **SUBRECIPIENT** will be required to continue all obligations under this Agreement during the pendency of claim or dispute including, but not limited to, actual period of mediation or judicial proceedings.
5. Either Party may at any time commence formal court proceedings, which shall be immediately communicated, and will end the informal Dispute Resolution process as described in Paragraph 1-3 above.

**SECTION XVIII: NOTICES**

Official notices concerning this Agreement will be directed to the following authorized representatives below, either in writing, by hand delivery, first class, or certified mail with return receipt requested at the addresses below, or in electronic format, by electronic mail:

**SUBRECIPIENT**

Name:  
Title:  
Agency:  
Address:  
Telephone:  
Email:

**COUNTY**

Name:  
Title:  
Agency:  
Address:  
Telephone:  
Email:

The signatures of the two persons shown below are designated and authorized to sign all applicable reports:

\_\_\_\_\_  
Name (printed/typed)

\_\_\_\_\_  
Name (printed/typed)

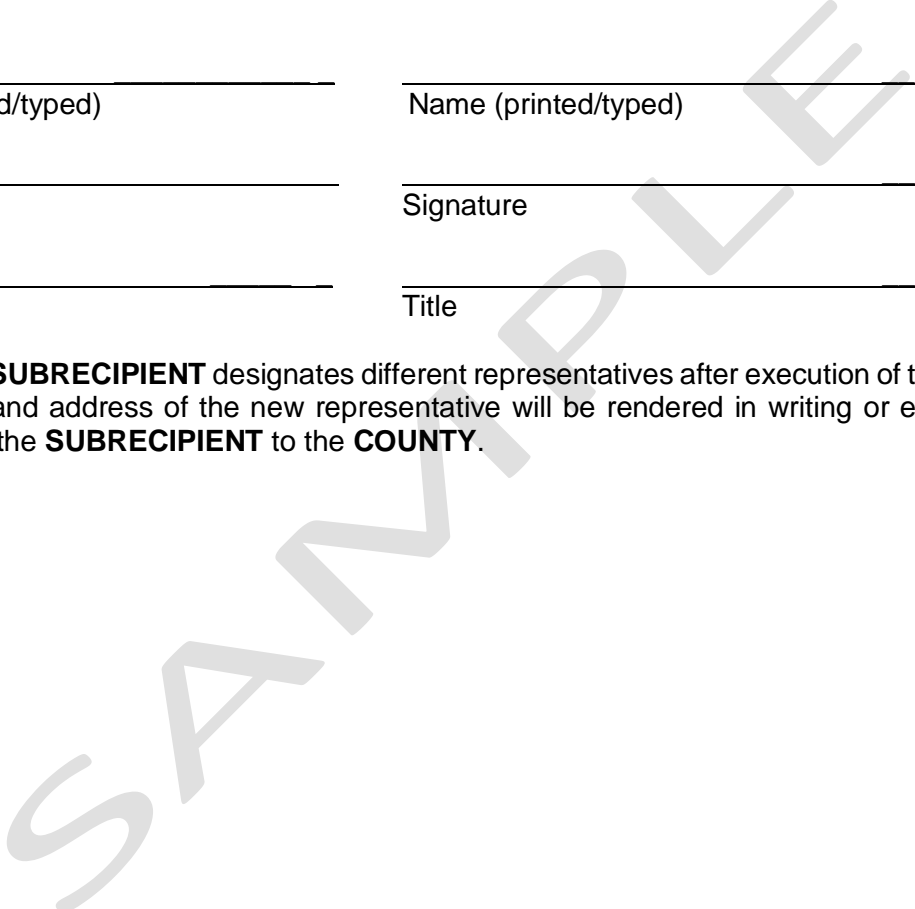
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

In the event that the **SUBRECIPIENT** designates different representatives after execution of this Agreement, notice of the name and address of the new representative will be rendered in writing or electronically by authorized officer of the **SUBRECIPIENT** to the **COUNTY**.



**SECTION XIX: ALL TERMS AND CONDITIONS INCLUDED**

This Agreement and its attachments, and any exhibits referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties. There are no provisions, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of this Agreement is legally determined unlawful or unenforceable, the remainder of the Agreement shall remain in full force and effect and such terms or provisions shall be stricken.

**IN WITNESS THEREOF**, the **SUBRECIPIENT** and the **COUNTY** have caused this Agreement and all Agreement Exhibits, Attachments, and Forms as indicated on next page to be executed by their undersigned officials as duly authorized.

**SUBRECIPIENT:** {AGENCY}

BY:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (print)

ATTEST:  
CLERK OF CIRCUIT COURT

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
Chair

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

\_\_\_\_\_  
County Attorney's Office



## Appendix 3 – Sample Developer Agreement

### DEVELOPER AGREEMENT BETWEEN LEE COUNTY BOARD OF COUNTY COMMISSIONERS AND

\_\_\_\_\_

**THIS AGREEMENT** is made and entered into this [\_\_\_\_\_] day of [\_\_\_\_\_] [\_\_\_\_\_] , 20\_\_\_\_\_, by and between Lee County, a municipal organization/body corporate and politic in the State of Florida (the “**County**”) whose address is: \_\_\_\_\_ and \_\_\_\_\_ (the “**Developer**”), a registered Florida corporation/limited liability corporation, whose address is: \_\_\_\_\_ and \_\_\_\_\_, (“**Owner**”), if applicable.

#### WITNESSETH:

**WHEREAS**, pursuant to Public Law 117-328, and the Federal Register Notice dated May 18, 2023 (88 FR 32046), the U.S. Department of Housing and Urban Development (HUD) has awarded \$1,107,881,000 in Community Development Block Grant – Disaster Recovery (CDBG-DR) funds to County for activities authorized under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) and described in the HUD-approved Lee County Action Plan for CDBG-DR Funds; and

**WHEREAS**, the County wishes to engage Developer to facilitate the development or improvement of affordable housing opportunities, pursuant to the terms of this Agreement by allocating \$ \_\_\_\_\_ ( \_\_\_\_\_ Million Dollars and xx/100 cents); and

**WHEREAS**, the Developer is a For-Profit / Non-Profit (circle one) corporation which has experience as a developer of housing for low- and moderate-income persons, and has demonstrated its experience and qualifications to County; and

**WHEREAS**, this Agreement constitutes the entire agreement between the parties, superseding all prior oral and written statements or agreements for the provision of CDBG-DR funds between County and Developer;

**NOW, THEREFORE**, in consideration of the mutual covenants, promises and obligations, and subject to the terms and conditions in this Agreement, and which may be more thoroughly defined (but which are not waived or abridged) in the loan closing documents, including but not limited to, the Award Letter and Loan Term Sheet (including any and all amendments), the Land Use Restriction Agreement (LURA), promissory note, and construction loan agreement (if applicable) attached as **EXHIBIT C**, collectively referred to as (“Loan Documents”), the parties understand and agree as follows:

**ARTICLE I  
GENERAL TERMS AND CONDITIONS OF AGREEMENT**

**AWARD** The total award provided by County, pursuant to this Agreement, is \$ \_\_\_\_\_ (the "Award"). Receipt of this Award by Developer from County is contingent upon Developer receiving all funds necessary to complete construction of the proposed affordable housing units. The Award is additionally conditional upon completion of a HUD-compliant Environmental Review Record (ERR) and subsequent issuance of an Authorization to Use Grant Funds (AUGF) from HUD. The Award funds shall be used to finance the construction of the Project. The Award shall be used in a manner that is consistent with the provisions of 24 CFR Part 570 and Federal Register Notice 88 FR 32046.

**Maximum Per-Unit Subsidy**

*Multifamily Rental Development Projects* The per-unit maximum subsidy shall be no more than \$250,000 per unit. This amount is ONLY the CDBG-DR portion of the total subsidy. Additional leveraging of other sources of funding for the Project may result in total per-unit expenditure that exceeds this CDBG-DR subsidy amount. \_

*Single-Family Homeownership Development Projects* The per-unit maximum subsidy shall be no more than \$300,000.00 per unit. This amount is ONLY the CDBG-DR portion of the total subsidy. Additional leveraging of other sources of funding for the Project may result in total per-unit expenditure that exceeds this CDBG-DR subsidy amount. \_

**LOAN TERMS** In consideration for Developer's agreement to perform the obligations described in this Agreement, the CDBG funds will be provided to Developer in the form of (a) an interest-free Loan **AND/OR** (b) a Restrictive Covenant. Further details regarding the structure of the Award of this Agreement are contained in the attached **EXHIBIT C**.

- Repayment options  
The Repayment option associated with this Agreement is unique to the Project and is described in detail and contained within the attached EXHIBIT A-MF or EXHIBIT A-SF.

**AFFORDABILITY REQUIREMENTS** Affordability requirements are outlined in the Federal Register Notice for the Grant from which this Project is awarded and are based upon the Program and type of activity(s) to be undertaken. Further details regarding the structure of the Affordability Period are contained in the attached **EXHIBIT A-MF** or **EXHIBIT A-SF** (as applicable). (24 CFR 92.252(e))

**LAND USE RESTRICTION AGREEMENT** A Land Use Restriction Agreement will also be executed by Developer and recorded in the appropriate county office for property records, restricting the Property from certain occupancy and rent requirements for the Loan term. During the Affordability Period, the Property will be subject to all federal laws and regulations regarding the CDBG-DR program and its affordability requirements.

**NATIONAL OBJECTIVE** Proceeds of the Loan must result in housing that meets the CDBG-DR program objective of benefitting low- and moderate-income persons; specifically, through housing activities for individuals and families whose household income at initial occupancy is at or below 80% of the area median income ("AMI") adjusted for household size, as annually  
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published by HUD. (24 CFR 570.200(a)(1)+(2), 570.201-570.209, 570.506)

**NOTICE** All notices, requests or other communications permitted or required to be made by Developer or County under this Agreement shall be given to the following:

**Lee County**

Glen Salyer, Assistant County Manager  
Lee County  
Strategic Resources & Government Affairs  
1500 Monroe Street  
Fort Myers, FL 33901  
Phone:  
Email: jsutton@leegov.com

**Developer**

Notice shall be in writing, signed by Developer, and Owner, if applicable. Notice shall be effective upon acknowledged receipt.

**ARTICLE II  
PROGRAM REQUIREMENTS**

The Project shall meet the following requirements:

**ACCESSIBILITY** In addition to any state and local requirements, due to the source of the Award, Developer shall comply with accessibility requirements in the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973.

**AFFIRMATIVE ACTION AND MARKETING** If any Project under this Agreement involves the rental of five or more CDBG-DR units, Developer shall comply with County's requirements to affirmatively market any CDBG-DR unit available for rent in a manner to attract tenants without regard to race, color, national origin, sex (including gender identify and sexual orientation), religion, familial status, or disability. (24 CFR 570.602) Developer agrees, in soliciting tenants, to do the following:

- Use the Equal Housing Opportunity logo in all advertisements;
- Display a Fair Housing poster in the rental leasing office;
- Where appropriate, advertise, use media, including minority outlets, likely to reach persons least likely to apply for the housing;
- Maintain files of Developer's affirmative marketing activities for five (5) years and provide access there to County staff;
- For Multifamily Rental Housing Projects: Not refrain from renting to any tenant holding a Section 8 existing Housing Choice Voucher (HCV) or other housing assistance voucher;
- For Multifamily Rental Housing Projects: Comply with Section 8 HCV regulations when renting to any tenant holding a Section 8 HCV; and
- For Multifamily Rental Housing Projects: Exercise affirmative marketing of the units when vacated

Documentation regarding affirmative marketing shall be completed prior to unit occupancy and retained in the Developer's Project file.

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Updated and Version: January 25, 2024; Version; 1.0

**DEBARMENT, SUSPENSION, AND EXCLUSION** Developer certifies that, to the best of its knowledge and belief, that they nor any contractor, subcontractor or material/service provider hired under this Agreement is presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from covered transactions by a federal department or agency. Further, that Developer nor any contractor, subcontractor or material/service provider have not, within a 3-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or perform a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property. The, nor any contractor, subcontractor or material/service provider hired under this Agreement, are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in this Agreement and have not been terminated for cause or default on a public transaction. (2 CFR 200.214)

**DRUG-FREE WORKPLACE** Developer will follow the Drug-free Workplace Act of 1988 (41 U.S.C. 701) and HUD's implementing regulations at 2 CFR Part 2429.

**ENVIRONMENTAL REVIEW** No Award of funds can be advanced, and no costs can be incurred, until an environmental review record (ERR) of the proposed site for the Project has been completed and a HUD Authorization to Use Grant Funds (AUGF) has been received as required under 24 CFR Part 58.

Execution of this Agreement indicates that the official ERR has been completed and submitted to HUD and that HUD has issued its official AUGF.

At the time of execution of this Agreement, the awarded Activity is fully compliant with all applicable environmental review requirements and regulations.

**FLOOD HAZARDS AND FLOOD INSURANCE** Developer shall comply with the mandatory flood insurance purchase requirements of Section 102 of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994 (42 USC 4012a). Additionally Developer shall comply with Section 582 of the National Flood Insurance Reform Act of 1994, as amended (42 USC 5154a), which includes the prohibition of flood disaster assistance, including loan assistance, to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. Section 582 also includes a responsibility to notify property owners of their responsibility to notify transferees about mandatory flood insurance purchase requirements. More information about these requirements is available in the Federal Register Notice 88 FR 32046, governing the CDBG-DR award.

In addition, the following requirements apply to projects in floodplain zones:

- If the project occurs in a Coastal High Hazard Area (V Zone) or a floodway, federal assistance may not be used at this location if the project is a critical action pursuant to

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24 CFR 55.1(c) and 55 subpart B, except as provided therein. For projects allowed under 24 CFR 55.1(c) and 55 subpart B, the eight-step process shall be followed pursuant to 24 CFR 55.20.

- If the project occurs in a 100-year floodplain or Special Flood Hazard Area (A Zone), the 8-Step Process is required as provided for in 24 CFR 55.20 or as reduced to the 5-Step Process pursuant to 24 CFR 55.12(a), unless an exception is applicable pursuant to 24 CFR 55.12(b).
- If the project occurs in a 500-year floodplain (B Zone or shaded X Zone), the 8-Step Process is required for critical actions as provided for in 24 CFR 55.20 or as reduced to the 5-Step Process pursuant to 24 CFR 55.12(a), unless an exception is applicable pursuant to 24 CFR 55.12(b).

Additional elevation standards as may be required by the Federal Register Notice apply to projects funded by this Agreement. All structures, defined at 44 CFR 59.1, designed principally for residential use and located in the 1 percent annual (or 100-year) floodplain or Special Flood Hazard Area that receive assistance for new construction, repair of substantial damage, or substantial improvement, as defined at 24 CFR 55.2(b)(10), must be elevated with the lowest floor, including the basement, at least two feet above the 1 percent annual floodplain elevation. Residential structures with no dwelling units and no residents below two feet above the 1 percent annual floodplain, must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3) or successor standard, up to at least two feet above the 1 percent annual floodplain.

All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 0.2 percent annual floodplain (or 500-year) floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 0.2 percent annual floodplain flood elevation or three feet above the 1 percent annual floodplain. If the 0.2 percent annual floodplain or elevation is unavailable for Critical Actions, and the structure is in the 1 percent annual floodplain, then the structure must be elevated or floodproofed at least three feet above the 1 percent annual floodplain level. Applicable State, local, and tribal codes and standards for floodplain management that exceed these requirements, including elevation, setbacks, and cumulative substantial damage requirements, must be followed.

**LEAD-BASED PAINT (if applicable)** Developer agrees that any construction or rehabilitation of housing with assistance provided under this Agreement shall be subject to HUD's Lead-Based Paint Regulations at 24 CFR 570.608, 24 CFR Part 35, Subparts A, B, J, and R.

**LIMITED ENGLISH PROFICIENCY** Federal Executive Order 13166 requires that County, programs, subrecipients, contractors, subcontractors, and/or developers funded in whole or in part with CDBG-DR financial assistance to ensure fair and meaningful access to programs and services for families and individuals with Limited English Proficiency (LEP) and/or those who are deaf/hard of hearing.

**NONDISCRIMINATION** In the selection of occupants for the Project units, Developer shall comply with all nondiscrimination requirements of 24 CFR 570.601-602 and 24 CFR Part 8.

**RELOCATION** If the Project is occupied at the time of this Agreement, Developer will comply [Notice of Funding Availability \(NOFA\) for Affordable Housing Development & Preservation](#) **69**  
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with the relocation requirements of 24 CFR 570.201, 24 CFR 570.606, and 49 CFR Part 24.

### **REAL PROPERTY ACQUISITION, AND ONE-FOR-ONE HOUSING REPLACEMENT**

Developer will take all necessary steps possible to minimize displacement in the Project. To the extent feasible, tenants displaced or relocated as a result of the development of the Project must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the complex (for Multifamily Housing Projects) upon completion of the Project. Developer shall comply, when applicable, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), 42 USC 4601 – 4655, 49 CFR part 24, 24 CFR part 42, and 24 CFR 570.606. In addition to other URA requirements, these regulations implement Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5181, which provides: “Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the [URA] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.” Portions of these regulations have been waived for the funds provided under this Agreement, pursuant to the Federal Register Notice.

## **ARTICLE III DEVELOPMENT AND CONSTRUCTION**

**DEVELOPMENT OF THE PROJECT** In strict conformance with the terms and conditions of this Agreement, Developer shall perform multifamily residential construction and/or rehabilitation construction services for disaster recovery to assist County in fulfilling State and Federal responsibilities related to recovery from Hurricane Ian. Developer shall perform services in compliance with (a) applicable HUD requirements, (b) this Agreement and all exhibits, addenda or attachments, (c) any amendments to this Agreement, and (d) any Technical Guidance Letters or Revisions that may be issued by County.

**MINIMUM PROJECT REQUIREMENTS** The Project shall, at a minimum, meet the following criteria:

- The Project must contain a minimum of \_\_\_\_\_ residential units with associated and appropriate common areas (if applicable), including but not limited to: parking, sidewalks, open space areas and stormwater retention areas and/or all other local codes.
- For Multifamily Housing Projects: The Project shall include flexible community space of no less than \_\_\_\_\_ square feet (except for rehabilitation only projects), in the aggregate (the “Community Space”) for use in serving residents and other community members. The Community Space may include a clubhouse, leasing office, laundry facilities, well-care center, business center, etc.
- The Project (other than the Community Space, if applicable) shall be for residential use only. Mixed-use projects are prohibited.
- Units may be available for resident occupancy in a phased manner as buildings/units are completed and receive Certificate of Occupancy.

- Projects involving new construction shall comply with the Green Building Standard for all construction of residential buildings under at least one of the following: (a) Enterprise Green Communities, (b) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development, (c) Living Building Challenge, or (e) Any other equivalent green building program acceptable to HUD. Lee County encourages use of the Florida Green Building Coalition standards and inspection/certification.
- Projects involving rehabilitation shall comply with the guidelines specified in the HUD CPD Green Building Retrofit Checklist ([www.hud.gov/sites/dfiles/CPD/documents/CPD-Green-Building-Retrofit-Checklist.pdf](http://www.hud.gov/sites/dfiles/CPD/documents/CPD-Green-Building-Retrofit-Checklist.pdf))
- The Project shall meet the following accessibility standards:
  - o All common facilities and areas must be accessible (Section 504 of the Rehabilitation Act of 1973)
  - o The development must incorporate universal design features (Section 504)
  - o For Multifamily Rental Housing Projects with over five units: Five percent (5%) of all units must be mobility accessible (The Americans with Disabilities Act of 1990)
  - o For Multifamily Rental Housing Projects with over five units: An additional two percent (2%) of all units must be sensory accessible.
  - o For Multifamily Rental Housing Projects with over five units: Accessible units must be spread throughout the Project and may not be concentrated on one floor or in one building (Section 504)
  - o Broadband infrastructure in common areas and units shall be installed to meet the requirements of Federal Register Notice 88 FR 32046

**DEVELOPER RESPONSIBILITIES** Developer must comply with all items outlined in the original application, attached herein and referred to as the Scope of Work.

**Income Determinations of Tenants (For Multifamily Rental Housing Development Projects)**

The determination of whether annual income of a household occupying or seeking to occupy a unit within the Project complies with the requirements of the Program shall be made by the Developer prior to admission of such household to occupancy in a unit. Thereafter, such determinations shall be made by the Developer at least annually. Additional information regarding Income Determinations of Tenants may be found in **EXHIBIT A-MF**.

**Income Determinations of Homebuyers (For Single-Family Homeownership Development Projects)**

The determination of whether annual income of a household desiring to purchase a home offered under the Program's Single-Family Homeownership Development projects shall be

made by the Developer prior to execution of a Residential Contract for Sale and Purchase. Additional information regarding Income Determinations of Homebuyers may be found in **EXHIBIT A-SF**.

Lease Provisions (For Multifamily Rental Housing Development Projects)

All tenant leases entered into during the Affordability Period/LURA term, shall be in writing. Additional information regarding Lease Provisions may be found in **EXHIBIT A-MF**.

Qualification as Affordable Housing (For Single-Family Homeownership Development Projects)

Each CDBG-DR assisted unit must be sold to and occupied by households that are eligible as low/moderate income families as defined in 24 CFR 92.2 and 24 CFR 92.217. Low/Moderate Income families are families whose annual gross income does not exceed 80 percent of the Area Median Income for the area, as determined by HUD, with adjustments for family size. Additional information regarding Qualification as Affordable Housing (for Homeownership) may be found in **EXHIBIT A-SF**.

**COUNTY RESPONSIBILITIES**

1. County shall furnish Developer with information regarding the requirements for this Project, including any changes in the CDBG-DR regulations or program limits that affect the Project. Notwithstanding the foregoing, the failure of County to notify Developer of such changes shall not excuse the Developer from complying with the changed regulations or program limits and shall not be deemed a breach of this Agreement by County, and County shall have no liability to the Developer for such failure.
2. County will prepare an Environmental Review Record (ERR) in compliance with HUD governing rules and regulations for CDBG-DR activities for each parcel identified by the Developer for acquisition prior to approval. Developer understands that County must give environmental clearance, through issuance of a HUD AUGF, for any property to be acquired prior to acquisition.

County will conduct progress inspections of work completed and will review project files and information to protect its interest as funder, lender and regulatory authority for this Project and will provide information to Developer regarding any progress inspection or monitoring to assist it in ensuring compliance. County's review and approval of the work will relate to overall compliance with the general requirements of the Agreement and HUD and CDBG-DR requirements, and all County regulations and ordinances.

**ARTICLE IV  
ADMINISTRATIVE REQUIREMENTS, MONITORING, REPORTING AND BUDGET**

**UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

Developer shall comply with the applicable provisions in 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, except as modified by the Federal Register notice and other Federal Register Notices and HUD guidance. These provisions include:



- Financial and Program Management. Developer shall expend and account for all CDBG-DR funds received under this Agreement in accordance with the requirements in 2 CFR Part 200, including 2 CFR Part 200, Subpart D, which covers Standards for Financial and Program Management.
- Cost Principles. Costs incurred, whether charged on a direct or indirect basis, must be in conformance with 2 CFR Part 200, Subpart E. All items of cost listed in 2 CFR Part 200, Subpart E, that require prior federal agency approval are allowable without prior approval of HUD to the extent that they comply with the general policies and principles stated in 2 CFR 200, Subpart E and are otherwise eligible under this Agreement, except for the following:
  - o Depreciation methods for fixed assets shall not be changed without the approval of the federal cognizant agency.
  - o Fines, penalties, damages, and other settlements are unallowable costs to the CDBG program.
  - o Cost of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses (goods or services for personal use) regardless of whether reported as taxable income to the employees (2 CFR 200.445).
  - o Organizational costs (2 CFR 200.455).

**BUDGET AND EXPENDITURE OF FUNDS** Developer's approved Project Budget under this Agreement is attached at **Exhibit C**. Only expenditures within the attached line-item budget will be eligible for reimbursement following satisfactory submission of all required supporting documentation needed to validate the expenditures.

Developer will ensure that any expenditure of the Award will be in compliance with the requirements of County Affordable Housing Development & Preservation Program, along with the specific Program Manual associated with the type of housing development to be undertaken (Multifamily Program Manual; Single-Family Program Manual), along with any subsequent billing guidance, as well as all requirements set forth by County and acknowledges that Award funds will only be provided as reimbursement for eligible costs incurred, including actual expenditures or invoices for work completed. Developer is prohibited from charging to this Award the costs of ineligible activities under 24 CFR 570.207, and from using funds provided herein or personnel employed in the administration of activities under this Agreement for political activities, inherently religious activities, or lobbying.

**CONFIDENTIALITY OF DATA** Developer is required to maintain potentially sensitive data under this Agreement. Developer must maintain and preserve the confidentiality of any and all information and records that are subject to protection by state and federal laws, which include but are not limited to, the laws regarding: Personally Identifiable Information (including names, addresses, birth dates, driver's license information, social security numbers, and financial information); data provided to Developer and County in the form of FEMA Individual Assistance, Public Assistance, Hazard Mitigation Assistance, National Flood Insurance Program, as well as Small Business Administration disaster loans; trade secrets; tax records; and individually

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identifiable health information. Developer may not disclose information to current or prospective vendors regarding ongoing procurements. If the Developer receives a public record request or request for protected information, Developer must notify and refer the request to County. Developer must ensure that all employees and contractors return all physical and electronic copies of all County files and other records containing confidential information upon termination or completion of his or her position with Developer.

**DOCUMENTATION AND RECORDKEEPING** Developer shall establish and maintain records sufficient to enable County to:

- Determine whether Developer has complied with this Agreement, applicable federal statutes and regulations, and the terms and conditions of County's federal award; and
- Satisfy all recordkeeping requirements applicable to County. These records include the records described in the following Covenant of this Agreement. At a minimum, Developer shall maintain records required by 24 CFR 570.506, as if the requirements in 24 CFR 570.506 were directly imposed upon Developer and any additional, applicable recordkeeping requirements imposed by the Federal Register Notice.

**DRAWDOWN OF FUNDS** The Loan will be disbursed in one or more draws after Developer has incurred expenditures toward the construction of the Project in accordance with the Loan Agreement. Except as set forth herein, or unless otherwise authorized in writing by County, costs incurred for eligible activities or allowable costs prior to the effective date of this Agreement are ineligible for reimbursement with CDBG-DR funds.

- County will retain ten percent (10%) of the Loan until (a) a Certificate of Occupancy has been issued for the Project, (b) all conditions to payment of the retainage under the construction contract have been satisfied, and (c) County has received a certified public accountant's Cost Certification and Independent Audit of the aggregate amount of actual construction costs incurred by Developer for the Project, such certification performed at Developer's own expense.
- Developer shall provide AIA forms G701/G703 or similar industry-standard format, signed by the General Contractor and certified by the engineer performing inspection services for the Project, documenting the costs for which reimbursement is being requested, and noting overall percent completion of the Project.
- County may return a draw request and ask for additional information regarding the contents of the draw request. Under such circumstances, the timeframe for payment shall be extended by the time necessary to receive the additional information. Upon receipt and verification of the draw request, County shall process the request and forward payment to Developer as soon as practicable (generally, within 30 days of final verification and acceptance).
- Denied draw requests shall be returned to Developer with detailed notification of the reason for denial, including any specific line item or section of the draw request.

**MONITORING** Developer will be monitored by County for compliance with the regulations of 24 Notice of Funding Availability (NOFA) for Affordable Housing Development & Preservation 74 Multifamily: Round 2 - Multifamily Housing Development

CFR 570.900 for the Affordability Period. Developer will provide reports and access to project files and records as requested by County during the Affordability Period and for five (5) years after completion and closeout of this Agreement.

**RECORDS TO BE KEPT** Developer must maintain records in order to meet recordkeeping requirements imposed by federal statute, regulation, specifically 24 CFR 570.506, and the terms and conditions of County's federal award, and to assist County in meeting its recordkeeping and reporting requirements. The following list is not exhaustive.

- Records providing a full description of each Project activity undertaken;
- Records demonstrating that each Project activity undertaken meets one of the National Objectives of the CDBG-DR program;
- Records required to determine the eligibility of Project activities;
- Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with grant funds;
- Records documenting compliance with the Fair Housing and Equal Employment Opportunity requirements of the federal regulations (24 CFR 570.601 and 570.607);
- Financial records as required by 2 CFR Part 200, including records necessary to demonstrate compliance with all applicable procurement requirements; and
- Other records necessary to document compliance with this Agreement, any other applicable federal statutes and regulations, and the terms and conditions of this County's federal award.

**REPORTING** Developer shall report to County regular performance metrics that are necessary to comply with County's and HUD's grant reporting requirements (24 CFR 570.507, including those metrics necessary for County's Quarterly Performance Reports (QPRs) submitted to HUD. County will provide a list of required data and metrics that must be included in the reports in the Agreement, which may be amended from time to time and automatically incorporated herein. County, at its sole discretion, may provide technical assistance to Developer on topics related to the Program.

Developer shall deliver to County:

- Within ten (10) days after the last day of each month, until Project is closed out, a Unit Status Report.
- From time to time and promptly upon each request, such data, certificates, reports, statements, documents, or further information regarding the assets of the business, liabilities, financial position, projections, results of operations, or business prospects of Developer or other such matters concerning Developer's compliance with HUD regulations as County may reasonably request during the construction, rehabilitation, or reconstruction of the units within the Project during the entirety of the Affordability Period.

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- Other federally required reports concerning:
  - o Equal opportunity and fair housing records containing:
    - Data on the extent to which each racial and ethnic group and single-headed household have applied for, participated in, or benefited from, any program or activity funded in whole or in part with CDBG-DR funds.
    - Documentation of actions undertaken to meet the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended.
    - Documentation and data on the steps taken to implement the Developer's outreach programs to minority-owned and women-owned businesses pursuant to 2 CFR 200.321, including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of \$25,000 or more and documentation of the Developer's affirmative steps to assure that minority- and women-owned business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.
    - Documentation of the actions of the Developer to affirmatively further fair housing.
  - o Records demonstrating compliance with Davis-Bacon and Related Acts.

Developer shall use County's designated system to upload reporting documents and other records as requested. Access to the designated system shall be provided to Developer by County as required.

#### **ARTICLE IV AMENDMENT AND TERMINATION**

**AMENDMENT** County and Developer may amend this Agreement at any time provided that such amendments are in writing, make specific reference to this Agreement, are approved by all parties, and are signed by a duly authorized representative of each party. Such amendments shall not invalidate this Agreement, nor relieve or release County of Developer from their obligations under this Agreement. Amendments will generally be required when any of the following are anticipated:

- Revision to the scope or objectives of the Program, including purpose or beneficiaries;
- Need to extend the availability of grant funds;
- Movement of funds within the existing budget; and
- Revision that would result in the need for additional funding;

County may, in its sole discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such [Notice of Funding Availability \(NOFA\) for Affordable Housing Development & Preservation](#) 76  
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amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by County and Developer.

**TERMINATION OF AGREEMENT BY MUTUAL CONSENT OR CONVENIENCE** The parties may terminate this Agreement by mutual written consent. County may terminate this Agreement, in whole or in part, for convenience, with 30 days written notice to Developer.

**TERMINATION IN THE EVENT OF DEFAULT** County may suspend, reduce, or terminate their obligations under this Agreement, in whole or in part, upon 30 days' notice, whenever County determines that Developer has failed to comply with any term, condition, requirement, or provision of this Agreement. Developer shall be afforded a reasonable period of time to cure any noncompliance. Failure to comply with any terms of this Agreement, include, but are not limited to, the following:

- Default in Performance. The default by Developer in the observance or performance of any of the terms, conditions or covenants of this Agreement, as determined by County.
- Misrepresentation. If any representation or warranty made by Developer in connection with this Agreement, or any information, certificate, statement or report heretofore or hereafter made shall be untrue or misleading in any natural respect at the time made, as determined by County.
- Abandonment of the Project. If Developer abandons or otherwise ceases to continue to make reasonable progress toward completion of the Project, as determined by County.

If, after notice of default or noncompliance, Developer has not cured such default within a reasonable time or is not diligently pursuing a cure satisfactory to County, then County shall promptly notify Developer, in writing, of its determination and reasons for the termination together with the date on which the termination shall take effect, along with other notifications required under 2 CFR Part 200, Subpart D. Upon termination, County retains the right to recover any improper expenditures from Developer and Developer shall return to County any improper expenditures no later than 30 days after the date of termination. County may, at its sole discretion, allow the Developer to retain or be reimbursed for costs reasonably incurred prior to termination, that were not made in anticipation of termination and cannot be cancelled, provided that said costs meet the provisions of this Agreement, 2 CFR Part 200, Subpart E, Costs Principles, and any other applicable state or Federal statutes, regulations or requirements.

**ADDITIONAL REMEDIES** If the Developer defaults, County shall have the power and authority, consistent with their statutory authorities, to:

- Prevent any impairment of the Grant activities by any acts which may be unlawful or in violation of this Agreement or any other item or document required herein;
- Compel specific performance of any of Developer's obligations under this Agreement;

- Obtain return of all Grant funds; and
- Seek damages from any appropriate person or entity.

County shall be under no obligation to complete the activities funded by this Agreement.

**NONWAIVER** No delay, forbearance, waiver, or omission by County to exercise any right, power or remedy upon any event of default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such event of default or to constitute acquiescence therein.

## **ARTICLE VI RECORDS AND REPORTS**

Developer shall maintain records sufficient to meet the requirements of 24 CFR 570.490. Developer further agrees to abide by the requirements and policies of County and its successors as it pertains to public records requests; if the requirements differ, the more restrictive requirement or policy will govern.

- Developer shall maintain records specific to each individual unit including tenant income eligibility documentation, so that all documentation regarding each unit will be easily retrievable.
- All original records pertinent to this Agreement shall be retained by Developer for a period of five (5) years following the date of termination of this Agreement or of submission of the final close-out report, whichever is later, with the following exceptions:
  - o If any litigation, claim, or audit is started before the expiration of the five (5) year period and/or extends beyond the five (5) year period, the records will be maintained until all litigation, claims or audit findings involving the records have been resolved.
  - o Records for the disposition of non-expendable personal property valued at \$1,000 or more at the time of acquisition shall be retained for five (5) years after final disposition.
- All records, including supporting documentation of all program costs, shall be sufficient to determine compliance with the requirements and the applicable federal laws and regulations and all other applicable laws and regulations.
- Developer, its employees, and agents, including all subcontractors or consultants to be paid from CDBG-DR Funds provided under this Agreement, shall allow access to its records at reasonable times to County, its employees and agents, and to HUD. "Reasonable" shall be construed according to the circumstances, but ordinarily shall mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday. The term "agents" shall include but is not limited to auditors or consultants retained by Developer or County.

- Developer shall submit to County a Monthly Progress Report which is due on the tenth (10th) day of each month during the term of this Agreement.
- Developer's failure to submit Monthly Progress Reports shall give cause for future payments to Developer being withheld until said report(s) are submitted.
- Developer shall provide County with additional program information as requested.

## **ARTICLE VII DURATION OF AFFORDABILITY PERIOD**

This Agreement shall commence upon its execution by both parties and shall terminate after (select one)

- thirty (30) years – for NEW CONSTRUCTION of MULTIFAMILY RENTAL HOUSING PROJECTS;
- twenty (20) years – for REHABILITATION of MULTIFAMILY RENTAL HOUSING PROJECTS;
- twenty (20) years – for NEW CONSTRUCTION of SINGLE-FAMILY HOMEOWNERSHIP PROJECTS

for the CDBG-DR funded units, after the date of final inspection and acceptance by County and the completion and certification of the CDBG-DR Units. If the award of funds from County is not approved or construction funding is not finalized by Developer, this Agreement may be terminated by County at the time notice of such is received. Additional termination provisions are provided in **ARTICLE IV** above.

## **ARTICLE VIII TIME OF PERFORMANCE**

Developer agrees to construct the Project and comply with a timetable agreed upon by all parties but which may not exceed \_\_\_\_\_ months including close-out procedures.

**EXTENSIONS** The burden is on the Developer to request deadline extensions under this Agreement, unless explicitly stated otherwise. Requests for extensions must be made in writing, addressed to County, explain why an extension is needed and must proposed a new deadline. County must receive this request at least 30 days before the applicable deadline. Within its sole discretion, County may or may not approve the extension, based on project performance and other contributing factors. County is not responsible for notifying Developer of any approaching deadlines.

**CLOSEOUT** Developer shall closeout its use of the awarded funding and its obligations under this Agreement by complying with the closeout procedures in 2 CFR 200.344. Activities during this closeout period may include, but are not limited to:

- Making final payments;

- Disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances (if applicable), and accounts receivable to County) (24 CFR 570.503(b)(7)); and
- Determining the custodianship of records.

Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that Developer has control over awarded funding, including program income. The rules governing program income acquired after closeout are modified in the Federal Register Notice applicable to this Agreement.

Record Retention and Transmission of Records to County. Prior to closeout of this Agreement, Subrecipient must transmit to Grantee records sufficient for the Grantee to demonstrate that all costs under this Agreement met the requirements of the federal award. Subrecipient shall retain financial records, supporting documents, statistical records, records and all other Subrecipient records pertinent to this Agreement and Subrecipient's subaward for the longer of 5 years after the expiration or termination of this Agreement. Subrecipient must continue to collect and maintain records to ensure that any real property under Subrecipient's control that was acquired or improved, in whole or part, with Grant Funds is used to meet one of the national objectives until 5 years after expiration of this Agreement.

The following exceptions apply to the 5-year retention requirement:

- If any litigation, claim, or audit is started before the expiration of the 5-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken; or
- When Developer is notified in writing by HUD, the cognizant agency for audit as defined in 2 CFR 200.1, the oversight agency for audit as defined in 2 CFR 200.1, the cognizant agency for indirect costs as defined in 2 CFR 200.1, or County, Developer shall extend the retention period consistent with the notification.

Deobligation of Unused Funds. When project costs are less than the award of Grant Funds, Developer shall deobligate excess funds back to County.

Refunds; Unexpended Funds. Developer shall repay to County, or its successor, any funds received that exceed the amount that has been allocated per this Agreement, including any interest earned on excess funds. If Developer has funds on hand or accounts receivable attributable to the use of funds at the time of termination of this Agreement, Developer must transfer all funds and attributable accounts receivable to County, or its successor.

Improper Expenditures. In the sole discretion of County, or its successor, County, or its successor, may recapture from Developer any amount of awarded funds improperly expended, either deliberately or non-deliberately, by any person or entity.

## **ARTICLE IX GENERAL PROVISIONS**

The following general provisions apply:

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- **Independent Contractor**  
Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating, or establishing the relationship of employer/employee between the parties. Developer shall at all times remain an “independent contractor” with respect to the services to be performed under this Agreement. County shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers’ Compensation Insurance, as Developer is an independent contractor.
  
- **Hold Harmless**  
Developer shall hold harmless, defend, and indemnify County from any and all claims, actions, suits, charges, and judgments whatsoever that arise out of Developer’s performance or nonperformance of the services or subject matter called for in this Agreement.
  
- **Workers’ Compensation**  
Developer shall provide Workers’ Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.
  
- **Insurance & Bonding**  
Developer shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from County.  
  
Developer shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.
  
- **County Recognition**  
Developer shall ensure recognition of the role of County in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, Developer will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

**ARTICLE X  
EMPLOYMENT AND CONTRACTING RESTRICTIONS**

Developer is prohibited from using Award funds or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities (24 CFR 570.200(j), 570.207(a)(3)). Hiring and contracting activities are subject to compliance with 24 CFR Part 570 and other applicable, local, state, and federal laws and regulations.

**LABOR STANDARDS** Developer agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable federal, state, [Notice of Funding Availability \(NOFA\) for Affordable Housing Development & Preservation](#) 81 Multifamily: Round 2 - Multifamily Housing Development

and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. Developer agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. Developer shall maintain documentation that demonstrates compliance with hour and wage requirements of this part.

Such documentation shall be made available to County for review upon request.

Developer agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by County pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve Developer of its obligation, if any, to require payment of the higher wage. Developer shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

The **WAGE DETERMINATION** for this Project, as determined by the U.S. Department of Labor, and issued through SAM.GOV, is:

**General Decision Number:** \_\_\_\_\_

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (MWBE)** Developer will use its best efforts to afford small businesses, minority business enterprises, and women’s business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms “small business” means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and “minority and women’s business enterprise” means a business at least fifty-one (51) percent owned and controlled by minority group members or women. Developer may rely upon written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

**ACCESS TO RECORDS** Developer shall furnish and cause each of its own developers or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records, and accounts by County, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

**NOTIFICATIONS** Developer will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker’s representative of Developer’s commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**SUBCONTRACT PROVISIONS** Developer will include the Labor Standards provisions listed above in every subcontract or purchase order, specifically or by reference, so that such [Notice of Funding Availability \(NOFA\) for Affordable Housing Development & Preservation Multifamily: Round 2 - Multifamily Housing Development](#)

provisions will be binding upon each of its own Developers or subcontractors.

## **ARTICLE XI CONFLICT OF INTEREST**

In the procurement of labor, supplies, equipment, construction, and services by Developer or by any subcontractor, the conflict of interest provisions in 24 C.F.R. 570.611(b) and 2 CFR 200.112 apply.

No person who is an employee, agent, consultant, officer, or elected official or appointed official of County, or of any designated public agencies, or subcontractors which are receiving CDBG-DR funds or who exercise or have exercised any functions or responsibilities with respect to CDBG-DR funded activities or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter. This prohibition includes the following:

- Any interest in any contract, subcontract or agreement with respect to any CDBG-DR assisted-projects or programs administered by Developer, or the proceeds thereunder; or
- Any unit benefits or financial assistance associated with CDBG-DR funds or programs administered by Developer including, occupancy of a multifamily rental housing unit in a CDBG-DR Unit in the Project;

This prohibition does not apply to an employee or agent of Developer who is income qualified and occupies a CDBG-DR Unit in the Project as the on-site project manager or maintenance worker.

In addition, no member of Congress of the United States, official or employee of HUD, official or employee of County shall be permitted to receive or share any financial or unit benefits arising from the CDBG-DR funds in the Project.

## **ARTICLE XII SECTION 3**

**SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT NOTICE** Developer shall follow the regulations of 24 CFR Part 75 et seq. that implement Section 3 of the Housing and Urban Development Act of 1968. If applicable, Developer agrees to the following:

- Any work to be performed under this Agreement that is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u (Section 3) shall follow the requirements of 24 CFR Part 75. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing, community development assistance, public housing financial assistance, or assistance from the

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Lead Hazard Control and Healthy Homes programs, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970, the Lead-Based Paint Poisoning Prevention Act, and the Residential Lead-Based Paint Hazard Reduction Act of 1992.

- Developer agrees to include Section 3 language in every contract subject to compliance with regulations in 24 CFR Part 75, and agrees to take appropriate action, as provided in an applicable provision of the contract or in this Section 3 language, upon finding that a contract is in violation of the regulations in 24 CFR Part 75. Developer will not subcontract with any entity where Developer has notice or knowledge that the entity has been found in violation of the regulations in 24 CFR Part 75.
- Execution of this Agreement is contingent upon the acceptance and approval by NCORR of a Section 3 Utilization Plan consistent with HUD guidelines. If Developer does not have a Section 3 Utilization Plan consistent with 24 CFR Part 75 regulations upon signature, Developer shall abide by the NCORR Section 3 guidelines. County's Section 3 Policy and subsequent amendments shall be automatically incorporated herein with this Agreement if Developer does not have a Section 3 Utilization Plan, or until Developer has a final Section 3 Utilization Plan.
- Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- Pursuant to 24 CFR 75.27, Developer shall include, or cause its borrowers, contractors, and subcontractors receiving CDBG-DR funds under this Agreement to include Section 3 language and Section 3 requirements in every Section 3 project (as defined in 24 CFR 75.3(A)(2)). Recipients of Section 3 funding must require contractors and subcontractors to meet the requirements of 24 CFR 75.19, regardless of whether Section 3 language is included in agreements, program regulatory agreements, or contracts.
- Developer will certify that any vacant employment positions, including training positions, that are filled (1) after Developer is selected but before the contract (or Agreement) is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities be directed, were not filled to circumvent Developer's obligations under 24 CFR Part 75.
- With respect to work performed in contracts, subcontracts, grants or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of 24 CFR Part 75.

**ARTICLE XIII  
GOVERNING LAW**

This agreement is governed by and shall be construed in accordance with the laws of the State of Florida. Developer and County consent to the exclusive jurisdiction of the Courts of the State of Florida and County, in all proceedings arising under this Agreement.

**ARTICLE XIV  
ENTIRE AGREEMENT**

This Agreement represents the entire agreement by and between the parties hereto for the matter specified herein. No statement, representation, writing, understanding, or agreement made by either party, or a representative of either party shall be binding unless expressed herein. All changes, amendments, modifications, or revisions to this Agreement shall be binding only when in writing and signed by both parties, by their respective authorized officers, agents, or representatives.

**ARTICLE XV  
INCORPORATION**

The recitals at the beginning of this Agreement are true and correct and, by this reference, are incorporated herein and made a part hereof. All exhibits attached hereto are, by this reference, incorporated herein and made a part hereof.

**ARTICLE XVI  
PROGRAM INCOME REQUIREMENTS**

County and Developer agree to comply with Program Income requirements in 24 CFR 570.504 and County policy.

**ARTICLE XVII  
COUNTERPARTS**

This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which, taken together, will constitute one and the same agreement. Execution by facsimile, by scanned attachments, or by electronic signature (including, but not limited to DocuSign) shall have the same force and effect as a wet signature. An executed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of that document.

IN WITNESS WHEREOF, County and Developer and Owner (if applicable) have caused this Agreement to be duly executed as of the date first written above.

**LEE COUNTY BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
(Lee County BoCC Authorized Representative signature)

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

APPROVED AS TO FORM AND LEGALITY

By: \_\_\_\_\_  
(Lee County Attorney / Notary Public)

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

**DEVELOPER**

**[Insert Developer Signatory and Title]**

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

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

**OWNER**

**[Insert Owner Signatory and Title]**

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

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

SAMPLE

## Appendix 4 – Subrecipient Certifications Form

### **EXHIBIT B (SIGNATURE REQUIRED) CERTIFICATIONS**

#### **CDBG-DR COMPLIANCE PROVISIONS**

This Exhibit to the Community Development Block Grant Disaster Recovery (“CDBG-DR”) Program Subrecipient Agreement contains supplementary compliance conditions for use with procured contracts and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development (“HUD”) under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.

This Exhibit shall be included as part of the terms of the agreement for all procured contracts and subrecipient agreements funded fully or in part by the CDBG-DR Program by Lee County and the selected contractor or subrecipient.

By signing this Exhibit, the applicant certifies they understand that all the below compliance provisions will apply to all projects that are awarded CDBG-DR funds.

#### **NATIONAL OBJECTIVES**

In accordance with 24 CFR 570.208, Section 104(b)(3) of the Housing and Community Development Act of 1974, all CDBG-DR funded activities must meet a National Objective. Under Section 101(c) of the authorizing Act (42 U.S.C. 5301), all CDBG-DR Activities must satisfy that one of the named National Objectives.

1. Benefit to Low-to-Moderate Income Persons (LMI)
2. Urgent Need (UN)
3. Elimination of Slum and Blight (SB)

#### ***Planning Exemption***

Planning activities are presumed to meet a National Objective. HUD’s Federal Register Notice (88 FR 32046) governing the CDBG-DR funds describes planning efforts as addressing the National Objectives without the limitation of any circumstances. In the CDBG Entitlement Program, these more general planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). HUD notes that almost all effective recoveries in the past have relied on some form of area- wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. To assist state grantees, HUD is waiving the requirements at 24 CFR 570.483(b)(5) and (c)(3), which limit the circumstances under which the planning activity can meet a low- and moderate-income or slum-and-blight national objective. Instead, as an alternative requirement, 24 CFR 570.208(d)(4) applies to states when funding disaster recovery- assisted, planning-only grants, or when directly administering planning activities that guide disaster recovery. In addition, 42 U.S.C. 5305(a)(12) is waived to the extent necessary so the types of planning activities that states may fund or undertake are expanded to be consistent with those of CDBG Entitlement grantees identified at 24 CFR 570.205.

Upon completion of approved activity(ies) funded under this Agreement and prior to the funding expiration date of this Agreement, whichever comes first, the Subrecipient must document that the approved activity(ies) met the approved National Objective, as necessary.

For Subrecipients with a National Objective requirement, the County shall review the actual National Objective achievements of the activity. If the Subrecipient does not or cannot satisfactorily document the National Objective achievement of an approved activity(ies), the

activity(ies) may be deemed ineligible, and repayment of funds may be required of the Subrecipient.

### **DUPLICATION OF BENEFITS**

A Duplication of Benefits (DOB) occurs when a person, household, business, or other entity receives disaster assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of the total need for the same purpose. It is the County's responsibility to ensure that CDBG-DR programs provide assistance only to the extent that the disaster recovery need has not been fully met by funds that have already been paid, or will be paid, from another source.

The Subrecipient or Contractor must report all funds obtained for the same activity from any source from the date of the disaster until the activity is completed.

The Subrecipient or Contractor agrees to repay to the County immediately upon demand any assistance later received for the same purpose as the CDBG-DR funds and that exceeds the total need for the particular recovery purpose.

### **EQUAL EMPLOYMENT OPPORTUNITY**

The obligations undertaken by Subrecipient or Contractor include, but are not limited to, the obligation to comply with all federal laws and regulations described in Subpart K of 24 CFR Part 570 and specifically with each of the following, among other things, as the same may be amended from time to time:

- a. **Title VI of the Civil Rights Act of 1964**: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving federal financial assistance.
- b. **Title VII of the Civil Rights Act of 1968 (The Fair Housing Act)**: This act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promote fair housing.
- c. **Restoration Act of 1987**: This act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability or age in a program or activity which does not directly benefit from such assistance.
- d. **Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 5309]**: This Section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.
- e. **The Fair Housing Amendment Act of 1988**: This act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial



status for those housing developments that qualify as housing for persons age 55 or older.

- f. **The Age Discrimination Act of 1975**: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic.
- g. **Section 504 of the Rehabilitation Act of 1973**: It is unlawful to discriminate based on disability in federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance.
- h. **The Americans with Disabilities Act of 1990 (ADA)**: This act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.
- i. **Executive Order 11063**: This executive order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.
- j. **Executive Order 12259**: This executive order provides that the administration of all federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.
- k. **The Equal Employment Opportunity Act**: This act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings federal, state, and local governments under the Civil Rights Act of 1964.
- l. **The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978**: This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal, and referral. It is designed to assist employers, labor organizations, employment agencies, licensing, and certification boards in complying with the requirements of federal laws prohibiting discriminatory employment.

- m. **The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002)**: This act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.
- n. **Executive Order 11246**: This executive order applies to all federally-assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race

### **CERTIFICATION OF NONSEGREGATED FACILITIES**

(applicable to contracts and subcontracts over \$10,000)

The Subrecipient or Contractor and its subcontractor(s) certifies that the entity does not maintain or permit employees to perform their services at any location where segregated facilities are maintained. The Subrecipient or Contractor certifies further that it will not maintain or provide for employees any segregated facilities at any of its establishments, and will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Subrecipient or Contractor and its subcontractor(s) agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Subrecipient or Contractor further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that it will retain such certifications in project files; and will provide notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

### **ENVIRONMENTAL PROTECTION AND ACTS**

- a. **National Environmental Protection Act (NEPA)**: All federally funded activities are subject to the National Environmental Policy Act of 1969 (NEPA) and its regulations under 40 CFR 1500 – 1508. Additionally, 24 CFR 58.22 prohibits committing or spending HUD or non-HUD funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an environment review once a project has federal funding, in full or in part. This prohibition on "choice-limiting actions" prohibits physical activity, including acquisition, rehabilitation, and construction, as well as contracting for or committing to any of these actions, prior to completion of the environmental review. Awarded activities must have completed an environmental review to demonstrate compliance with NEPA, as well as 24 CFR 58.
- b. **Clean Air and Water Acts**: (*applicable to contracts and subcontracts exceeding \$100,000*) The Subrecipient or Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the

Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

- c. **Flood Disaster Protection:** The Subrecipient or Contractor shall comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001). The Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, that flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).
- d. **Energy Efficiency:** The Subrecipient or Contractor shall comply with mandatory standards and policies relating to energy efficiency under the Energy Policy and Conservation Act (Public Law 94-163).
- e. **Procurement of Recovered Materials:** Per 2 CFR 200.323, a non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

#### **CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS**

The Subrecipient or Contractor will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:

- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists
- B. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources:
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and

- E. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

### **POLITICAL ACTIVITY**

The Subrecipient or Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

### **BYRD ANTI-LOBBYING AMENDMENT**

The Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) requires that Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

The Contractor certifies, to the best of his or her knowledge and belief that:

- 1) No federally appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

### **CONFLICT OF INTEREST**

No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Subrecipient or Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of any contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to any contract if made with a corporation for its general benefit.

### **DOMESTIC PREFERENCES FOR PROCUREMENTS.**

Per 2 CFR 200.322, as appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the

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purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section: (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

#### **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

Per 2 CFR 200.216, Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

As described in Public Law 117–328, section 208, subsection (a), covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

#### **AGREEMENTS BETWEEN SUBRECIPIENTS AND CONTRACTORS**

- A. The Subrecipient shall not enter into any agreement, written or oral, with any contractor or other party without the prior determination that the contractor or other party is eligible to receive federal funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible contractors.

The terms “other party” is defined as public or private nonprofit agencies or organizations and certain (limited) private for-profit entities who receive grant funds from a Subrecipient to undertake Approved Activities.

- B. An agreement between the Subrecipient and any contractor or other party shall require:
  - 1) Compliance with all State and federal requirements described in this Agreement including without limitation those that pertain to labor standards, nondiscrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug Free Workplace, and prevailing wages.
  - 2) Maintenance of at least the minimum State required Workers' Compensation Insurance for those employees who will perform the Approved Activities.

- 3) Maintenance, as required by law, of unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor in performing the Approved Activities.
- 4) Compliance with the applicable Equal Opportunity Requirements described in Section 3 of this Exhibit.

C. Contractors shall:

- 1) Perform Activities in accordance with federal, state, and local regulations, as are applicable.

**RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

If a Federal award meets the definition of “funding agreement” under 37 CFR 401.2(a) and the Subrecipient or Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of subrecipient or contractor must comply with requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulation issued by the awarding agency.

**PATENTS**

The Subrecipient or Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.

License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Subrecipient or Contractor.

If the Subrecipient or Contractor uses any design device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Subrecipient or Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

**COPYRIGHT**

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Subrecipient or Contractor for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

**DRUG-FREE WORKPLACE ACT OF 1988**

- A. Publish and give a policy statement to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy.
- B. Establish a drug-free awareness program to make employees aware of a) the dangers of drug abuse in the workplace; b) the policy of maintaining a drug-free workplace; c) any available drug counseling, rehabilitation, and employee assistance programs; and d) the penalties that may be imposed upon employees for drug abuse violations.
- C. Notify employees that as a condition of employment on a federal contract or grant, the employee must a) abide by the terms of the policy statement; and b) notify the employer, within 5 calendar days, if he or she is convicted of a criminal drug violation in the workplace.
- D. Notify the contracting or granting agency within 10 days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.
- E. Impose a penalty on or require satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted of a reportable workplace drug conviction.
- F. Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the act.

#### **SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS AND ACCIDENT PREVENTION**

- A. Use of Explosives: When the use of explosives is necessary for the prosecution of the work, the contractor shall observe all local, state, and federal laws in purchasing and handling explosives. The contractor shall take all necessary precaution to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced, and the material shall be covered with suitable timber, steel, or rope mats.
- B. The contractor shall notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the contractor or his Surety for damages that may be caused by such use.

- C. Danger Signals and Safety Devices: The contractor shall make all necessary precautions to guard against damages to property and injury to persons. The contractor shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades, and other devices necessary to protect the public.
- D. Protection of Lives and Health: The contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971, Title 29 - LABOR, shall be observed and the contractor shall take or cause to be taken, such additional safety and health measures as the Developer may determine to be reasonably necessary.

#### **PROHIBITION AGAINST PAYMENTS OF BONUS OR COMMISSION**

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of:

- A. Obtaining the County's approval of the Application for such assistance; or,
- B. Any other approval or concurrence of the County required under this Agreement, Title I of the Housing and Community Development Act of 1974, or State regulations with respect thereto; provided, however, that reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

#### **CONFIDENTIAL FINDINGS**

All of the reports, information, data, etc., prepared or assembled by the Subrecipient or Contractor under any Agreement are confidential, and the Subrecipient or Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

#### **ACCESS TO RECORDS - MAINTENANCE OF RECORDS**

Lee County, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Subrecipient or Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with any contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the County's final closeout of the grant.

#### **INSPECTION**

The authorized representative and agents of Lee County and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

#### **PROVISIONS REQUIRED BY LAW DEEMED INSERTED**



Each and every provision of law and clause required by law to be inserted in any contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

### Application Certification

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct and that the application and all support documentation has been duly authorized by the governing body of the applicant. I further certify that I am authorized to submit this application and have followed all policies and procedures of my agency regarding grant application submissions.

**WARNING: Anyone who knowingly submits a false claim, or makes false statements is subject to criminal and civil penalties, including confinement for up to 5 years, fines, and civil penalties. (18 U.S.C. §§ 287, 1001 and 31 U.S.C. §3729).**

BY:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (print)

## Appendix 5 – Threshold Checklist

Affordable Housing Development & Preservation Program – Multifamily Round 2: Multifamily Housing Development Application Threshold Criteria Worksheet		
<b>Applicant Name</b>		
<b>Project Title</b>		
<b>Application Number</b>		
<b>Threshold Criteria</b>	<b>Criteria Needed</b>	
<b>Complete Application</b>	Application submitted by the published deadline.	
	Application signed and dated by the agency official designated to execute contracts (resolution from board certifying who is authorized)	
	All required sections of the Application Form complete	
	All required sections of the Budget Form complete	
	51% of units within the proposed project are subject to ≤ 80% AMI tenant requirement	
	Budget is clear and concise	
	Board authorization to submit documentation	
<b>Eligible Entity</b>	The applicant is an eligible entity: Private non-profit entity, private for-profit entity or Public Housing Authority	
	Applicant has been in operation for a minimum of 36 months prior to application deadline.	
	The applicant is a legally formed entity qualified to do business in the State of Florida.	
	The applicant has provided evidence of ownership/site control	
<b>SAM.gov</b>	The applicant is registered within the System for Award Management (Log into link, select search, and enter UEI to see if applicant has current registration) <a href="http://www.sam.gov">www.sam.gov</a>	
	Did the applicant include their SAM Unique Entity Number (UEI)?	
	Is the applicant excluded, disbarred, or suspended with SAM?	
<b>Eligible Activities</b>	Proposed project includes new construction of 5 or more rental housing units	
	- New construction of affordable multifamily housing on property previously owned by applicant	
	- Acquisition and new construction of affordable multifamily housing	
	- Acquisition, conversion and substantial rehabilitation of previously non-residential, vacant structures to affordable rental housing	

	Affordability Period compliance	
	Green Building/Resilient Standards	
<b>Underwriting</b>	Broadband	
	Construction standards	
	20-year Operating Proforma	
	Cost reasonableness	
	Satisfactory independent audit, or single audit (if applicable)	
	Applicant has previous experience administering projects of a similar size and scope and/or working with federal or state housing grant funds	
<b>Leverage</b>	Documentation of commitment letters from other sources of funding	

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# Appendix 6 - Scoring Rubric

Available Points	Category	Description	Scoring Evaluation Rubric			
			15- 12 Points	11 - 9 Points	8 - 5 Points	4 - 0 Points
15	<b>Applicant Capacity and Experience</b>	The extent to which the applicant demonstrates experience with federally funded activities, and financial management systems to include the following key components: budgeting, internal controls, federal cost principles, accounting and record keeping, procurement, reporting, and audits. The extent to which the applicant demonstrates sufficient capacity to perform grant management and project oversight functions. The applicant should demonstrate sufficient bandwidth to manage all currently pending or planned development projects. The applicant's internal audit processes and administrative staffing levels should demonstrate sufficient internal oversight. The applicant should demonstrate a history of timely fund expenditures and experience with federal cross cutting requirements, such as Davis Bacon, Section 3, CBE/VBE solicitation, and 2 CFR 200 (if applicable).	The applicant demonstrates comprehensive and organized financial management systems. The applicant conducts internal audits at least one time annually, and has a comprehensive and documented process for conducting audits. The applicant has more than sufficient administrative staff to maintain grant, project, and financial oversight. The applicant demonstrates outstanding knowledge of federal cross cutting requirements.	The applicant demonstrates financial management systems exist, but minor improvements are needed to ensure compliance. The applicant has conducted an internal audit at least one time in the last 24 months, and has a documented process for conducting audits. The applicant has sufficient administrative staff to maintain grant, project, and financial oversight. The applicant demonstrates suitable knowledge of federal cross cutting requirements.	The applicant demonstrates financial management systems exist, but major improvements are needed to ensure compliance. The applicant has conducted an internal audit at least one time in the last 24 months, but does not have a documented process for conducting audits. The applicant has administrative staff, but may need additional capacity to maintain grant, project, and financial oversight. The applicant demonstrates some knowledge of federal cross cutting requirements.	The applicant does not have financial management systems in place. The applicant has not conducted an internal audit at least one time in the last 24 months, and does not have a documented process for conducting audits. The applicant has administrative staff, but may need additional capacity to maintain grant, project, and financial oversight. The applicant demonstrates limited or no knowledge of federal cross cutting requirements.
20	<b>Project Design and Approach</b>	The extent to which the project demonstrates long term sustainability and affordability period. The project's pro-forma budget demonstrates an affordability period meeting or exceeding the prescribed period for the project type, with adequate reserves for maintenance, repayment, and ongoing operating expenses. <b>Applications proposing affordability period of greater than 20 years, and long-term financial viability will receive priority.</b> The applicant proposes a financing structure that yields to repayment of CDBG-DR funds within the affordability period, or sooner. <b>Applicants who propose 100 percent repayment of CDBG-DR funds within the affordability period will receive priority.</b>	The applicant is proposing an affordability period greater than 20 years. The applicant demonstrates long term financial viability through an extended pro-forma budget. The applicant proposes 100% repayment of CDBG-DR funds within the affordability period.	The applicant is proposing an affordability period of 20 years. The applicant demonstrates long term financial viability through a 20-year pro-forma budget. The applicant proposes 100% repayment of CDBG-DR funds within the affordability period.	The applicant is proposing an affordability period of 20 years. The applicant demonstrates long term financial viability through a 20-year pro-forma budget. The applicant proposes NO repayment of CDBG-DR funds.	The applicant is proposing an affordability period of 20 years. The applicant does not demonstrate long term financial viability through a 20-year pro-forma budget. The applicant proposes NO repayment of CDBG-DR funds.
15	<b>Sustainability and Resilience Measures</b>	The extent to which the proposed Activity integrates adaptable and reliable technologies to prevent displacement and protect tenants/owners, specifically for vulnerable populations. The extent to which the proposed Activity will integrate mitigation measures and strategies to reduce natural hazard risks, including climate related risks. The extent to which the proposed Activity design/approach is reasonable, efficient, and durable. The extent to which the proposed Activity utilizes alternative materials and innovative design options, including designing with broadband in mind. Meeting or exceeding the ICC Standard for Residential Construction in High Wind Regions.  Measures may include: integration of green/energy efficient, resilient, and innovative rehabilitation design of substantially damaged units (definition at 44 CFR 59.1).  Integration of green/energy efficient, resilient, and innovative rehabilitation design of non-substantially damaged units following the guidelines specified in the HUD CPD Green Building Retrofit Checklist ( <a href="https://www.hud.gov/sites/dfiles/CPD/documents/CPD-Green-Building-Retrofit-Checklist.pdf">https://www.hud.gov/sites/dfiles/CPD/documents/CPD-Green-Building-Retrofit-Checklist.pdf</a> ) NOTE: See Construction Standards Manual and Green Building Requirements in the Subrecipient Manual for more information.	The activity will integrate all effective green and resilient building standards. The applicant has included a cost effective alternate budget for exceptional resilience measures. The applicant demonstrates clear integration of the HUD Green Building Retrofit checklist, Green Building Standard, and energy efficient design, as applicable. The activity will expand broadband access for residents.	The activity will integrate some green and resilient building standards. The applicant has included a cost effective alternate budget for exceptional resilience measures. The applicant demonstrates some integration of the HUD Green Building Retrofit checklist, Green Building Standard, and energy efficient design, as applicable. The activity will NOT expand broadband access for residents.	The activity will integrate green and resilient building standards. The applicant has NOT included a cost effective alternate budget for exceptional resilience measures. The applicant demonstrates limited integration of the HUD Green Building Retrofit checklist, Green Building Standards, OR energy efficient design, as applicable. The activity will NOT expand broadband access for residents.	The activity will NOT integrate green and resilient building standards. The applicant has NOT included a cost effective alternate budget for exceptional resilience measures. The applicant demonstrates limited or NO integration of the HUD Green Building Retrofit checklist, Green Building Standards, OR energy efficient design, as applicable. The activity will NOT expand broadband access for residents.
15	<b>Timeliness and Urgency</b>	Assess the urgency and timeline for implementing the housing project. Consider whether the project addresses immediate needs and time-sensitive recovery priorities, particularly in cases where delays could exacerbate risks or hardships. The project will be evaluated on feasibility to commence with architectural/engineering services (if applicable) or construction within 6 months of agreement execution.	The applicant has site control. The site is zone appropriately for intended use, and proposed activity will comply with existing land use requirements. The applicant has clear, detailed, and feasible schedule for project implementation, spending, staffing and reporting and has a proven track record of carrying out activities within past funding periods in a timely fashion.	The applicant has site control. The site is zone appropriately for intended use, and proposed activity will comply with existing land use requirements. The applicant has a proven track record of carrying out activities within past funding periods in a timely fashion or has carried out activities in past funding periods in other counties in a timely fashion.	The applicant does not have site control but has a feasible schedule for project implementation, spending, staffing and reporting. The site is zone appropriately for intended use, and proposed activity will comply with existing land use requirements. The applicant has a proven track record of carrying out activities within past funding periods in a timely fashion or has carried out activities in past funding periods in other counties in a timely fashion.	The applicant does not have site control nor has a feasible schedule for project implementation, spending, staffing and reporting or has not carried out funded activities in a timely fashion. The site is NOT zone appropriately for intended use, or proposed activity will NOT comply with existing land use requirements.
20	<b>Cost Effectiveness and Leveraged Funds</b>	The extent to which the proposed Activity will use other funding sources to leverage the amount of CDBG-DR funding requested. The CDBG-DR per unit subsidy will be used to measure cost effectiveness in most cases. Applicants should demonstrate the ability to align financing and capital from a variety of sources, including but not limited to Low Income Housing Tax Credits and Bonds. Applicants should consider leveraging increases for eligible tax credit basis by developing in difficult to develop areas, qualified census tracts, and opportunity zones. Priority will be provided to applicants with the lowest per unit subsidy, and clear repayment plan for CDBG-DR funds.	The per unit CDBG-DR subsidy is greater than \$125,000 per unit or less. The applicant is leveraging other federal, state, and local grant resources, as well as private financing. The pro-forma budget indicates sustainable debt service capacity. The activity leverages available tax incentives.	The per unit CDBG-DR subsidy is greater than \$125,000. The applicant is leveraging other federal, state, and local grant resources, as well as private financing. The pro-forma budget indicates sustainable debt service capacity. The activity does not leverage available tax incentives.	The per unit CDBG-DR subsidy is greater than \$125,000. The applicant is NOT leveraging other federal, state, and local grant resources, or private financing. The pro-forma budget indicates nearly sustainable debt service capacity. The activity does not leverage available tax incentives.	The per unit CDBG-DR subsidy is greater than \$125,000. The applicant is NOT leveraging other federal, state, and local grant resources, or private financing. The pro-forma budget does not indicate sustainable debt service capacity. The activity does not leverage available tax incentives.
5	<b>Meeting Community Needs</b>	The extent to which the proposed Activity provides affordable housing units for extremely-low and very-low income households, age dependent households, and/or other special needs populations. The extent to which the applicant has engaged with the community in project design, especially those who are expected to reside in planned housing units.	The proposed activity set aside more than 75% of units for households from 0 to 80% AML, and demonstrates affordable rents for households below 65% AML. More than 51% of the set aside units are intended to provide housing for special needs populations. The applicant engaged individuals who are expected to reside in the housing units in the planning and design process.	The proposed activity set aside between 51% and 75% of units for households from 0 to 80% AML, and demonstrates affordable rents for households below 65% AML. 50% or less of the set aside units are intended to provide housing for special needs populations. The applicant did not engage individuals who are expected to reside in the housing units in the planning and design process.	The proposed activity set aside the minimum 51% of units for households from 0 to 80% AML, and demonstrates affordable rents for households below 65% AML. The applicant did not engage individuals who are expected to reside in the housing units in the planning and design process.	The proposed activity set aside the minimum 51% of units for households between 65% and 80% AML, and plans to charge FMR for all units. The applicant did not engage individuals who are expected to reside in the housing units in the planning and design process.
5	<b>Proximity to Public and Private Amenities</b>	The extent to which the proposed Activity provides the opportunity for community engagement through access to parks, community centers, bike paths, health care, shopping, schools, public transportation, and human/family services.	The proposed activity is within one-half mile of parks, community centers, bike paths, health care facilities, shopping, schools, public transportation and other supportive services.	The proposed activity is within one mile of parks, community centers, bike paths, health care facilities, shopping, schools, public transportation and other supportive services.	The proposed activity is within five miles of parks, community centers, bike paths, health care facilities, shopping, schools, public transportation and other supportive services.	The proposed activity is greater than five miles from parks, community centers, bike paths, health care facilities, shopping, schools, public transportation and other supportive services.
5	<b>Supportive Services</b>	The extent to which the proposed Activity provides on-site, or referrals for, supportive services including, but not limited to the following: Health and Wellness: mental health support, case management, traveling medical and physical health services. Economic Mobility: job placement assistance, job fairs, financial literacy, job training, Education: childcare, after-school, summer academic enrichment programs, colleges, technical training, college readiness, and GED programs.	The proposed activity will provide on-site supportive services, access to transportation, and referrals for off-site services, include health and wellness, economic mobility, AND educational services.	The proposed activity will provide on-site supportive services, access to transportation, AND referrals for off-site services, include health and wellness, economic mobility, or educational services.	The proposed activity will provide on-site supportive services, access to transportation, OR referrals for off-site services, include health and wellness, economic mobility, OR educational services.	The proposed activity will NOT provide on-site or off-site supportive services.

Notice of Funding Availability (NOFA) for Affordable Housing Development & Preservation 100 Multifamily: Round 2 - Multifamily Housing Development

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