

CSFA # 40.901  
Contract No. SHIP C-  
Funding Source: LB 5540513801.508309  
S/L LB027

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**AGREEMENT BETWEEN  
THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
AND  
HABITAT FOR HUMANITY OF LEE AND HENDRY COUNTIES, LLC**

**THIS** ☐ **Service** ☒ **Capital (check one) CONTRACT** (the “**Agreement**”), entered this 18th day of December, 2018, by and between LEE COUNTY, a political subdivision and Charter County of the State of Florida (the “**County**”), and Habitat for Humanity of Lee and Hendry Counties, LLC, a Not-for-Profit Corporation existing under the laws of the State of Florida (the “**Provider**”), collectively referred to herein as the “**Parties**.”

**WHEREAS**, the County adopted its Local Housing Assistance Plan (the “**LHAP**”) to participate in the State of Florida’s State Housing Initiatives Partnership Program (“**SHIP Program**”) established under Chapter 420 of the Florida Statute in order to further the housing element of the County’s Comprehensive Plan;

**WHEREAS**, the County desires to provide funding through its SHIP Program to non-profit housing providers for the provision of affordable housing, as well as the provision of affordable housing for special needs persons, throughout Lee County in compliance with the LHAP;

**WHEREAS**, the Provider specializes in housing, construction, community development, and/or supported housing for people with special needs; and desires to enter into a partnership with the County to provide its services to eligible persons in Lee County; and

**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the Provider, intending to be legally bound, covenant and agree as follows

**ARTICLE I - PROGRAM SERVICES**

The Provider hereby agrees to provide and perform the scope of work for the program(s) set forth in Exhibit “A” entitled “Scope of Work” that is attached hereto and incorporated herein by reference (the “**Program Services**”).

## **ARTICLE II - TERM OF CONTRACT**

This Agreement shall be for a term of 12 months commencing on December 18, 2018 and expiring on December 30, 2019 (the “**Term**”) unless terminated as specified in Article VIII, Suspension/Termination, herein. Contract is retroactive to July 1, 2018 to cover work complete before the execution date of the contract.

## **ARTICLE III - COMPENSATION**

### **A. Contract Payment**

The Parties hereby agree that the Provider shall be compensated for the Program Services in the total amount not to exceed One Hundred Fifty Eight Thousand and Thirty-Nine and 00/100 Dollars (\$158,039.00) during the Term, subject to the provisions of Article III - B. Deferred Payment/Return of Funds, Article VIII - Suspension/Termination, and the terms set forth in Exhibit “A.” The funds will be disbursed by the County on a reimbursement basis.

### **B. Deferred Payment/Return of Funds**

The Provider agrees to return to the County any overpayments due to funds disallowed pursuant to the terms of this Agreement. Such funds shall be considered County Funds and must be refunded to the County within thirty (30) calendar 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 Provider will be required to reimburse the County for any acts of non-compliance resulting in disallowed costs or fines.

It is at the option of the County to defer payment to the Provider for non-compliance with contract deliverables or during the period of a County audit or monitoring due to questionable items. If as a result of the audit or monitoring, unallowable or unsupported costs are found, no further payments will be made until the full amount of overpayment is remitted to Lee County or a repayment agreement is accepted by Lee County.

### **C. Availability of Funds**

Compensation under this Agreement shall be based upon the following:

#### **1. State of Florida Funding.**

The County’s remittance of the compensation in Section A is contingent upon the County’s receipt of the State funds pursuant to Chapter 420 of the Florida Statutes.

#### **2. Non-appropriation of Funds.**

All funds for payment by the County under this Agreement are subject to the availability of an annual appropriation for this purpose by the County. In the event of non-appropriation of funds by the County for the Program Services, the County will terminate

the contract, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the Provider on thirty (30) days' prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under this Agreement beyond the date of termination.

## **ARTICLE IV - AUDITS, MONITORING, AND RECORDS**

### **A. Audits and Reports**

The Provider shall comply with all applicable requirements set forth in *Exhibit "B"* entitled "*Financial and Compliance Audit Requirements*" that is attached hereto and incorporated herein by reference. Additionally, the Provider shall provide the County General Progress Reports at least once every twelve (12) months.

Failure to submit any of these reports within the required time-frame will result in the withholding of payments under Article III. The County may terminate the Agreement if the Provider fails to submit any of the reports within three (3) days of receiving written notice by the County.

### **B. Monitoring**

The Provider agrees to permit employees duly authorized by the County and the Federal or State grantor agency (if applicable) or any representatives to inspect all records, papers, documents, facility's goods and services of the Provider and/or interview any clients and employees of the Provider to be assured of satisfactory performance of the terms and conditions of this Agreement to the extent permitted by the law after giving the Provider reasonable notice. The monitoring is a limited scope review of the Agreement and agency management and does not relieve the Provider of its obligation to manage the grant in accordance with applicable rules and sound management practices.

Following such monitoring the County may deliver to the Provider a written report regarding the manner in which goods or services are being provided. The Provider will rectify all noted deficiencies 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 Provider's failure to correct or justify the deficiencies within the time specified by the County may result in the withholding of payments, and/or the Provider being deemed in noncompliance, or termination of this Agreement.

Provider must supply County with copies of all monitoring reports of programs which are also funded by the County, including agency response, within thirty (30) days of receipt.

**C. Audit and Inspections**

The Provider will make all records referenced in Article IV (C) and all items included on financial statements available for audit or inspection purposes at any time during normal business hours and as often as County deems necessary.

The Clerk of Courts Internal Audit division, the Federal or State grantor agency (if applicable), Lee County employees, or any duly authorized representatives have the right of timely and unrestricted access to any books, documents, papers, or other records of Provider or certified public accountant (**CPA**) that are pertinent to the contract in order to make audits, examinations, excerpts, transcripts and copies of such documents. If contract non-compliance or material weaknesses in the organization is 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 a Provider's personnel for the purpose of interview and discussion related to such documents.

**D. Records**

**PROVIDER** specifically acknowledges its obligations to comply with §119.0701, F.S., 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 meet all requirements for retaining public records and transfer, at no cost to the **COUNTY**, all public records in possession of **PROVIDER** 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 PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, <http://www.leegov.com/publicrecords>.**

**E. Independent Audit**

An original, bound annual audit of the Provider's financial statements in accordance with Financial Accounting Standards Board (FASB) 117, or current Generally Accepted Government Auditing (GAGA) Standards as applicable including the auditor's opinion, requisite reports on internal control and compliance if required, management letter addressing internal controls if required, and management's response to such letter if required, must be submitted to the County no later than one hundred eighty (180) days following the end of the **Provider's** fiscal year along with any corrective action plan if applicable.

The audit must be conducted by an independent licensed certified public accountant who has received an unmodified opinion on their current Peer Review and must be in accordance with Auditing Standards Generally Accepted in the United States, and generally accepted Government Auditing Standards, Office of Management and Budget (OMB) Circular A-133, "Audits of Institutions of Higher Education and other Non-Profit Organizations", if applicable, the Florida Single Audit Act (F.S. Section 215.97), if applicable, and the Auditor General Rule 10.550, if applicable. The audit must detail the programs or service areas that are funded by Lee County 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) and exhibit(s).

**ARTICLE V - MODIFICATIONS**

Modifications of provisions of this Agreement shall only be valid when they have been reduced to writing and duly signed and dated by both parties.

**ARTICLE VI - CONTRACTOR STATUS**

**A. Independent Contractor**

It is mutually agreed that the Provider is an independent contractor and not an agent or employee of the County.

**B. Subcontracts**

Primary roles and responsibilities of Provider cannot be subcontracted. It is mutually agreed that any County funded program component that is subcontracted by Provider must have a written contract upon execution of this Agreement. The Provider must ensure each subcontractor conforms to the terms and conditions of this Agreement and must be subject to indemnification as stated in Article VII, herein.

## **ARTICLE VII - RISK MANAGEMENT**

### **A. Indemnification**

The Provider will defend, hold harmless, and indemnify the County from and against any and all liability, loss, claims, damages, costs, attorneys' fees, and expenses of whatever kind or nature which the County may sustain, incur, or be required to pay either by reason of the loss or improper use of any monies disbursed or to be disbursed hereunder including but not limited to fraud, embezzlement, or dishonesty on the part of any person represented or employed by the Provider, or by reason of the intentional or negligent act of the Provider or its agents, representatives and/or employees.

The Provider further agrees that it will, at its own expense, defend any and all claims, actions, suits, or proceedings that may be brought against the County in connection with the above and satisfy, pay, and discharge any and all judgments or other resolution of claims that may be entered against the County in any such action or proceedings.

The Provider 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 Provider and not of the County.

### **B. Insurance**

The Provider agrees to provide and maintain during the term of this Agreement Commercial General Liability insurance insuring the Provider against any and all claims, demands, or causes of action whatsoever for injuries received or damage to property incurred in the performance of the terms of this Agreement or the use, occupation, management, or control of any facility herein provided for and the improvements thereto. Such a policy of insurance will insure the Provider in an amount not less than \$500,000 to cover any and all bodily injury, personal injury, and/or property damage claim connected with any County accident or occurrence that may arise or be claimed to have arisen against the Provider. The Provider must furnish an appropriate Certificate of Insurance (**Exhibit B**) naming Lee County Board of County Commissioners as Certificate Holder and Additional Insured. The Provider agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess. The Provider agrees that this insurance requirement shall not relieve or limit Provider's liability and that the County does not in any way represent that the insurance required is sufficient or adequate to protect the Provider's interests or liabilities, but are merely minimums. Certificates of Insurance and bonding and renewals must be submitted to:

Risk Management  
Lee County Board of County Commissioners  
P.O. Box 398, Fort Myers, Florida 33902-0398

### **C. Bonding**

The PROVIDER must provide fidelity bonding for all employees that handle Provider's funds. The amount of the bond must be equivalent to the highest daily cash balance of the Provider. Proof of this bonding must be submitted to the County prior to the date of execution of this Agreement.

## **ARTICLE VIII - SUSPENSION/TERMINATION**

### **A. Suspension**

The County reserves the right to suspend funding for failure to comply with the requirements of this Agreement.

In the event the Provider 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 Provider with regard to those unpaid funds.

### **B. Termination by County**

The County may at any time and for any reason cancel this Agreement by giving twenty-four (24) hours written notice to the Provider by certified mail following a determination by the Board of County Commissioners, at its sole discretion, that such cancellation is in the best interest of the people of Lee County. From the date of cancellation, neither party shall have any further obligation unless specified in the termination notice.

### **C. Termination by Provider**

The Provider may at any time and for any reason cancel this Agreement by giving seventy-two (72) hours prior written notice to the County by certified mail of such and specifying the effective date.

County's obligation to make any payments under any provision of this Agreement shall cease on the effective date of termination.

## **ARTICLE IX - ASSURANCE, CERTIFICATIONS, AND COMPLIANCE**

The Provider agrees that compliance with these assurances and certifications constitutes a condition of continued receipt of or benefit from funds provided through this Agreement, and that it is binding upon the Provider, its successors, transferees, and assignees for the period during which services are provided. The Provider 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 and activities are not discriminating against those participants or employees in violation of statutes, regulations, guidelines and standards. By acceptance of this funding, the Provider assures and certifies the following:

- A. That it 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 contract, 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 Provider.

- B.** That it will comply with Chapter 760, Florida Statutes, and Lee County Ordinance Number 13-04 which prohibit discrimination in housing on the basis of race, color, national origin, sex, religion, disability or familial status.
- C.** That it will comply with Chapter 760, Florida Statutes which prohibit discrimination in employment on the basis of race, color, national origin, sex, religion, disability or marital status.
- D.** That it will administer its programs under procedures, supervision, safeguards, and such other methods as may be necessary to prevent fraud and abuse, and that it will target its services to those who most need them.
- E.** That if clients are to be transported under this contract, the Provider will comply with the provisions of Chapter 427, Florida Statutes, which requires the coordination of transportation for the disadvantaged.
- F.** That any products or materials purchased with contract funds shall be procured in accordance with the provisions of Section 403.7065, Florida Statutes, which refers to the procurement of products or materials with recycled content.
- G.** That it will comply with the Americans with Disabilities Act of 1990, Public Law (P. L.) 101-336, which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities.
- H.** That it shall report any unusual incidents involving funded activities to the County, in writing, within five (5) calendar days of the occurrence or the County may terminate this contract. Unusual incidents include, but are not limited to those events which are reported to local police authorities by the Provider or any person whose report requires any type of response by local law enforcement authorities; those events which result in physical injury to a person receiving Provider services that are underwritten in any way by the County; or, those incidents or events which result in a report to or investigation arising from a call to the Florida Abuse Hotline. In accordance with Chapter 415, Florida Statute, an employee of the Provider who knows or has reasonable cause to suspect that a child, aged person, or disabled adult has been abused, neglected, or exploited, shall immediately report such knowledge or suspicion to the Florida Abuse Hotline on the statewide toll-free number (1-800-96- ABUSE).
- I.** That it will comply with Section 216.347, Florida Statutes, which prohibits the expenditure of contract funds for the purpose of lobbying the Legislature, State or County agencies.
- J.** That it will notify the County immediately of any funding source changes and/or additions from other sources that are different from that shown in the Provider's proposal. This notification must include a statement as to how this change in funding affects provision of service as well as the use of and continued need for county funds.
- K.** That it will acknowledge support for programs funded by Lee County.



- L. That it will notify the County of any SIGNIFICANT changes to the Provider organization to include articles of incorporation and bylaws within ten (10) working days of the effective date.

### **ARTICLE X - NOTICES**

Official notices concerning this Agreement shall be directed to the following authorized representatives:

**COUNTY:**

ATTN: Mikki Rozdolski, Manager, Planning Section

Department of Community Development

Address: P.O. Box 398, Fort Myers, FL 33902-0398

Telephone: (239) 533-8309

Fax: (239) 485-8344

E-mail: MRozdolski@leegov.com

**PROVIDER:**

Name: \_\_\_\_\_

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

Agency: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Web site address: \_\_\_\_\_

E-mail: \_\_\_\_\_

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

Name: David M. Loveland, AICP  
(typed)

OR Name: \_\_\_\_\_  
(typed)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Director, Dept. of Community Development  
Title

\_\_\_\_\_  
Title

In the event that different representatives are designated by either party after execution of this contract, notice of the name and address of the new representative will be rendered in writing by authorized officer of Provider to the County. The notification shall be attached to originals of this Agreement.

### **ARTICLE XI - SPECIAL PROVISIONS**

If needed, Provider may be called upon to assist County during a natural disaster or emergency.

## **ARTICLE XII - ALL TERMS AND CONDITIONS INCLUDED**

This Agreement and its exhibits, and any attachments/exhibits referenced in said exhibits, 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**, Provider and County have caused this Agreement, to be executed by their undersigned officials as duly authorized.

### **PROVIDER:**

By: \_\_\_\_\_  
Name (typed)

\_\_\_\_\_  
Signature of authorized officer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

### **NOTARY:**

By: \_\_\_\_\_  
Notary of Public (Signature)

\_\_\_\_\_  
Name (Typed)

(STAMP / SEAL REQUIRED)

### **COUNTY: LEE COUNTY**

By: \_\_\_\_\_  
Name (typed)

\_\_\_\_\_  
Signature of authorized officer

Chair – Lee County Board of  
County Commissioners  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

### **ATTEST: LINDA DOGETT CLERK OF CIRCUIT COURT**

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

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

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

### **APPROVED AS TO FORM FOR THE RELIANCE OF LEE COUNTY ONLY**

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

Title: \_\_\_\_\_  
**COUNTY ATTORNEY'S OFFICE**

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

## **Exhibit B**

### **FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS**

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained Federal and/or State funding from Lee County. Each subrecipient is responsible for complying with the Single Audit Act of 1984 (Public Law (P. L.) 98-502), the Single Audit Act Amendments of 1996 (Public Law (P. L.) 104-156), and 29 CFR, Part 96, of the Department of Labor Regulations that implements Office of Management and Budget (OMB) Circular A-133. Also, each subrecipient is responsible for complying with the Florida Single Audit Act (FS 216.3491) (as applicable).

NOTE: Subrecipients/Contractors that are State Departments, State Universities and/or State Community Colleges are audited annually by the Office of the State Auditor General, and are not required to have additional independent audits performed as outlined by this Attachment. Additionally, copies of the State Auditor General's audit report are transmitted directly to Agency for Workforce Innovation (AWI) by that office. No further actions are required by the entities (as Contractors) referenced in this paragraph.

The Contractor agrees to have an annual financial and compliance audit as specified by The Single Audit Act of 1996 and OMB Circular A-133. **An annual audit is required if the Subrecipient/Contractor has Federal expenditures of \$500,000 or more in a fiscal year. This includes all Federal funds received from all funding sources, not just the funds awarded under this contract.** The audits are to be performed by independent auditors in accordance with the current Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States, and in compliance with OMB Circular A-133, Audits of States, Local Governments and Nonprofit Organizations.

The Contractor agrees to have an annual State financial and compliance audit, if the total expenditures are \$500,000 or more in a fiscal year (i.e. state financial assistance provided to carry out a state project) in accordance with auditing standards as stated in the Rules of the Auditor General. The Contractor must have a single audit or project-specific audit for such fiscal year in accordance with Section 216.3491, Florida Statutes; applicable rules of the Executive Office of the Governor and the Comptroller, and Rules of the Auditor General Chapter 10.600.

#### **Audit Requirements for States, Local Governments and Nonprofit Organizations:**

Non-federal organizations that expend \$500,000 or more in a fiscal year in Federal awards (**all Federal funding sources must be considered**) must have a single audit or a program-specific audit conducted for that fiscal year in accordance with current Government Auditing Standards issued by the Comptroller General of the United States, and in compliance with The Single Audit Act of 1984 (Public Law (P. L.) 98-502), the Single Audit Act Amendments of 1996 (Public Law (P. L.) 104-156) and OMB Circular A-133 "Audits of States Local Governments, and Non-Profit Organizations".

**Single Audit** – Single Audit means an audit that includes both the entity’s financial statements and the Federal awards requirements as described in the OMB Circular A-133. A State single audit means an audit of a non-state entity’s financial statements and state awards. A Single Audit also includes a report on Internal Controls and a report on Program Compliance.

**Program-Specific Audit** – A Program-Specific Audit means an audit of **one Federal program** as provided in the OMB Circular A-133. Additionally, a state program-specific audit means an audit of **one state project** in accordance with the requirements of Section 216.3491, Florida Statutes.

The cost of audits conducted in accordance with the Single Audit Act and/or the provisions of Section 216.3491, Florida Statutes, must be paid from non-Federal/non-State funds (i.e., the cost of such an audit must be paid from subrecipient/contractor funds obtained from other than Federal/State sources

**Habitat for Humanity of Lee and Hendry Counties, LLC**

**I. AWARD**

1. The Project, as approved for grant assistance, shall consist of the following authorized scope of Project work: Rehabilitation of 8 owner occupied houses affected by Hurricane Irma for 4 very low, 3 low and 1 moderate income households including, but not limited, to at least 2 special needs households
2. The amount of funds awarded under this grant is \$158,039. The **COUNTY** agrees to reimburse the **PROVIDER**, upon completion of each house and receipt and verification of the Provider's request and documentation for project costs pursuant to and as defined in this Contract. The **COUNTY** is not obligated or authorized to award any funds in addition to this amount.
3. The value of the dwelling units must not exceed the maximum amount specified in the applicable Local Housing Assistance Plan (LHAP), and must meet affordability requirements in order to qualify as eligible.
4. The **PROVIDER** is expected to make reasonable effort to participate in program training activities offered by the Florida Housing Finance Corporation, the Florida Housing Coalition, Lee County or similar organizations in order to ensure compliance with local and State regulations governing the State Housing Initiatives Partnership Program.

**II. RECORDS AND MONITORING**

1. The **PROVIDER** agrees to perform all necessary requirements to assist the **COUNTY** in implementing its monitoring responsibilities, which include on-site inspections of the project to determine compliance with applicable laws, rules, regulations, ordinances, and codes of the federal, state, and local governments, including the requirements of the State Housing Initiatives Partnership (SHIP) and the Lee County Local Housing Assistance Plan.
2. The **COUNTY** shall be provided access to all contracts of the **PROVIDER** for the procurement of goods and/or services relating to the project work described in Subsection 1. a. herein, and all change orders or amendments, but said access shall not be construed as acceptance by or imposition of upon the **COUNTY** of any financial liability in connection with said contracts.
3. The **PROVIDER** shall be responsible for ensuring that all builders/contractors utilized are licensed appropriately and capable of performing all necessary work. The **PROVIDER** will further be responsible to ensure that all applicable permits, inspections, and fees are obtained and paid (as required for the respective scope of work). The **PROVIDER** shall further serve as the agent for the homeowner in all communications with the selected contractors and ensure a timely completion of rehabilitation proceedings, as the owner's agent.
4. The **COUNTY** shall be provided access to all detailed plans, specifications and home buyer incomes relating to the project and records relating thereto describe in subsection 1-a. herein, to ensure compliance with the objectives, requirements, and limitations of the Lee County

SHIP Affordable Housing Program. The following documentation must be maintained on file for each beneficiary or unit produced by the Provider for a period of seven (7) years following the effective date of contract. The following documentation at a minimum must be available for inspections at all reasonable times by the **COUNTY** or their assigns:

- Applicant Intake Forms
- Income Verification and Certification Forms
- Release of Information
- Acknowledgment of SHIP terms signed by beneficiary
- Verification of Assets of beneficiary
- Verification of Employment for beneficiary
- Certificate of Compliance/Completion

5. All projects must be in compliance with the rules and regulations of the State Housing Initiatives Partnership Program as authorized by Florida Statutes, Section 420.907, Florida Administrative Code Rule Chapters 67-37, and the Lee County Housing Assistance Program authorized by Lee County Ordinance Number 95-17, as amended, and in particular:

- Income limits
- Definition of Affordability
- Non-discrimination
- Maximum production or purchase cost
- Maximum SHIP funds per unit
- Compliance reporting as required per project

### **III. APPLICATION, CONSTRUCTION, AND CLOSING DOCUMENTS**

The **PROVIDER** shall provide to the **COUNTY** proof or make available the following application documents, construction documents and closing documents, as applicable, for each beneficiary prior to receiving reimbursement for the completed project. A list of these documents is found in the Lee County SHIP Homeowner Rehabilitation Completion Checklist which must be submitted to the County as each project is completed.

**APPLICATION DOCUMENTS:** The **PROVIDER** shall maintain a list of eligible applicants in order of receipt of the signed application and documents listed below. Participants will be selected on a first come, first ready basis; very-low and low income households will be given priority.

1. **Owner's Application Form including the list of work requested**
2. **Proof of Ownership**
3. **Proof of Principal Residence**
4. **Proof that the owner is current on property taxes**
5. **Proof that the owner's mortgage is in good standing**
6. **Proof of homeowner's insurance**

7. **Income Certification of applicant** (include authorization of release of information, income verification and income certification forms per SHIP regulations)

**CONSTRUCTION DOCUMENTS:**

8. **Work Write-Up, Scope and Cost Estimates:** The **PROVIDER** will interview the homeowner, conduct walk through, develop a work write-up, scope and cost estimate and provide a copy to the **COUNTY**. The **PROVIDER** will use SHIP funds to meet local building codes and ordinances and to correct situations which threaten the health and safety of owners and which increase the useful life, safety or energy efficiency of the building.

The **PROVIDER** is recognized by the **COUNTY** as not being a licensed contractor. However, to the extent applicable, the **PROVIDER**, as a subrecipient of SHIP Program Funding, shall comply with the provisions of Articles IV, V and VI of the "Contractors Handbook SHIP Housing Rehabilitation Demolition and Reconstruction Programs" hereinafter referred to as the "Contractors Handbook" by the Florida Housing Coalition July 2008 which is incorporated by reference. Labor or Materials paid for with SHIP funds shall conform to the specifications (unless otherwise agreed) set forth in the "Contractor Handbook"

If the owner-applicant does not approve of the work write-up, scope, cost estimate or materials to be used, no SHIP funds will be expended on the project. While construction activities will not be undertaken just to improve the aesthetics of the residence, at the completion of a project the residence should have an adequate and generally acceptable curb appeal. SHIP funds will not be used for recreational items such as barbeques, swimming pools, saunas etc.

To the extent feasible green building techniques and materials should be incorporated into rehabilitation projects. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Contractors Handbook, the terms of the Agreement shall control.

9. **Three bids or estimates for the selection of labor or materials to be paid for with SHIP funds:** To be reimbursed with SHIP funds for labor or material used in a project, the **PROVIDER** will have to provide the **COUNTY** with at least three bids or estimates. The lowest bid will be selected provided it complies with the work write-up, scope and cost estimate of work unless there is a mitigating circumstance which is documented and approved by the **COUNTY**.
10. **Rehabilitation Contract Conference.** The **PROVIDER** shall meet with the homeowner and contractor and explain the work write-up, scope, specifications of the project and the terms of the Contract between the **PROVIDER** and the homeowner; including the fact that the **PROVIDER** will execute a mortgage on behalf of the **COUNTY** for costs associated with this project.
11. **Contract with the Homeowner.** A Rehabilitation Agreement between the homeowner and the **PROVIDER** with work write-up, scope and cost estimate with specifications for the use of SHIP funds shall be executed with a copy provided to the **COUNTY**.

12. **SHIP Mortgage and Note Agreement signed by the homeowner and executed by the PROVIDER on behalf of the COUNTY.** To prevent an unauthorized sale or transfer of title while work is in progress a SHIP Mortgage and Note which secures the property during rehabilitation will be signed by the homeowner and executed by the **PROVIDER** on behalf of the **COUNTY**.
13. **Notice to Proceed from the COUNTY to the PROVIDER.**
14. **Notice of Commencement**
15. **Copy of the General Contractor's License**
16. **General Contractor Information Sheet**
17. **General Contractor Liability Insurance**
18. **List of Subcontractors and Material Suppliers**
19. **Change Orders if applicable.** The **PROVIDER** agrees that no alteration of materials or labor described in the final work write-up shall take place unless in writing and mutually agreed upon by the homeowner, **PROVIDER** and the **COUNTY**. All changes must be submitted on the Change Order Form provided within the "Contractors Manual," signed and dated by the homeowner, **PROVIDER**, and the **COUNTY**. Any changes made will be bound by the contract and incorporated into the project; subject to the same requirements, policies and procedures as described herein.

**CLOSING DOCUMENTS: Upon project completion the PROVIDER will be reimbursed for allowable expenditures.** The following items must be completed to adequately close a project.

20. **Notification of work completed.**
21. **Final walk through and the final inspection punch list signed by the owner and the contractor.**
22. **A statement of owner satisfaction with the work completed and homeowner evaluation.**
23. **Inspection Record**
24. **Certificate of Compliance/Completion**
25. **One year warranty on all workmanship for the homeowner**
26. **Owner acknowledgement of other warranties provided**
27. **Owner acknowledgement that the construction site is clean and ready for occupancy**
28. **Final executed and recorded SHIP Mortgage and Note (modified if necessary) between the homeowner and the COUNTY.**



29. **Affidavit of Lien waivers from the general contractor and all subcontractors**
30. **Itemized list and invoices for In-Kind goods and services**
31. **Itemized list and invoices for SHIP subsidy (including recording fees)**
32. **Final Payment Certification Form**
33. **Final Payment Received Form**

**IV. NO IMPROPER USE:**

The **PROVIDER** will not use, nor suffer or permit any person to use in any manner whatsoever, **COUNTY** funds or facilities for any improper, immoral or offensive purpose or for any purpose in violation of any federal, state, county or municipal ordinance, rule order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. In the event of such violation by the **PROVIDER** or if the **COUNTY** or its authorized representative shall deem any conduct on the part of the **PROVIDER** to be objectionable or improper, the **COUNTY** shall have the right to suspend the Contract with the **PROVIDER**. Should the **PROVIDER** fail to correct any such violation, conduct, or practice to the satisfaction of the **COUNTY** within twenty-four (24) hours after receiving notice of such violation, conduct, or practice, such suspension is to continue until the violation is cured. The **PROVIDER** further agrees not to commence operation during the suspension period until the violation has been corrected to the satisfaction of the **COUNTY**.

**V. PAYMENTS WITHHELD:**

The **COUNTY** may decline to approve any Application for Payment, or portions thereof, because of defective, unsatisfactory or incomplete work, outstanding punch-list items, subsequently discovered evidence or subsequent inspections. The **COUNTY** may nullify the whole or any part of any approval for payment previously issued and the **COUNTY** may withhold any payments otherwise due the **PROVIDER** under this Agreement or any other agreement between the **COUNTY** and the **PROVIDER**, to such extent as may be necessary in the **COUNTY'S** opinion to protect the homeowner from loss because of: (a) defective or unsatisfactory Work not remedied; (b) third party claims filed or reasonable evidence indicating a probable filing of such claims; (c) failure of the **PROVIDER** to make payment properly to sub-contractors for labor, materials or equipment; (d) reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount; (e) reasonable indications that the work will not be completed within the Contract Time; (f) unsatisfactory prosecution of the Work by the **PROVIDER**, or (g) any other material breach of the Contract Documents, terms and conditions.

If any conditions described above are not remedied or removed, the **COUNTY** may, after three (3) days written notice, rectify the same at the **PROVIDER'S** expense. The **COUNTY** also may offset against any sums due the **PROVIDER** the amount of any liquidated or un-liquidated obligations of the **PROVIDER** to the **COUNTY** relating to or arising out of this Agreement.

**VI. CONTRACT TIME AND TIME EXTENSIONS:**

Time is of the essence in the performance of any Work under this Agreement and the **PROVIDER** shall diligently pursue the completion of the Work and coordinate the work being done on the Project by its subcontractors and materialmen, as well as coordinating its work with

all work of others at the Project Site, so that its Work or the work of others shall not be delayed or impaired by any act or omission by the **PROVIDER**. The **PROVIDER** shall be solely responsible for all construction means, methods, techniques, sequences, and procedures as well as coordination of all portions of the work under the Contract Documents.

Should the **PROVIDER** be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of the **PROVIDER**, and not due to its fault or neglect, including but not restricted to acts of God or of the public enemy, acts of Government, fires, floods, epidemics, quarantine regulation, strikes or lockouts, the **PROVIDER** shall notify the **COUNTY** in writing within forty-eight (48) hours after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which the **PROVIDER** may have had to request a time extension.

No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the work from any cause whatever, including those for which the **COUNTY** may be responsible, in whole or in part, shall relieve the **PROVIDER** of his duty to perform or give rise to any right to damages or additional compensation from the **COUNTY**. The **PROVIDER** expressly acknowledges and agrees that it shall receive no damages for delay. The **PROVIDER'S** sole remedy, if any, against the **COUNTY** will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage for Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion.

#### **VII. CLEAN UP:**

The **PROVIDER** agrees to keep the Project site clean at all times of debris, rubbish and waste materials arising out of the Work. At the completion of the Work, the **PROVIDER** shall remove all debris, rubbish and waste materials from and about the Project Site, as well as all tools, appliances, construction equipment and machinery and surplus materials, and shall leave the Project site clean and ready for occupancy.

#### **VII. WARRANTY:**

The **PROVIDER** shall obtain and assign to the property owner all express warranties given to the **PROVIDER** or any subcontractors by any material men supplying materials, equipment or fixtures to be incorporated into the Project. The **PROVIDER** expressly warrants to Owner that any materials and equipment furnished under the Contract Documents shall be new (unless otherwise specified), and that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents.

The **PROVIDER** further expressly warrants to the **COUNTY** that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers, or processors except as otherwise provided for in the Contract Documents.

If, within one (1) year after final completion, any Work is found to be defective or not in conformance with the Contract Documents, the **PROVIDER** shall correct it promptly after receipt of written notice from the property owner or the **COUNTY**. The **PROVIDER** shall also

be responsible for and pay for replacement or repair of adjacent materials or Work that may be damaged as a result of such replacement or repair. These warranties are in addition to those implied warranties to which the property owner is entitled as a matter of law.

**IX. TESTS AND INSPECTIONS:**

If the Contract Documents or any codes, laws, ordinances, rules or regulations of any public authority having jurisdiction over the Project requests any portion of the Work to be specifically inspected, tested or approved, the **PROVIDER** shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the **COUNTY** the requested certificates of inspection, testing or approval. All inspections, tests or approvals shall be performed in a manner and by organizations acceptable to the **COUNTY**.

**X. PROTECTION OF WORK:**

The **PROVIDER** shall fully protect the Work from loss or damage during construction and shall bear the cost of any such loss or damage until final payment has been made. If the **PROVIDER** or anyone for whom the **PROVIDER** is legally liable is responsible for any loss or damage to the work, or other work or materials of the property owner, the **PROVIDER** shall be charged with the same, and any monies necessary to replace such loss or damage shall be deducted from any amounts due the **PROVIDER**.

The **PROVIDER** shall not load nor permit any part of any structure to be loaded in any manner that will endanger the integrity of the structure, nor shall the **PROVIDER** subject any part of the work or adjacent property to stresses or pressures that will endanger it.

The **PROVIDER** shall not disturb any benchmark established by the **COUNTY** or Property Owner with respect to the Project. If the **PROVIDER**, or its subcontractors, agents or anyone, for whom the **PROVIDER** is legally liable, disturbs the benchmarks, the **PROVIDER** shall immediately notify the **COUNTY**. The appropriate Entity shall re-establish the benchmarks and the **PROVIDER** shall be liable for all costs incurred therewith.

**XI. EMERGENCIES:**

In the event of any emergency affecting the safety or protection of persons or the Work or property at the Project site or adjacent thereto, the **PROVIDER**, without special instruction or authorization from either the **COUNTY** or the Property Owner is obligated to act to prevent threatened damage, injury or loss. The **PROVIDER** shall give the **COUNTY** and Property Owner written notice within forty-eight (48) hours after the occurrence of the emergency, if the **PROVIDER** believes there are significant changes in the Work or variations from the Contract Documents have been caused thereby.

If the **COUNTY** determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations.

If the **PROVIDER** fails to provide the forty-eight (48) hour written notice noted above, the **PROVIDER** shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the Contract Amount or an extension to the Contract Time.

## **XII. COMPLETION:**

The **COUNTY** reserves the right to inspect the Work and make an independent determination as to the acceptability of the Work. Unless and until the **COUNTY** is satisfied as to the completion of the Work, the payment shall not become due and payable.

## **XIII. PERSONNEL:**

1. **QUALIFIED PERSONNEL:** The **PROVIDER** agrees when the WORK to be performed relates to a WORK which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to engage in such WORK, to employ and/or retain only qualified personnel to be in responsible charge of all WORK to be provided pursuant to this Agreement.

2. **THE PROVIDER'S PROJECT MANAGER:** The **PROVIDER** agrees to employ and designate, in writing, a qualified and, if required by law, a licensed professional to serve as the Project Manager. The Project Manager shall be authorized and responsible to act on behalf of the **PROVIDER** with respect to directing, coordinating and administering all aspects of the work to be provided and performed under this Agreement and Amendment(s) thereto. The Project Manager shall have the full authority to bind and obligate the **PROVIDER** on any matter arising under this Agreement and its Amendment(s) unless substitute arrangements have been furnished to the **COUNTY** in writing. The **PROVIDER** agrees that the Project Manager shall devote whatever time is required to satisfactorily direct, supervise, and manage the work provided and performed by the **PROVIDER** throughout the entire period this Agreement is in effect.

## **XIV. MAXIMUM AWARD AMOUNT:**

The maximum dollar amount of SHIP funds per household is set for in the Lee County Local Housing Assistance Plan (LHAP). Items eligible to be paid for with the SHIP funds include:

1. Hard costs typically or customarily treated as construction costs including labor and materials;
2. Payment of engineering and survey fees;
3. Architectural and related fees;
4. On-site storage and security, portable restrooms;
5. Job supervision;
6. Debris removal;
7. Inspections and abatement;
8. Recording document fees on mortgages and notes;
9. Appraisals;
10. Environmental testing;
11. Permit costs;
12. Legal fees (including variance or appeal fees);
13. Payment of housing inspections (independent **COUNTY** approved) by a Class A, B, or C General Contractor or an SBCCI Certified Housing Inspector;
14. Infrastructure costs within the ROW (IE. Water line, sewer line, sidewalks, and driveway apron);
15. Other costs may be eligible but must be approved by the **COUNTY**;

16. Program Delivery Fee of up to 16% (No mark-up of material costs are allowed in view of the 16% Program Delivery Fee. Material costs must be substantiated with back-up invoices).

**XV. RETURN OF FUNDS:**

The **PROVIDER** agrees to return any funds determined to have been used in a manner inconsistent with the terms of this Agreement within thirty (30) days after the request. Should payment not be made within thirty (30) days, the **COUNTY** may charge interest of one (1) percent per month compounded on the outstanding balance. Improper use or expenditures of funds by the **PROVIDER** shall be grounds for immediate termination of the agreement at the discretion of the **COUNTY**.

**XVI. CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES:**

The **PROVIDER** agrees to be responsible for the professional quality, technical adequacy, timely completion, and the coordination of all data, studies, reports, memoranda, other documents and other services, work and materials performed, provided, and/or furnished by the **PROVIDER**. The **PROVIDER** shall without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of the **PROVIDER**.