

CSFA # 40.901
Contract No. SHIP C-
Funding Source: LB 5540513801.508309
S/L LB026

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

THIS **Service** **Capital (check one) CONTRACT** (the “**Agreement**”), entered this 18th day of June 18, 2019, 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, Inc., 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 3 months this contract was executed on June 4, 2019 and expiring on August 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 Thirty-Eight Thousand Seven Hundred Ninety-Four Dollars (\$38,794.00) 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 is hereby placed on notice that when public funds are expended by an agency, then all the financial, business, and membership records pertaining to the public agency from which or on whose behalf the payments are made, of the person, corporation, foundation, trust, association, group, or organization to whom such payments are made shall be public records and subject to the provisions of Florida Statutes, Chapter 119, Public 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 any person, provide 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:

COUNTY: LEE COUNTY

By: _____
Name (typed)

By: _____
Name (typed)

Signature of authorized officer

Signature of authorized officer

Title

Chair – Lee County Board of
County Commissioners
Title

Date

Date

NOTARY:

**ATTEST: LINDA DOGGETT
CLERK OF CIRCUIT COURT**

By: _____
Notary of Public (Signature)

By: _____

Name (Typed)

Title: _____

Date: _____

(STAMP / SEAL REQUIRED)

**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