

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, OFFICE OF  
RECOVERY AND RESILIENCY  
AND  
THE NORTH CAROLINA HOUSING FINANCE AGENCY  
  
HURRICANE MATTHEW CDBG-DR GRANT**

THIS AGREEMENT is entered this 24th day of July, 2019 by and between the North Carolina Department of Public Safety, Office of Recovery and Resiliency (the “Grantee” or “NCORR”) and the North Carolina Housing Finance Agency (the “Subrecipient” or “NCHFA”).

**I. RECITALS**

WHEREAS, on October 8-9, 2016, Hurricane Matthew hit central and eastern North Carolina with record-breaking rainfall that created 1,000-year flood events that devastated the people, infrastructure, businesses, and schools of entire communities; and

WHEREAS, certain buildings, facilities, personal items, and equipment owned or rented by residents in the county and city were damaged by floodwaters associated with Hurricane Matthew; and

WHEREAS, on October 9, 2016, an expedited major disaster declaration from the President of the United States was requested and was granted on October 10, 2016 as FEMA-4285-DR-NC, allowing North Carolina to receive federal aid in the form of individual and public assistance for citizens and local governments; and

WHEREAS, the U.S. Department of Housing and Urban Development (“HUD”) has allocated Community Development Block Grant Disaster Recovery funds (“CDBG-DR”) to the State of North Carolina and the North Carolina Office of Recovery and Resiliency (“NCORR”) under the Further Continuing and Security Assistance Appropriations Act of 2017 (Public Law 114-254) and the Consolidated Appropriations Act of 2017 (Public Law 115-31) for the purpose of assisting recovery in the most impacted and distressed areas declared a major disaster due to Hurricane Matthew; and

WHEREAS, pursuant to 82 Fed. Reg. 5591 (Jan. 18, 2017) and 82 Fed. Reg. 36812 (Aug. 7, 2017), the State has received an allocation of CDBG-DR funds from HUD in the amount of \$236,529,000; and

WHEREAS, the Grantee wishes to engage the Subrecipient to assist Grantee in utilizing such funds to carry out a part of the Grantee’s Federal award by committing up to a maximum of **\$18,204,256** of Grantee’s Federal award to fund two new construction multi-family rental housing developments, pursuant to this Memorandum of Agreement (the “Agreement”); and

WHEREAS, the CDBG-DR funds or (“Grant Funds”) made available for use by the Subrecipient under this Agreement constitute a subaward of the Grantee’s Federal award, the use of which must be in accordance with requirements imposed by Federal statutes, regulations, and the terms and conditions of the Grantee’s Federal award; and

WHEREAS, the Subrecipient has legal authority to enter into this Agreement, and by signing this Agreement assures the Grantee that it will comply with all requirements of the subaward described herein; and

NOW, THEREFORE, in consideration of the need for recovery from Hurricane Matthew and the premises and mutual covenants described herein, the parties mutually agree to the terms described in this Agreement:

## **II. GENERAL AWARD INFORMATION**

The subaward from the Grantee to the Subrecipient, which is described below, is for the purpose of carrying out a portion of a Federal award described in Section I of this Agreement, and creates a Federal assistance relationship with the Subrecipient. This Agreement must be updated to reflect any changes to the federal award and the following award information:

### **Contact information:**

#### **Grantee**

Laura Hogshead  
Chief Operating Officer  
North Carolina Office of Recovery and Resiliency  
PO Box 110465  
Durham, NC 27709  
Phone: (984) 833-5350  
Fax: (919) 405-7392

#### **Subrecipient**

Scott Farmer  
Executive Director, NCHFA  
North Carolina Housing Finance Agency  
3508 Bush Street  
Raleigh, NC 27609  
919-877-5641

Federal Award Identification Number: [REDACTED]

CFDA Number and Name: 14.228

Federal Award Date: 8/14/2017

Federal award project description: To provide disaster recovery to communities impacted by Hurricane Matthew, consistent with the State’s HUD-approved CDBG-DR Action Plan.

Is this award for research and development? No

Subrecipient’s unique entity identifier: 56-1700536

Subaward period of performance: July 24, 2019 to December 31, 2022.

Total Amount of the Federal Award Committed to the Subrecipient by the Grantee: up to a maximum of \$18,204,256.

### **III. SCOPE OF SERVICE AND WORK**

#### **A. Eligible Use of Funds**

The HUD-approved Grantee CDBG-DR Action Plan (“Action Plan”), which may be amended from time to time, is incorporated herein by reference. As a condition of receiving this subaward, the Subrecipient shall administer and carry out projects as shown in the Action Plan, and as permitted by this Agreement, which includes performing all of the work described in this section and Exhibit A (“Scope of Work”), which may be amended from time to time by mutual consent of the parties or at the discretion of NCORR pursuant to the terms of this Agreement. The Subrecipient shall complete the activities in a manner satisfactory to the Grantee and consistent with the terms of conditions of this Agreement and applicable Federal and State statutes and regulations.

#### **Prohibited Activities**

The Subrecipient may be reimbursed with CDBG-DR funds for carrying out the activities described in this Agreement and for no other activities. The Subrecipient is prohibited from charging to this award the costs of ineligible activities under CDBG-DR, including those described at 24 C.F.R. § 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. The Subrecipient may be financially liable for the carryout of activities outside the parameters of the Scope of Work of this agreement.

#### **Program Delivery (CDBG-DR Eligible Activities)**

NCHFA shall use the funds provided to it pursuant to this Agreement to fund the new construction and/or rehabilitation of multifamily rental units located in only those counties considered the most impacted counties for Hurricane Matthew in accordance with this agreement, the Grantee Action Plan, and Exhibit A (the Scope of Work).

#### **Pre-Award Costs**

The parties do not anticipate that pre-award costs will be incurred as part of this Agreement and Scope of Work. However, the parties may amend this Agreement to reflect specific requirements related to pre-award costs in accordance with Section VIII of this Agreement, and reference the appropriate HUD’s Community Planning and Development notice concerning pre-application costs.

## B. National Objectives

All activities funded with CDBG-DR funds must meet the criteria for one of the CDBG program's National Objectives. Activities funded by this Agreement must benefit low-and-moderate-income persons; aid in the prevention or elimination of slum or blight; or meet community development needs having a particular urgency. The criteria for meeting these national objectives are found in 24 C.F.R. § 570.208, as amended by 81 Fed. Reg. 83254 (Nov. 21, 2016) (made applicable to the funds provided by this Agreement through 82 Fed. Reg. 5591 (Jan. 18, 2017)). This Agreement together with the Action Plan outlines the ways that the program activities funded by this Grant shall accomplish the national objectives, including that the construction of affordable multifamily housing will increase the housing stock for those Most Impacted and Distressed counties impacted by Hurricane Matthew. The Subrecipient shall ensure that the Designated Projects (as defined in the Scope of Work) meet applicable CDBG-DR national objectives and that Developers (as defined in the Scope of Work) complete the applicable forms to document compliance with the national objectives.

## C. Levels of Accomplishment – Performance Goals and Timelines

The Subrecipient shall complete the activities required under this Agreement in accordance with the timeframes and performance goals as stated in the Scope of Work and in compliance with the Section V of this Agreement. Notwithstanding the foregoing, the activities shall include the new construction of two multifamily housing rental developments to be completed (or placed in service) no later than December 31, 2022. Each new construction project shall be considered a separate activity (Activity #1 for chosen Developer #1 and Activity #2 for chosen Developer #2).

## D. Staffing:

Subrecipient agrees to provide and allocate NCHFA personnel that will be assigned to the performance and monitoring of the activities made pursuant to this Agreement. The Subrecipient shall supervise and direct the completion of all activities under this Agreement with such NCHFA personnel. Subrecipient shall submit a list of personnel dedicated to the performance and monitoring of this Agreement and the Scope of Work within two weeks of the final date of execution of this Agreement by both parties.

## **IV. PERFORMANCE MONITORING & REPORTING**

### A. Monitoring

Grantee shall monitor the performance of the Subrecipient as necessary and in accordance with regulations on Subrecipient Monitoring and Management, 2 C.F.R. §§ 200.330–200.332, to ensure Subrecipient compliance with all of the requirements of this Agreement, including the timeframes and performance goals associated with the activities specified in the Scope of Work. NCORR's protocol for monitoring Subrecipient compliance is derived from Chapter 6 of HUD's *Community Planning and Development Monitoring Guidebook*, which may be accessed at [https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/cpd/6509.2](https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/6509.2). When NCORR develops its monitoring manual, NCORR shall provide that monitoring manual to

NCHFA, and the parties shall incorporate that document as part of this Agreement by way of amendment pursuant to VIII.

Substandard performance as determined by NCORR will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a time period specified by NCORR after being notified by NCORR, NCORR may impose additional conditions on the Subrecipient and its use of CDBG-DR funds consistent with 2 C.F.R. § 200.207, suspend or terminate this Agreement, or initiate other remedies for noncompliance as appropriate and permitted under 2 C.F.R. § 200.338.

#### B. Reporting

The Subrecipient shall report regular performance metrics to Grantee that are necessary to comply with NCORR's and HUD's CDBG-DR reporting requirements. Subrecipient may use its own reporting system so long as the required metrics and data for CDBG-DR reporting are captured by Subrecipient. Grantee will provide reporting templates and schedules to the Subrecipient if requested by Subrecipient. Grantee will provide a complete list of required data and metrics that must be included in the reports upon execution of this Agreement, which may be amended from time to time pursuant to Section VIII. NCORR at its discretion, may conduct technical assistance and monitoring of the Subrecipient on topics relating to the CDBG-DR program.

#### C. Nonperformance standard

If at the end of the two (2) years the program activity has not begun or has not accomplished the performance objectives set forth by Grantee, Grantee may, at its option, terminate this Agreement and recapture funds allocated. No contract extensions may be granted by Grantee unless Subrecipient and/or developer obtaining funding pursuant to this Agreement can document circumstances beyond its control that prevented start of the activity. Grantee will review the documentation and Grantee reserves the right to make a decision based on the reasons stated and prevailing circumstances.

### **V. PERIOD OF PERFORMANCE AND TERM**

The Subrecipient hereby acknowledges that this Agreement is subject to the execution of a grant agreement between the State of North Carolina, NCORR, and HUD (the "Federal Grant Agreement") and the availability of the allocated CDBG-DR funds. The Subrecipient also acknowledges and agrees that any suspension, cancellation, or termination of the CDBG-DR allocation(s) or Grant Funds by HUD will result in the immediate suspension, cancellation, or termination of this Agreement, upon NCORR's notice.

#### A. Effective Date

This Agreement shall become effective and the parties shall become bound by all provisions applicable to them pursuant to this Agreement on the date in which the Agreement has been fully executed and delivered (the "Effective Date").

## B. Term

The term of this Agreement (the “Term”) commences on the Effective Date and expires on the later of: (i) December 31, 2022; (ii) the date as of which the parties agree in writing that all grant closeout requirements have been satisfied or, where there are no closeout requirements are applicable to this Agreement, the date as of which the parties agree in writing that no grant closeout requirements are applicable hereto; or (iii) such later date as the parties may agree to in a signed document. This Agreement and its terms and conditions shall remain in effect during any period the Subrecipient has control over CDBG-DR funds provided through this Agreement, including program income as defined in this Agreement, 24 CFR 570.489(e), to the extent that the notice 81 Fed. Reg. 83254 (Nov. 21, 2016) waives or further defines program income at paragraph A.17, section VI.

## C. Reimbursement Period

The Subrecipient shall commit 100% of non-administrative grant funds and provide documentation to NCORR of the commitments no later than July 31, 2022, and all funds must be expended by the Subrecipient by December 31, 2022.

The burden is on the Subrecipient to request any extensions under the Agreement if the Subrecipient anticipates that the project funds will not be committed by the date by which funds must be committed or expended. Any requests for extensions must be made in writing, addressed to NCORR, explaining why an extension is needed and proposing the requested new date. NCORR must receive this request at least 60 days before December 31, 2022. Within the sole discretion of NCORR, NCORR may or may not approve the extension, based on project performance and other contributing factors. NCORR is not responsible for notifying the Subrecipient of any approaching deadlines.

## VI. BUDGET

### A. Budget Table

The Subrecipient shall complete all activities subject to this Agreement and Scope of Work (Exhibit A) in accordance with the Budget Table below.

	Allocation
Administrative Costs	\$ 0
Planning & Capacity Costs	\$ 0
<b>Total Admin/Planning</b>	<b>\$ 0</b>
Housing Programs	\$ 0
Multi Family Rental Program	\$ 18,204,256



Subrecipient-Controlled Funds	\$	
NCORR-Implemented Funds	\$	-
Total Hurricane Matthew CDBG-DR Funds	\$	\$18,204,256

NCORR may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion, and if applicable, in the form and content prescribed by NCORR. Any amendments to the budget must be approved in writing and signed by NCORR.

B. Program Income, Refunds, Reversion of Unexpended Funds, and Reduction of the Grant based on Qualified Made less than Budgeted Cost

1. Program Income. The Subrecipient shall report all program income—as defined in 81 Fed. Reg. 83254 (Nov. 21, 2016) (paragraph A.17 of section VI)—generated by activities carried out with CDBG-DR funds made available under this Agreement. All Program Income generated by activities carried out with CDBG-DR Funds must be reported to NCORR, and NCORR will determine on a case by case basis whether such Program Income may be retained by Subrecipient. If NCORR approves in writing the Subrecipient's retention of Program Income, the use of program income by the Subrecipient shall comply with the requirements set forth at 81 Fed. Reg. 83254 (Nov. 21, 2016) (including, paragraph A.17 of section VI of that notice). By way of further limitations, during the term of this Agreement, the Subrecipient may use such income only for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program income balances on hand. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the Grantee. All unexpended program income shall revert to the Grantee upon termination of this contract.

2. Refunds. The Subrecipient shall repay to NCORR or its designee any compensation it has received that exceeds the payment to which it is entitled herein, including any interest earned on funds reimbursed pursuant to the Agreement.

3. Unexpended Funds. Any unexpended Grant monies shall revert to NCORR or its designee upon termination of the Agreement. If the Subrecipient has any CDBG-DR funds on hand or accounts receivable attributable to the use of CDBG-DR funds at the time of termination, the Subrecipient shall transfer such funds and accounts receivable to NCORR or its designee.

4. Reduction of the Grant made less than projected budget amounts. NCORR may reduce the Grant amount if the Subrecipient expects that actual expenses will be less than budgeted. A copy of the budget amendment will be kept by NCORR.

5. Reimbursement for Improper Expenditures. In the sole discretion of NCORR, NCORR may recapture from the Subrecipient any amount of Grant assistance improperly expended, either deliberately or non-deliberately, by any person or entity. Additionally, a contract for administrative services should include a clause holding the administering organization responsible for reimbursement to the Subrecipient for any improperly expended grant funds, due to the actions or omissions of the administering organization that had to be returned to NCORR.

6. Use of Real Property. Any real property under the Subrecipient's control that is acquired or improved in whole or in part with CDBG-DR funds in excess of \$25,000 must be used to meet one of the national objectives in 24 C.F.R. § 570.208 until at least five years after expiration of this Agreement. For any real property which is not used to meet one of the national objectives of CDBG-DR, the Subrecipient shall pay to NCORR or its designee an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. No payment is required if the property no longer meets one of the national objectives after five years following the expiration of this Agreement. The regulations concerning any change in the use or planned use of real property acquired with CDBG-DR funds, found in 24 C.F.R. § 570.505, apply to this Agreement.

## **VII. PAYMENT**

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed the amount as stated in the Recitals and the Scope of Work (Exhibit A).

NCORR has structured its CDBG-DR program strictly as a reimbursement program, wherein NCHFA and the developers must first expend the funds before NCORR may reimburse NCHFA (and, indirectly, the developers) with CDBG-DR funds. NCORR shall pay to the Subrecipient CDBG-DR funds available under this Agreement based upon information submitted by the Subrecipient for allowable costs permitted under this Agreement and consistent with the approved budget.

NCORR will provide NCHFA with a more detailed payment protocol and procedure ("NCORR Procedures for Reimbursement") regarding request for payments. That protocol, which will be provided by NCORR via electronic mail and written U.S. postal mail, will specify: (i) how the reimbursement requests may be made; (ii) the documentation, forms, and templates required; (iii) time and effort reporting requirements and guidelines for NCHFA's personnel, if applicable; and (iv) how NCHFA may request training and consultation from NCORR regarding these procedures and expenditures. All requests for payment and reimbursement must be accompanied by documentation from the Subrecipient demonstrating that all procurements for which payment is requested have been made in accordance with this Agreement. If the protocol and procedures are not available upon first draw request, Subrecipient may still request reimbursement so long as the following documentation is included: invoices, inspection reports, wage compliance reports, and other necessary documentation as requested by Grantee.



## **VIII. AMENDMENT AND TERMINATION**

### **A. Amendments**

NCORR and the Subrecipient 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 NCORR or Subrecipient from their obligations under this Agreement. Amendments will generally be required when any of the following are anticipated: i) revision to the scope or objectives of the Program and Scope of Work, including purpose or beneficiaries; ii) need to extend the availability of Grant Funds; iii) revision that would result in the need for additional funding; and iv) expenditures on items for which applicable cost principles require prior approval (see 24 C.F.R. § 570.200(h) for pre-award/pre-agreement costs).

NCORR may, in its discretion, amend this Agreement to conform with Federal, State or local governmental guidelines, policies and available funding amounts, or for other reasons. If such 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 NCORR and the Subrecipient.

### **B. Suspension or Termination**

1. Termination for Convenience. NCORR may terminate this Agreement, in whole or in part, for convenience, with 30 days written notice to NCHFA. If NCORR terminates the Agreement pursuant to this section, NCHFA will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of NCHFA covered by this Agreement, less payments of compensation previously made, provided that if less than sixty percent (60%) of the services covered by this Agreement have been performed upon the effective date of such termination, NCHFA shall be reimbursed (in addition to the above payments) for that portion of actual out-of-pocket expenses (not otherwise reimbursed under this Agreement) incurred by NCHFA during the effective period of the Agreement which are directly attributable to the incomplete portion of the services covered by this Agreement. In the case that this Termination for Convenience is exercised by NCORR, NCORR will, at its discretion and to the greatest extent feasible, allow NCHFA to retain or be reimbursed for costs reasonably incurred prior to termination, that were not made in anticipation of termination and cannot be canceled. Notwithstanding anything herein to the contrary, it is understood between the parties that the Grantee will continue to provide to Subrecipient all funds under this Agreement once they are under a written commitment to developer/borrowers, provided that said costs and reimbursement for such costs meet provisions of this Agreement, 2 C.F.R. Part 200, Subpart E, Cost Principles, and any other applicable State or Federal statutes, regulations, or requirements.

2. Termination in the Event of Default. NCORR may suspend, reduce, or terminate their obligations under this Agreement, in whole or in part, upon 30 days' notice, whenever they determine that the Subrecipient has failed to comply with any term, condition, requirement, or provision of this Agreement. Subrecipient 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:

(a) Default in Performance. The default by the Subrecipient or a subsequent Recipient in the observance or performance of any of the terms, conditions or covenants of this Agreement.

(b) Misrepresentation. If any representation or warranty made by the Subrecipient in connection with the Grant or any information, certificate, statement or report heretofore or hereafter made shall be untrue or misleading in any material respect at the time made.

(c) Abandonment of the Project. If Subrecipient or all developers subject to this Agreement abandon or otherwise cease to continue to make reasonable progress towards completion of the program, activities or projects as outlined in the Scope of Work.

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

3. Additional Remedies. If Subrecipient defaults, NCORR shall have the power and authority, consistent with statutory authorities: (a) 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 hereunder; (b) to compel specific performance of any of Subrecipient's obligations under this Agreement; (c) to obtain return of all Grant Funds, including equipment if applicable; and (d) to seek damages from any appropriate person or entity. NCORR shall be under no obligation to complete the activities funded by this Agreement.

4. Nonwaiver. No delay, forbearance, waiver, or omission by NCORR 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.

## **IX. OTHER REQUIREMENTS TO COMPLY WITH FEDERAL STATUTES, REGULATIONS AND THE TERMS AND CONDITIONS OF THE FEDERAL AWARD**

The CDBG-DR funds available to the Subrecipient through this Agreement constitute a subaward of NCORR's federal award under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R., Part 200. This Agreement includes terms and conditions of NCORR's Federal award that are imposed on NCORR and the Subrecipient, and the Subrecipient agrees to carry out its obligations in compliance with all of the obligations described in this Agreement.

### **A. General Compliance**

The Subrecipient shall comply with all applicable provisions of the Housing and Community Development Act of 1974, as amended, and the regulations at 24 C.F.R., Part 570, as modified by the Federal Register notices that govern the use of CDBG-DR funds available under this Agreement. These Federal Register notices include, but are not limited to, 81 Fed. Reg. 83254 (Nov. 21, 2016), 82 Fed. Reg. 5591 (Jan. 18, 2017), 82 Fed. Reg. 36812 (Aug. 7, 2017). The Subrecipient shall also comply with all other applicable federal, state and local laws, regulations, and policies that govern the use of the CDBG-DR funds in complying with its obligations under this Agreement, regardless of whether CDBG-DR funds are made available to the Subrecipient on an advance or reimbursement basis.

Notwithstanding the foregoing, (1) the Subrecipient does not assume the designated responsibilities of Grantee's decision-making authority for environmental review described in 24 CFR part 58 and (2) the Subrecipient does not assume any of the Grantee's responsibilities for initiating the review process under the provisions of 24 CFR Part 52.

### **B. Duplication of Benefits**

The Subrecipient 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 (42 U.S.C. § 5155). In particular, the Subrecipient may not use funds provided by this Agreement to carry out the same activities that were funded by another source, including other federal or state sources or private insurance. The Subrecipient must repay any assistance later received for the same purpose as those awarded or provided by this Agreement.

### **C. Drug-Free Workplace**

The Subrecipient must comply with drug-free workplace requirements in Subpart B of 2 C.F.R., Part 2429, which adopts the government wide implementation (2 C.F.R., Part 182) of sections

5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. §§ 701 – 707).

#### D. Insurance and Bonding

To the extent feasible and in compliance with applicable State law and Federal law (2 CFR 200.325 and 200.310), the Subrecipient shall ensure developers, contractors and borrowers carry sufficient insurance coverage and bonding to protect assets acquired with the use of CDBG-DR funds to protect from loss due to theft, fraud, and/or undue physical damage.

#### E. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

The Subrecipient shall comply with the applicable provisions in 2 C.F.R., Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, except as modified by 81 Fed. Reg. 83254 (Nov. 21, 2016).

1. Financial & Program Management. Because Grantee is subject to 24 CFR 570.489(d), Grantee's own fiscal and administrative requirements are incorporated within this Agreement, and Subrecipient will account for all CDBG-DR funds under this Agreement in accordance therewith. Grantee will submit to NCHFA within two weeks of execution of this Agreement the NCORR standards of procedure regarding the financial and program management, including monitoring requirements, of CDBG-DR funds ("Financial and Program Management Protocol"). Any amendment to the NCORR Financial and Program Management Protocol for fiscal and administrative procedures is automatically incorporated into this Agreement, and notice of the amendment or changes to that Protocol will be provided to NCHFA within one week of the amendment.

2. Cost Principles. Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with 2 C.F.R., Part 200, Subpart E. All items of cost listed in Subpart E that require prior federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in Subpart E and are otherwise eligible under this agreement, except for the following:

- (i) Depreciation methods for fixed assets shall not be changed without the approval of the Federal cognizant agency;
- (ii) Fines penalties, damages, and other settlements are unallowable costs to the CDBG program;
- (iii) Costs 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 C.F.R. § 200.445);
- (iv) Organization costs (2 C.F.R. § 200.455); and
- (v) Pre-Award Costs, if applicable and as limited by this Agreement.

#### F. Documentation and Record Keeping.

1. Records to be Maintained. The Subrecipient shall establish and maintain records sufficient to enable NCORR to (1) determine whether the Subrecipient has complied with this Agreement, applicable federal statutes and regulations, and the terms and conditions of NCORR's Federal award and (2) satisfy recordkeeping requirements applicable to NCORR. These records include the records described in Section III, Scope of Service. Because Grantee is subject to 24 CFR 570.490, the Subrecipient must maintain records that would allow Grantee to satisfy the requirements of 24 CFR 570.490 and 81 Fed. Reg. 83254 (Nov. 21, 2016), which waives certain aspects of 24 CFR 570.490. NCHFA shall maintain records that the Grantee is required to maintain as jointly agreed upon by HUD and the Grantee, maintains records sufficient to enable HUD to make the determinations described at 24 CFR 570.493, and maintain any records necessary for fair housing and equal opportunity purposes.

2. Access to Records. The Subrecipient shall provide any duly authorized representative of NCORR, the North Carolina State Auditor, the North Carolina Office of State Budget and Management, HUD, and the Comptroller General, the Inspector General and other authorized parties at all reasonable times access to and the right to inspect, copy, monitor, and examine all of the books, papers, records, and other documents relating to the grant during the period of performance of this Agreement and for five years following the completion of all closeout procedures. All original files shall be maintained at the Subrecipient's offices for access purposes. Because Grantee is subject to 24 CFR 570.489(m) and 24 CFR 570.490 (except for waivers as stated in 81 Fed. Reg. 83254 (Nov. 21, 2016)), Subrecipient must provide sufficient access to records in compliance with 2 CFR 200.331(a)(5) and 24 CFR 570.490(c). As required by 2 CFR 200.331(a)(5), the Subrecipient shall permit the Grantee and auditors to have access to the Subrecipient's records and financial statements as necessary for the Grantee to meet its audit requirements under the Federal award.

3. Record Retention and Transmission of Records. Prior to closeout of this Agreement, the Subrecipient must transmit to NCORR records sufficient for NCORR to demonstrate that all costs under this Agreement met the requirements of the federal award. Notwithstanding the term of this agreement, all records the Subrecipient is required to maintain, including supporting documentation, shall be retained for the greater of at least five years from closeout of the Federal award to the Grantee, or the period required by other applicable laws and regulations as described in 24 CFR 570.487 and 24 CFR 570.488.

4. Client Data and Other Sensitive Information. The Subrecipient is required to maintain data demonstrating client and tenant eligibility for activities provided under this Agreement. Such data may include, but not be limited to, client and tenant name, address, income level or other basis for determining eligibility, and description of activities provided. The Subrecipient must take reasonable measures to safeguard protected personally identifiable information and other information HUD or the Grantee designates as sensitive, or Subrecipient considers sensitive consistent with applicable Federal, State, local, and tribal laws regarding privacy and obligations of confidentiality. If there is a public records request where a person or organization is requesting records that include the



above sensitive information and is regarding the use of CDBG-DR funds or the activities undertaken pursuant to this Agreement, NCHFA and NCORR shall notify the other party (NCORR or NCHFA) and coordinate with the other party to prepare the production, if applicable, of those records to the requesting party.

#### G. Closeout

The Subrecipient shall closeout its use of the CDBG-DR funds and its obligations under this Agreement by complying with the closeout procedures in 2 C.F.R. § 200.343. 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, and accounts receivable to NCORR), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income. The rules governing program income acquired after closeout are modified in the Federal Register notice that applies to this Agreement. *See* 81 Fed. Reg. 83254, sec. VI, no. 17 (Nov. 21, 2016).

#### H. Audits, Inspections, and Monitoring

1. Single Audit. The Subrecipient must be audited as required by 2 C.F.R., Part 200, Subpart F when it is expected that the Subrecipient's federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in § 200.501 Audit requirements.

2. Inspections and Monitoring. The Subrecipient shall permit NCORR and auditors to have access to the Subrecipient's records and financial statements as necessary the Grantee to meet the requirements of 2 C.F.R., Part 200. The Subrecipient must submit to monitoring of its activities by NCORR as necessary to ensure that the award is used for authorized purposes, in compliance with federal statutes, regulations, and the terms and conditions of this agreement. This review 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 state agencies as required by 2 C.F.R. § 200.521.

3. Corrective Actions. NCORR may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits. The Grantee may require the Subrecipient to take timely and appropriate action on all deficiencies pertaining to the federal award provided to the Subrecipient detected through audits, on-site reviews, and other means. In response to audit deficiencies or other findings of noncompliance with this agreement, NCORR may impose additional conditions on the use of the CDBG-DR funds to ensure future compliance, or provide training and technical assistance as needed to correct noncompliance.

#### I. Procurement and Contractor Oversight

1. Procurement Policies: NCHFA will not procure goods or services with the Grant Funds provided under this Agreement, however, in the event NCHFA were to make such procurements, NCHFA will follow the NCORR Procurement Manual and abide by 24 C.F.R. 570.489(g) where applicable. Generally, except as stated otherwise in the NCORR Procurement Manual, NCORR opted to follow State policies when procuring goods and services for administration of the program. Where NCORR or State policies are silent, NCHFA shall follow the applicable federal requirements and procurement standards as stated in 2 C.F.R. §200.318 - §200.326. NCHFA shall also follow the additional alternative requirements as stated in 81 Fed. Reg. 83254 (Nov. 21, 2016) where Federal procurement rules apply.

NCHFA will follow the NCORR Procurement Manual for procurement of goods and services for the administration of the program and activities pursuant to this Agreement, which may include, but is not limited to: (i) temporary staffing; (ii) legal services; (iii) inspection services; (iv) environmental services; and (v) other activities necessary to complete the work and administration of this program. NCHFA is free to use their existing NCHFA personnel to administer the program.

The NCORR Procurement Manual will be submitted to NCHFA within a week of the execution of this Agreement, and will also be made available upon request and posted on the ReBuild NC website.

2. Contractor Oversight: The Subrecipient shall impose the Subrecipient's obligations under this Agreement on its contractors and borrowers, specifically or by reference, so that such obligations under will binding upon each of its contractors and borrowers. The Subrecipient must comply with CDBG regulations regarding debarred or suspended entities, including 2 C.F.R. § 200, Subpart F. The Subrecipient is responsible to ensure that it has checked the federal System for Awards Management (SAM) (<https://www.sam.gov/portal/SAM>) and the State Debarred Vendors Listing (<http://www.pandc.nc.gov/actions.asp>) to verify that contractors, borrowers, developers and their subcontractors, or subsequent recipients have not been suspended or debarred from doing business with the Federal or State government. The Subrecipient shall maintain oversight of all activities under this Agreement and shall ensure that for any procured contract or agreement, its contractors and borrowers perform according to the terms and conditions of the procured contracts or agreements, and the terms and conditions of this agreement.

## J. Property Standards

The Subrecipient and its borrowers and/or contractors shall abide by the terms as set forth in notice 81 Fed. Reg. 83254 (Nov. 21, 2016) regarding property standards, which include the following:

1. Green Building. Pursuant to 81 Fed. Reg. 83254, sec. VI, no. 28(a) – (d) (Nov. 21, 2016), all new construction of residential buildings and all replacement of substantially

damaged residential buildings funded under this Agreement must meet an industry-recognized standard that has achieved certification under at least one of the following programs: (i) ENERGY STAR (Certified Homes or Multifamily High-Rise), (ii) Enterprise Green Communities; (iii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development), (iv) ICC–700 National Green Building Standard, (v) EPA Indoor AirPlus (ENERGY STAR a prerequisite), or (vi) any other equivalent comprehensive green building program acceptable to HUD.

2. Rehabilitation. For rehabilitation work funded by this Agreement, Subrecipients must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist, available at [https:// www.hudexchange.info/resource/3684/ guidance-on-the-cpd-green-buildingchecklist/](https://www.hudexchange.info/resource/3684/guidance-on-the-cpd-green-buildingchecklist/). When older or obsolete products are replaced as part of the rehabilitation work, rehabilitation is required to use ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products and appliances.

#### K. Federal Funding Accountability and Transparency Act (FFATA)

The Subrecipient shall comply with the requirements of 2 C.F.R., Part 25 Universal Identifier and System for Award Management (SAM). The Subrecipient must have an active registration in SAM in accordance with 2 C.F.R., Part 25, Appendix A, and must have a Data Universal Numbering System (DUNS) number. The Subrecipient must also comply with provisions of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, and 2 C.F.R., Part 170 Reporting Subaward and Executive Compensation Information. Subrecipient must ensure that

#### L. Relocation, Real Property, Acquisition, and One-for-One Housing Replacement

The Subrecipient shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), 42 U.S.C. §§ 4601 – 4655, 49 C.F.R., part 24, 24 C.F.R., part 42, and 24 C.F.R. § 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 U.S.C. § 5181, which provides that “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 81 Fed. Reg. 83254, sec. VI, no. 19 (Nov. 21, 2016).

#### M. Nondiscrimination.

1. 24 C.F.R., Part 6. The Subrecipient will comply with 24 C.F.R., Part 6, which implements the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. § 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination

under any program or activity funded in whole or in part with Federal financial assistance. The Subrecipient will adhere to the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 – 6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) (Section 504). Section 109 of the HCDA makes these requirements applicable to programs or activities funded in whole or in part with CDBG-DR funds. Thus, the Subrecipient shall comply with regulations of 24 C.F.R., Part 8, which implement Section 504 for HUD programs, and the regulations of 24 C.F.R., Part 146, which implement the Age Discrimination Act for HUD programs.

2. Architectural Barriers Act and the Americans with Disabilities Act. The Subrecipient shall ensure that its activities funded under this Agreement are consistent with requirements of Architectural Barriers Act and the Americans with Disabilities Act.

The Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151 – 4156) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of “residential structure” as defined in 24 C.F.R. § 40.2 or the definition of “building” as defined in 41 C.F.R. § 101-19.602(a) is subject to the requirements of the Architectural Barriers Act and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 C.F.R., Part 40 for residential structures, and appendix A to 41 C.F.R., Part 101-19, subpart 101-19.6, for general type buildings).

The Americans with Disabilities Act (42 U.S.C. § 12131; 47 U.S.C. §§ 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

Additionally, for projects funded under this Agreement, the Subrecipient must comply with the North Carolina Building Code’s standards for constructing or altering building and facilities to make them accessible to and useable by the physically handicapped.

3. State and Local Nondiscrimination Provisions. Subrecipient agrees to comply with state nondiscrimination provisions found at N.C. Gen. Stat. §§ 143-422.1 – 422.3 (Equal Employment Practices); and § 41A-1–10 (NC Fair Housing Act).

4. Title VI of the Civil Rights Act of 1964 (24 CFR part 1).

- (i) *General Compliance:* The Subrecipient shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352), as amended and 24 C.F.R. §§ 570.601 and 570.602. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this agreement. The specific nondiscrimination provisions at 24 C.F.R. § 1.4 apply to the use of these funds. The Subrecipient shall not intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by Title VI of the Civil Rights Act of 1964 or 24 C.F.R., Part 1, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under 24 C.F.R., Part 1. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of 24 C.F.R., Part 1, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.
- (ii) *Assurances and Real Property Covenants:* As a condition to the approval of this Agreement and the extension of any Federal financial assistance, the Subrecipient assures that the program or activities described in this Agreement will be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this Part 1.

If the Federal financial assistance under this Agreement is to provide or is in the form of personal property or real property or interest therein or structures thereon, the Subrecipient's assurance herein shall obligate the Subrecipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the Subrecipient for the period during which Federal financial assistance is extended pursuant to the contract or application. This assurance gives the State and the United States a right to seek judicial enforcement of the assurance and the requirements on real property.

In the case of real property, structures or improvements thereon, or interests therein, acquired with Federal financial assistance under this Agreement or acquired with CDBG-DR funds and provided to the Subrecipient under this Agreement, the instrument effecting any disposition by the Subrecipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

If the Subrecipient receives real property interests or funds or for the acquisition of real property interests under this Agreement, to the extent that rights to space on,



over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of Part 1 shall extend to any facility located wholly or in part in such space.

#### 5. Affirmative Action.

- (i) *Approved Plan.* The Subrecipient agrees that it shall carry out, pursuant to NCORR's specifications, an Affirmative Action Program in compliance with the President's Executive Order 11246 of September 24, 1966, as amended, and implementing regulations at 41 C.F.R., Part 60. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the release of funds under this Agreement.
- (ii) *Women- and Minority-Owned Businesses (W/MBE).* Where applicable, consistent with N.C. Gen. Stat. § 143-128.2, Subrecipient and its borrowers must include a 10% goal for participation by minority- and women-owned businesses in total value of work for every building project funded by this Agreement, and shall make good-faith effort to recruit minority- and women-owned businesses for the work. The Subrecipient shall take the affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible when the Subrecipient procures property or services under this agreement.
- (iii) *Notifications.* Where applicable, the Subrecipient and its borrowers 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 the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (iv) *Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement.* The Subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

#### N. Labor and Employment

The Subrecipient shall comply with the labor standards in 04 N.C.A.C. 19L.1006, which incorporate the requirements of the Davis-Bacon Act (40 U.S.C. § 276a), the Contract Work Hours and Safety Standards Act (40 U.S.C. § 327 through 333), the Fair Labor Standards Act (29 U.S.C. § 201 *et seq.*), and federal anti-kickback laws (18 U.S.C. § 874 and 40 U.S.C. § 276a). The Davis Bacon Act requirements (prevailing wages) apply to residential construction where the property has eight or more units, or to nonresidential construction projects that exceed \$2,000. The Subrecipient shall maintain documentation that demonstrates compliance with applicable hour and wage requirements. Such documentation shall be made available to NCORR for review upon request.

#### O. Section 3 of the Housing and Urban Development Act Notice.

Section 3 of the Housing and Urban Development Act of 1968 (P.L. 90-448). Pursuant to 24 CFR § 135.38, the Subrecipient agrees to the following:

- (i) Any work to be performed under this Agreement 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). 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.
- (ii) The parties to this Agreement agree to comply with HUD’S regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediments that would prevent them from complying with the Part 135 regulations.
- (iii) Execution of this Agreement is contingent upon the acceptance and approval of a Section 3 Utilization Plan by NCORR and HUD guidelines. NCORR will include the NCORR guidelines on its website at [www.rebuild.nc.gov](http://www.rebuild.nc.gov) and provide those guidelines upon execution of this Agreement, and shall be incorporated herein with this Agreement.
- (iv) Noncompliance with HUD’s regulations in 24 CFR Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- (v) The Subrecipient shall include, or cause it’s borrowers receiving CDBG-D R funds under this Agreement to include, the “Section 3 clause” at 24 CFR 135.38 in every “Section 3 covered contract” (as defined in 24 CFR 135.5).

#### P. Conduct

1. Hatch Act. The Subrecipient shall comply with the Hatch Act, 5 U.S.C. §§ 1501 – 1508, ensuring that no funds provided, nor personnel employed under this Agreement, shall be in any way engaged in the conduct of political activities in violation of Chapter 15 of Title V of the United States Code.

2. Conflict of Interest. In the procurement of supplies, equipment, construction, and services pursuant to this agreement, the Subrecipient shall comply with the conflict of interest provisions of NCORR’s procurement policies, including but not limited to the NCORR Procurement Manual and N.C. Gen. Stat. § 14-234. In all cases not governed by NCORR’s procurement policies, the Subrecipient shall comply with the conflict of interest

provisions in 24 CFR 570.489(h). Certain limited exceptions to the conflict of interest rules listed in 24 C.F.R. § 570.489 may be granted in writing by Department of Housing and Urban Development (“HUD”) upon written request and the provision of information specified in 24 C.F.R. § 570.489(h)(4).

3. Lobbying Certification. The Subrecipient hereby certifies that:

- (i) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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;
- (ii) If any funds other than Federal 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, it will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions;
- (iii) It shall require that the language of paragraph (a) through (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and
- (iv) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is required by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Q. Religious Activities.

The Subrecipient shall comply with all applicable regulations set forth under 24 C.F.R. § 5.109 concerning the participation of faith-based organizations in HUD programs, including subsection (j) regarding the acquisition, construction, and rehabilitation of structures that may involve religious purposes. Funds provided under this agreement shall not be utilized for inherently religious activities, such as worship, religious instruction, or proselytization.

R. Environmental Conditions and Review

1. Recipients of CDBG-DR funds are required to comply with the requirements of the National Environmental Policy Act of 1969 (NEPA) found at 24 C.F.R., Part 58 and

complete an Environmental Review Record (ERR). NCORR may also require additional environmental reviews for projects that receive these funds. No funds may be obligated or expended by Subrecipient until the environment review procedures outlined in Part 58 have been complied with.

2. The Subrecipient must comply with and be responsible for the limitation in 24 CFR 58.22 even though the Subrecipient is not delegated the requirement under Section 104(g) of the HCD Act for environmental review, decision making, and action (see 24 CFR part 58) and is not delegated the Grantee's responsibilities for initiating the review process under the provisions of 24 CFR Part 52. 24 CFR 58.22 imposes limitations on activities pending clearance, and specifically limits commitments of HUD funds or non-HUD funds by any participant in the development process before completion of the environmental review. A violation of this requirement may result in prohibition on the use of Federal funds for the activity.

3. The Subrecipient shall also comply with the following environmental compliance requirements, insofar as they apply to the performance of this Agreement: (1) The Clean Air Act (42 U.S.C. § 7401 et seq.) as amended, particularly sections 176(c) and (d) (42 U.S.C. §§ 7506(c) and (d)); (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 C.F.R., Parts 6, 51, and 93); and (3) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq., as amended, including the requirements specified in Sections 114 and 308 of the Federal Water Pollution Control Act, as amended, and all regulations and guidelines issued thereunder.

4. Flood Hazards and Flood Insurance. The Subrecipient 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 U.S.C. § 4012a. Additionally, the Subrecipient shall comply with Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. § 5154a), which includes a prohibition on the provision 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 purchase requirements. More information about these requirements is available in the Federal Register notices governing the CDBG-DR award.

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

- (a) 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 24 C.F.R. §§ 55.1(c) and 55 Subpart B, except as provided therein. For projects

allowed under 24 C.F.R. §§ 55.1(c) and 55 Subpart B, the eight-step process shall be followed pursuant to 24 C.F.R. § 55.20.

- (b) If the project occurs in a 100-year floodplain (A Zone), the 8-Step Process is required as provided for in 24 C.F.R. § 55.20 or as reduced to the 5-Step Process pursuant to 24 C.F.R. § 55.12(a), unless an exception is applicable pursuant to 24 C.F.R. § 55.12(b).
- (c) 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 C.F.R. § 55.20 or as reduced to the 5-Step Process pursuant to 24 C.F.R. § 55.12(a), unless an exception is applicable pursuant to 24 C.F.R. § 55.12(b).

Additional elevation standards, as set forth in 81 Fed. Reg. 83254, sec. VI, no. 28(e) (Nov. 21, 2016), apply to projects funded by this Agreement. All structures, defined at 44 C.F.R. § 59.1, designed principally for residential use and located in the 1 percent annual (or 100-year) floodplain that receive assistance for new construction, repair of substantial damage, or substantial improvement, as defined at 24 C.F.R. § 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 C.F.R. § 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 C.F.R. § 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.

5. Historic Preservation. To the extent that environmental review is carried out by the Subrecipient through funds provided under this Agreement, the Subrecipient shall follow the state historic preservation programmatic agreement, which can be found on the RebuildNC website at <https://www.rebuild.nc.gov/reporting-and-compliance/environmental-review>. The programmatic agreement implements the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended, codified in title 54 of the United States Code, and the procedures set forth in 36 C.F.R., Part 800, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list.

#### S. Lead-Based Paint.

The Subrecipient agrees that any construction or rehabilitation of residential housing with assistance provided under this Agreement shall be subject to HUD's Lead-Based Paint Regulations



at 24 C.F.R. § 570.608, 24 C.F.R. § 35, Subpart B, and Chapter 130A of the North Carolina General Statutes, Article 19A (Lead-Based Paint Hazard Management Program). Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

## **X. OTHER REQUIREMENTS IMPOSED BY GRANTEE**

### **A. Eligibility Restrictions for Certain Resident Aliens.**

The Subrecipient shall comply with regulations set forth under the 24 C.F.R. § 570.613 regarding the eligibility requirements of certain resident aliens where applicable.

### **B. Housing Counseling.**

To the extent that any housing counseling is carried out by the Subrecipient through funds provided under this Agreement, such activities must be carried out in accordance with 24 C.F.R. § 5.111.

### **C. No Funding to Private Utilities.**

Pursuant to 81 Fed. Reg. 83254, sec. VI, no. 46 (Nov. 21, 2016), no funds provided under this Agreement may be used to assist a privately owned utility for any purpose.

### **D. Broadband Infrastructure in Housing.**

Pursuant to 81 Fed. Reg. 83254, sec. VI, no. 28(f) (Nov. 21, 2016), if funds under Agreement are used for any new construction or substantial rehabilitation (as defined by 24 C.F.R. § 5.100) of a building with more than four rental units, those structures must include installation of broadband infrastructure, except where the Subrecipient documents that: (a) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible; (b) the cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or (c) the structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

## **XI. MISCELLANEOUS PROVISIONS**

### **A. Deobligation of Unused Funds.**

When project costs are less than the grant award amount, excess award funds shall be deobligated back to NCORR. Administration and project delivery funds shall be deobligated in proportion to the amount of program funds being deobligated to NCORR.

B. Complaints and Grievance procedures for Compliance Plans.

Subrecipient must address complaints to NCORR and/or the Rebuild NC website (<https://www.rebuild.nc.gov/>) pursuant to the terms of the Action Plan. Citizen complaints can be filed to NCORR and/or the Rebuild NC website (<https://www.rebuild.nc.gov/>).

C. Benefit.

This Agreement is made and entered into for the sole protection and benefit of NCORR and the Subrecipient, and their respective successors and assigns, subject always to the provisions of the Agreement. Except as herein specifically provided otherwise, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to NCORR and the Subrecipient and their respective successors and assigns. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person, other than as expressly provided in this Agreement. It is the express intention of the Parties and their respective successors and assigns that any such person or entity, other than the State, NCORR, and the Subrecipient, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

D. Further Assurance.

In connection with and after the disbursement of Grant funds under this Agreement, upon the reasonable request of NCORR, the Subrecipient shall execute, acknowledge and deliver or cause to be delivered all such further documents and assurances, and comply with any other requests as may be reasonably required by NCORR or otherwise appropriate to carry out and effectuate the Grant as contemplated by this Agreement. NCORR may require the delivery of documents in hard copy or electronic media.

E. Independent Status of the Parties.

The Parties are independent entities and neither this Agreement nor any provision of it or any of the documents or records that may or may not be made part of this Agreement shall be deemed to create a partnership or joint venture between the Parties. Further, neither the Agreement nor any of the documents or records that may or may not be made part of this Agreement shall in any way be interpreted or construed as making the Subrecipient, its agents or employees, agents or representatives of NCORR. Given that Subrecipient is independent and apart from Grantee, and therefore acting as an "independent contractor," the Subrecipient is and shall be wholly responsible for the work to be performed and for the supervision of its employees. In no event shall NCORR be liable for debts or claims accruing or arising against the Subrecipient. The Subrecipient represents that it has, or shall secure at its own expense, all personnel required in the performance

of this Agreement. Such employees shall not be employees of, nor have any individual contractual relationship with NCORR.

F. Indemnity.

The Subrecipient agrees, to the fullest extent permitted by law, to release, defend, protect, indemnify and hold harmless NCORR and its employees and agents against claims, losses, liabilities, damages, and costs, including reasonable attorney fees, which result from or arise out of: (a) damages or injuries to persons or property caused by the negligent acts or omissions of Subrecipient, its employees, or agents in use or management of the Grant; and (b) for any claims, whether brought in contract, tort, or otherwise, arising out of this Agreement, if related to the Subrecipient's actions or omissions. The obligations under this paragraph are independent of all other rights or obligations set forth herein. This indemnity shall survive the disbursement of the Grant funds, as well as any termination of this Agreement.

G. Binding Effect, Contract Not Assignable by Subrecipient.

The terms hereof shall be binding upon and inure to the benefit of the successors, assigns, and personal representatives of the parties hereto; provided, however, that the Subrecipient may not assign this Agreement or any of its rights, interests, duties or obligations hereunder or any Grant proceeds or other moneys to be advanced hereunder in whole or in part unless expressly allowed under this Agreement, without the prior written consent of NCORR, which may be withheld for any reason and that any such assignment (whether voluntary or by operation of law) without said consent shall be void.

H. Successor in Interest and Assignment by Grantee.

This Agreement shall be transferred from NCORR to any successor in interest designated by the US Department of Housing and Urban Development as Grantee for the CDBG-DR program for the State of North Carolina immediately upon that designation.

I. Savings Clause.

Invalidation of any one or more of the provisions of this Agreement, or portion thereof, shall in no way affect any of the other provisions hereof and portions thereof which shall remain in full force and effect.

J. Additional Remedies.

Except as otherwise specifically set forth herein, the rights and remedies provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available in connection with this Agreement.

K. Survival.

Where any representations, warranties, covenants, indemnities or other provisions contained in this Agreement by its context or otherwise, evidences the intent of the parties that such provisions should survive the termination of this Agreement or any Closing, the provisions shall survive any termination or Closing.

L. Incorporation of Exhibits.

All exhibits attached to this Agreement are fully incorporated as if set forth herein.

M. Entire Agreement.

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. All recitals, exhibits, schedules and other attachments hereto are incorporated herein by reference. Documents that incorporated by reference to this Agreement include the following, which may be amended from time to time:

- (1) The NCORR Procurement Manual;
- (2) NCORR Procedures for Reimbursement;
- (3) Financial and Program Management Protocol;
- (4) List of NCHFA personnel; and
- (5) Grantee Action Plan (January 2019, Hurricane Matthew)
- (6) State of North Carolina Documentation Sources for HUD Environmental Reviews
- (7) Environmental Assessment Determinations and Compliance Findings for HUD-assisted Projects 24 CFR Part 58

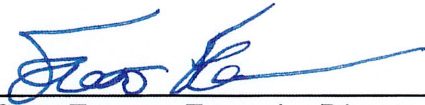
N. Headings.

The headings of the various sections of this Agreement have been inserted for convenience only and shall not modify, define, limit or expand the express provisions of this Agreement.

IN WITNESS WHEREOF, the Subrecipient and NCORR have executed this Agreement in two originals as of the Effective Date, with one original being retained by each Party.

[Signature page follows.]

AGREED:



\_\_\_\_\_  
Scott Farmer, Executive Director  
NC Housing Finance Agency

7/25/19  
\_\_\_\_\_  
Date



\_\_\_\_\_  
Laura Hogshead, Chief Operating Officer  
NC Office of Recovery and Resiliency

7/25/19  
\_\_\_\_\_  
Date



## **Exhibit A**

### **Scope of Work**

#### **A. Summary:**

This Scope of Work outlines the program requirements, structure of the program, and estimated timeline. It is the intent of the parties to afford NCHFA flexibility in further structuring this program, so long as the program structure is within the scope and requirements of the CDBG-DR rules and follows relevant laws and HUD guidance. This Scope of Work may be amended from time to time by mutual consent of the parties, or at NCORR's convenience to allow conformance with the applicable HUD laws and guidance.

#### **B. Designated Projects and Work Agreements with Developers:**

The Subrecipient shall only perform the activities detailed in this Scope of Work with respect to the projects identified in writing by NCORR (a "Designated Project" or the "Designated Projects"). With the previous written approval of NCORR, Designated Projects shall be carried out in accordance with a written agreement (each such agreement, a "Work Agreement") between the Subrecipient and the governmental or non-profit/for-profit entity (each such entity, a "Developer") that shall perform or cause to be performed all of the design construction and related work required to complete the Designated Project.

The Work Agreement will specify and incorporate the above Grant Funds disbursement parameters and requirements, requirements made pursuant to this agreement, as well as any other parameter requested by NCORR, for the disbursement of Grant Funds to the Subrecipient and from the Subrecipient to Developers, to assure compliance with all applicable Federal, State and local statutes and regulations. The Work Agreement will also specify that CDBG-DR funds or Grant Funds to Developers will be disbursed to the Subrecipient first. The Subrecipient shall not commingle these funds with any other funds and will assure that NCORR has access to monitor the bank account where CDBG-DR and other funds applicable to this agreement are held.

After the Subrecipient's receipt of CDBG-DR funds or Grant funds for reimbursement payments intended for the Developers, the Subrecipient shall have no more than seventy-two (72) hours to disburse such funds to Developers.

As a condition of funding pursuant to this Agreement, each Developer awarded CDBG-DR funds must submit to NCHFA and NCORR the proposed scope, budget, and schedule for all or part of the work contemplated with respect to the Designated Project. NCHFA will submit such information together with the Developer's application submitted to NCHFA as part of its 2019 LIHTC application (each "LIHTC Application"). If the LIHTC Application does not include and clearly specify proposed funding for administrative costs and/or program delivery costs and/or design and planning costs and/or constructions costs, to the extent that such costs are considered applicable, then those costs must be included in a separate document and submitted to NCORR with the Work Agreement. In addition, NCHFA shall submit to NCORR any documentation requested by NCORR regarding the selection of the Developers that will receive CDBG-DR funds

pursuant to this Agreement, including scoring criteria, before entering into the Work Agreement. Any and all cost analysis performed by NCHFA and the Developers must also be submitted to NCORR.

The parties agree that the designation of the Designated Projects and NCORR's notice to proceed shall be made in accordance with NCORR guidelines (hereinafter the "Policy"), HUD guidelines and regulations, and other applicable state and federal laws and regulations.

NCHFA shall submit the Work Agreement, NCHFA conditional commitment letter, and all applicable loan documents to NCORR in draft form prior to the anticipated execution of these documents. The Work Agreements shall incorporate the above dispositions and any other clauses or dispositions required by NCORR, including, but not limited to, the termination of the Work Agreement for convenience by NCORR.

NCHFA is authorized to include the following provision, or a similar provision, regarding a termination for convenience clause in its closing and loan documents:

The Loan shall close on or before \_\_\_\_\_, 20\_\_, if the funding shall be made *pari passu*, and \_\_\_\_\_, 20\_\_, if the funding is to be provided at completion (in either case, the "Closing Date").

If a *pari passu* Loan has not closed on or before the Closing Date, and construction has not started by the Construction Start Date stated in Paragraph 11 above, this Award Agreement may be terminated by Grantee, in its sole discretion, by written notice to Applicant, in which event Grantee shall no longer have any obligation to make the Loan, and Applicant shall have no further rights under this Award Agreement.

If a funding at completion Loan has not closed on or before the Closing Date, this Award Agreement may be terminated by Grantee, in its sole discretion, by written notice to Applicant, in which event Grantee shall no longer have any obligation to make the Loan, and Applicant shall have no further rights under this Award Agreement.

All final executed copies of the Work Agreement, NCHFA conditional commitment letter, and applicable loan documents between NCHFA and the Developer must be submitted to NCORR within one week of execution.

In addition, upon completion and execution with the Developer, NCHFA shall make available to NCORR all records and documentation that may include, but is not limited to, the following information:

1. Rent schedule
2. Affordability requirements
3. Lease requirements
4. Tenant selection criteria
5. Compliance with applicable state and local tenant-landlord laws
6. Lead-Based paint requirements
7. Fair housing and equal opportunity provisions
8. Fund disbursement
9. Record keeping and reporting provisions
10. Enforcement provisions

## 11. Procedures used to secure rent increases

### **D. NCORR Approval:**

NCORR may only approve the proposed Designated Project to move forward with construction upon HUD's issuance of the Authority to Use Grant Funds for a Designated Project, and, notwithstanding anything to the contrary contained in the Agreement, unilaterally adjust the Grant Funds amount accordingly.

### **E. Project Phase and Environmental Review:**

Notwithstanding Section IX, Paragraph R of this Agreement (Environmental Conditions and Review), it is the intent of the parties, to the extent allowed to by law, that NCHFA perform the following activities as part of the environmental review related processes and documentation in relation to the Designated Projects on behalf of NCORR: (i) in accordance with 24 CFR 58.22, ensure no funds are committed, or no choice limiting activity is taken, with regards to a Designated Project prior to NCORR's receipt of an Authority to Use Grant Funds from HUD, (ii) determine, in consultation with NCORR, what level of environmental review is required for a Designated Project, (iii) in collaboration with the developer for a Designated Project collect, review and analyze supporting documentation (in accordance with the "State of North Carolina Documentation Sources for HUD Environmental Reviews" attached here to as **Exhibit B**) necessary to complete the "Environmental Assessment Determinations and Compliance Findings for HUD-assisted Projects 24 CFR Part 58" attached hereto as **Exhibit C** (the "Statutory Checklist"), (iv) submit to NCORR the Statutory Checklist and all supporting documentation in order for NCORR to determine if the Designated Project will or will not result in a significant impact to the quality of the human environment and (v) enter into an agreement with the borrower/developer of a Designated Project to ensure any mitigation measures identified by NCORR are required to be implemented as a condition of receiving CDBG-DR funds under this Agreement.

The parties agree that NCORR shall have sole responsibility for ensuring the adequacy of the level of documentation necessary to satisfy a finding of no significant impact under 24 CFR Part 58. NCORR will post or publish a RROF and FONSI notice and will submit the Request for Release of Funds form to HUD. NCORR will notify NCHFA upon receipt of Authority to Use Grant Funds from HUD.

NCHFA agrees to provide information in its possession requested from NCORR in a timely manner so as to prevent any delays in securing an Authority to Use Grant Funds for potential multifamily project activities. The Subrecipient agrees to require the Developer to comply with and timely implement any and all mitigation measures and other requirements set forth in any environmental reviews, environmental assessments, or environmental impact statements performed or to be performed in connection with, or records of decision or any similar documents, issues or to be issued in connection with, the CDBG-DR Program, as may be applicable to this Agreement. It is the Subrecipient's responsibility to ensure that it has complete copies of all such documents.

Following the completion of Environmental Review and the Notice to Proceed, NCORR will notify the Subrecipient in writing (“Clearance Letter”) that NCORR intends to commit funds for the implementation of a Designated Project.

If construction/implementation is authorized by NCORR in the Clearance Letter, the Subrecipient must ensure that the Developer complies with any and all conditions or required mitigation set forth in any environmental review documents and shall, on NCORR’s behalf, monitor to ensure proper documentation of compliance measures, which may include permit requirements, or other applicable requirements of federal and State environmental laws, including worker health and safety requirements.

NCHFA shall ensure to include provisions in the documentation and agreements between NCHFA and the Developer to require that Developer comply and cooperate with NCORR and the NCHFA in meeting all the terms and conditions under this Agreement, and NCORR’s approval thereof, as a condition of receiving CDBG-DR funds pursuant to this Agreement.

The Subrecipient will monitor the performance of Developers against goals and performance standards stated in the LIHTC application and those conditions as set forth in this Agreement. While NCORR may consider additional costs, as they arise, Developer must be prepared to perform (and document to NCORR) the Designated Project’s compliance with the applicable CDBG-DR program requirements and those requirements set forth in this Agreement, even if the funds provided hereunder do not cover 100% of the costs of performance.

In the event NCORR’s funds do not cover 100% of the agreed upon budget, Developer must make a showing of committed supplemental funding.

#### **F. Program Income:**

It is the intent of the parties that NCHFA will provide CDBG-DR funds to Developers by way of loan financing (possibly, at NCHFA’s option, a forgivable loan that is structured similarly to the LIHTC program requirements). Program income is defined to include payments of principal and interest on loans made using CDBG-DR funds. Therefore, any interest earned (in the event of default of a forgivable loan) will be considered program income, and subject to Section VI(B)(1) of this Agreement. Program income funds cannot be commingled with any other funding source, including any other disaster recovery related fund. Any and all program income obtained by NCHFA after approval by NCORR must first be used by NCHFA to administer the Program pursuant to, and in accordance with, the terms of this Agreement.

#### **G. Program Overview:**

NCORR is committing a maximum of **\$18,204,256** for the new construction of two multi-family rental developments. It is the intent of the parties that these funds will only be used for the two projects chosen by NCHFA as part of their competitive awarding process. At this time, NCORR is not committing any additional funds for staff or overhead expenses needed by NCHFA to monitor the program. Upon information and belief, the application, allocation, and monitoring fees that are paid by the Developers out-of-pocket to the Subrecipient shall cover these costs; those fees

may not be reimbursed using CDBG-DR funds. Consistent with the requirements of this Agreement, however, NCHFA may be reimbursed for any Eligible Costs incurred in carrying out program activities within the budget amounts allotted and if there are funds remaining after the CDBG-DR funds for the Designated Projects are expended.

The activities under this program will be managed by NCHFA. If technical assistance is needed, NCHFA may contact NCORR regarding monitoring, compliance, or any other questions it may have. NCORR may provide NCHFA with technical assistance.

The program activities include providing loans to qualified project developers, the funds of which shall only be used for construction and/or rehabilitation of low-income housing properties in North Carolina counties declared as major disaster areas under FEMA-4285-DR-NC (Hurricane Matthew), with priority to the Most Impacted and Distressed counties of Cumberland, Robeson, Edgecombe, Bladen, Columbus and Wayne. With respect to each activity, NCHFA and its contractor(s) shall implement the activity in accordance with this Agreement and applicable Federal and State laws.

In order to implement the foregoing, Subrecipient will carry out the activities described in the Grantee Action Plan, which the Action Plan may be modified to say the following:

NCHFA shall perform activities as part of the Multi-Family Rental Housing Program of NCORR and NCORR's HUD-approved Action Plan for Hurricane Matthew recovery. The Multi-Family Rental Housing Program has been designed to provide financing to repair majorly to severely damaged rental housing in the most impacted communities, and to create new multi-family housing affordable to LMI renters in the most impacted communities. Eligible activities under this program include: Rehabilitation, Acquisitions; New Residential Construction; Relocation, Demolition and Clearance; Non-Federal Match; Construction of Housing. Rental housing must be located in a damaged-declared county (Hurricane Matthew) eligible to receive HUD funds. Priority must be given to projects located in the most impacted counties. Priority will also be given to projects that leverage other resources and produce new housing that is sustainable, integrated with neighborhood services and jobs, and provides deeper affordability. Projects must be selected through a competitive application process. For the purposes of this program, and to the extent HUD deems it so, the competitive bidding process and applicants for the 2019 allocation of Federal and State tax credits, priorities of which are included in the 2019 Qualified Allocation Plan, is a competitive application process sufficient to meet that aspect of the program. Eligible applicants are developers that build rental housing reserved for households earning less than 80% AMI. Projects must be multi-family new construction or substantial rehabilitation, consisting of more than 8 units. The Maximum Award that may be allotted for this program is up to \$150,000 per unit for reconstruction or new construction.

#### **H. Work Performed by Subrecipient:**

1. RFP development and procurement, where applicable: RFP and other solicitation documents must be approved by NCORR prior to publication. All procurement by Subrecipient must be done in accordance with the approved NCORR Procurement Manual.
2. Program outreach activities, including drafting of any required marketing materials.
3. Application review, including verification of design criteria compliance with green building standards or comparable industry standard (as further stated in Section IX paragraph J(1) of this agreement).
4. Threshold and ranking review of LIHTC projects submitted for consideration of this program.
5. Underwriting of applications (for all funding sources).
6. Preliminary funding determinations.
7. Award agreement drafting including the Work Agreement, loan agreements and developer contracts.
8. Relocation plan development related to the Uniform Relocation Act requirements as necessary.
9. Review and approval of closing documents.
10. Insurance review.
11. System of record.
12. Monthly certifications for payments review and approval.
13. Submit request for funds to NCORR.
14. Pre-audit of monthly certifications for payment when and if requested by NCORR.
15. Disbursement of monthly certifications for payment.
16. Enforcement of provisions in developer agreements for instances of non-performance or insufficient performance. Any such instances should be reported to NCORR along with suggested corrective action.
17. Accounting and reporting of uses of CDBG-DR funds, including but not limited to: information on national objectives met, beneficiary demographics, and project completion status.

18. Reporting and data management, including delivery of ad hoc reports when requested by NCORR or its designee(s).
19. Final cost certification review.
20. Final underwriting.
21. Project/grant closeout.
22. Affordability period monitoring.
23. Management of agreed upon program budget included herein. Any variances or expected variance which would cause significant impacts on the program must be reported to NCORR alone with recommended corrective action.
24. Ensure adequate staffing levels to support program activities funded in whole or in part by CDBG-DR.
25. Human resource management for all staff dedicated in whole or in part to programs funded by CDBG-DR.
26. Translation of program documents, if required to be publicly available by law and by request.
27. Provide NCORR with any required documentation and information as stated in this MOU and other documents required pursuant to law. Non-essential information (when requested), such as marketing materials and bulletins, shall also be provided to NCORR.
28. Other duties as requested by NCORR.

**I. Work overseen by Subrecipient:**

1. Award agreement drafting.
2. Execution of legal documents.
3. Compliance monitoring of Davis-Bacon, which includes weekly certified payroll and on-site payroll interviews.
4. Environmental review coordination, which includes (i) collecting the proper documentation, (ii) initial review of reports and assessments, (iii) providing recommendations to NCORR, (iv) management of public commenting requirements, and (v) and other requirements as stated in Section E of the Scope of Work. (To be clear, NCORR shall make all final determinations in the environmental review process as Responsible Entity, but will rely on NCHFA to coordinate the environmental review process.)

5. Environmental monitoring, which includes monitoring of Developer's compliance with mitigation measures are required by NCORR, and to the extent that NCORR provides additional environmental review and on-site requirements and reporting pursuant to this Agreement, NCHFA shall inform Developer of those requirements and ensure recordkeeping of those forms designated by NCORR.
6. Relocation plan monitoring, if applicable.
7. Monthly inspection of construction work.
8. Approval of monthly site and hard construction payments.
9. Approval of construction retainage payment.
10. Certification of completion of construction.

**J. Program Description:**

This Program will use CDBG-DR Funds to provide whole funding, gap funding and/or other financing to augment other public and private financing methods for the construction of affordable rental housing units under the Low-Income Housing Tax Credit program (LIHTC), under Section 42 of the Internal Revenue Code, administered by NCHFA. However, consideration will be made for those projects that are unable to obtain any other private or public funding source.

Under a typical LIHTC program, a developer secures a construction and/or permanent loan from a private lender or public agency, gap financing from a public or private source, and equity from private investors in exchange for LIHTCs. To the extent allowed by law, CDBG-DR funding will be replacing what would be NCHFA's tax credit allocation, so that the program would be structured similarly to the LIHTC program. The intent of the parties, for the purposes of this Agreement, is to fund two (2) new construction multifamily rental developments to be located each in a county deemed most impacted by Hurricane Matthew (Cumberland, Robeson, Edgecombe, Bladen, Columbus, and Wayne). CDBG-DR funding will be provided by NCORR to NCHFA, which will in turn provide a loan to the developers. NCHFA may choose to implement a forgiveness structure with the loan financing. However, NCHFA should consider charging an interest rate if program income is necessary for administration of this program if the monitoring and compliance fees cannot be reimbursed with CDBG-DR funds. By making affordable housing feasible, this program will speed the new construction/rehabilitation of qualified projects that are otherwise shovel-ready in disaster-affected areas of the State, and increase the stock of affordable housing in those areas.

**K. Affordability Period:**

Although the CDBG-DR program requirements for Hurricane Matthew does not have a mandated affordability period—that is, the required term or covenant that restricts the developer from renting



units to those persons who are not low- to moderate-income persons—for multifamily housing developed using CDBG-DR funds, it is the intent of the parties that an affordability period for the projects funded under this agreement be maintained at, or be similar to, the affordability periods of the LIHTC program or a minimum of 30 years. NCHFA must seek approval from NCORR if changes need to be made to the affordability period of any project funded in whole or in part pursuant to this agreement and by CDBG-DR funds. Approval for amending the affordability period may be granted based on consideration of several factors, including: (i) the amount of CDBG-DR funds that are being used in relation to other financing funding the project; (ii) whether the development provides housing to the lowest-income persons; (iii) whether the developer is unable to obtain other private financing because the project would be deemed unprofitable since the units must remain affordable; and (iv) whether there were unforeseen circumstances beyond the control of the developer.

#### **L. National Objective:**

Activities under this program meet the national objective of benefitting low- and moderate-income persons through housing (LMH). The national objective will be achieved at the point when a project is occupied by at least 51% low- or moderate-income households.

#### **M. Program Criteria:**

This CDBG-DR program will create rental housing stock to address rental housing needs at affordable rents. Also, this program will participate in eligible activities such as housing construction, acquisition, Green Building Standards and supplement the existing LIHTC program (refer to the NCHFA 2019 Qualified Allocation Plan or QAP, available at <https://www.nchfa.com/rental-housing-partners/rental-developers/qualified-allocation-plan/2019-qualified-allocation-plan-qap>).

#### **N. Program Timeline:**

The parties will attempt to mobilize, launch, and operate the program as follows:

- On or about July 2019, the parties will:
  - execute this Agreement
  - issue preliminary determinations of CDBG-DR Funds letters to project developers identified to qualify for this program
- Between July 2019 and September 2019:
  - NCHFA will begin the procurement process for goods and services to administer the program, if necessary
  - final review, analysis, underwriting and allocation of CDBG-DR Funds
- Upon completion of projects (NCHFA and NCORR assume that all construction projects will be completed by August 2024):
  - compliance monitoring of the affordability period, which shall be 30 years or another affordability period set by NCHFA and approved by NCORR

As each project is identified and confirmed by NCHFA as ready to proceed to development, each project shall follow the following timelines. NCHFA and NCORR assume that some adjustments may occur due to variance in project underwriting, unforeseen environmental review findings, financing changes or shifting market conditions, and potential acts of God with respect to construction disruptions.

MONTH 1 – 3	<ol style="list-style-type: none"> <li>1. Environmental review and site assessment (Phase I) begins</li> <li>2. Drafting and approval of CDBG-DR Award Agreements and other legal documents by selected attorneys and consultants</li> </ol>
MONTH 3 – 5	<ol style="list-style-type: none"> <li>1. Closing with project developers</li> <li>2. Disbursement of CDBG-DR funds start on a reimbursement basis (monthly requests for reimbursement)</li> </ol>
MONTH 5 – 32	<ol style="list-style-type: none"> <li>1. Project construction begins</li> <li>2. Disbursement of CDBG-DR funds continue during construction (20 to 32 months), and compliance reviews are completed for all Davis-Bacon applicable work</li> <li>3. Within 18-20 months of construction the tenant selection process for each project begins</li> <li>4. Lease up process following construction completion</li> <li>5. If applicable, Interim financing will convert to Permanent Loan, up to a year after construction ends.</li> <li>6. Final Cost Certifications and Project Closeout</li> </ol>