

SUB-RECIPIENT AGREEMENT
BETWEEN CITY OF MINOT (GRANTEE) AND Project BEE
(SUB-RECIPIENT) FOR CDBG-NATIONAL DISASTER RESILIENCE PROGRAM

THIS AGREEMENT is entered into this 23rd day of November, 2021 by and between the City of Minot (the "Grantee") and Project BEE, a North Dakota non-profit corporation, (the "Sub-recipient") to develop and construct seventeen (17) affordable rental units for low and moderate income (LMI) households on a portion of the Property copy of which deed with legal description attached as Exhibit G.

RECITALS

WHEREAS, Pursuant to Public Law PL 113-2 (the Appropriations Act) and the Federal Register Notice dated June 7, 2016, at Federal Register / Vol. 81, No. 109, the U.S. Department of Housing and Urban Development ("HUD") awarded \$74.3 in Community Development Block Grant National Disaster Resilience (CDBG-NDR) funds to the City of Minot (Grantee) for activities authorized under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) and described in the Grantee's National Disaster Resilience Competition Action Plan (the "Action Plan"); and

WHEREAS, the Grantee wishes to engage the Sub-recipient to assist the Grantee in their efforts to increase the community's resilience by providing newly constructed affordable rental units in a resilient area of the community for rent to LMI households. The Grantee will provide up to \$2,117,966 of the Grantee's Federal NDR award, pursuant to this Sub-recipient Agreement (the "Agreement"); and

WHEREAS, the CDBG-NDR funds made available for use by the Sub-recipient 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 this Agreement; and

WHEREAS, the Sub-recipient has legal authority to enter into this Agreement, and the Sub-recipient's governing body has duly adopted this Sub-recipient Agreement authorizing the Sub-recipient to enter this Agreement with the Grantee, and by signing this Agreement, to assure the Grantee that it will comply with all the requirements of the sub-award described herein; and

WHEREAS, no funds will be made available under this Agreement until commitment prerequisites identified in the Agreement have been met;

NOW, THEREFORE, the parties, for and in consideration of the sum to be paid by the Grantee, in the manner and at the time provided in this Agreement, and for other covenants and conditions contained in this Agreement, do hereby agree as follows:

I. GENERAL AWARD INFORMATION

This Agreement is financed through a grant provided to the Grantee by the United States Department of Housing and Urban Development (HUD) pursuant to authority of Title 1 of the Housing and Community Development Act of 1974 as amended (42 USC 5301 et. seq.) Public Law PL 113-2 (the Disaster Recovery

Appropriations Act 2013) and the Federal Register Notice dated June 7, 2016, Community Development Block Grant National Disaster Resilience (CDBG-NDR).

The sub-award from the Grantee to the Sub-recipient, which is described below, is for the purpose of carrying out a portion of the Federal award described in section I of this Agreement and creates a Federal assistance relationship with the Sub-recipient.

Federal Award Identification Number: B-13-MS-38-0002

CFDA Number: 14.272 CDBG-NDR

Federal Award Date: September 21, 2016

Federal award project description:

The Grantee received approximately \$74.3 million from the National Disaster Resilience Competition (NDRC) to fund three NDRC projects: reduce flood risk and improve water management, build affordable resilient housing and neighborhoods, and foster economic resilience and diversification. This Agreement supports one of the critical unmet recovery needs in Minot, developing affordable housing to address the needs of vulnerable residents by increasing the supply and resilience of long term affordable housing that fosters livability and the long-term viability and sustainability of Minot neighborhoods. The housing funded through this NDR loan will be kept affordable for tenants with incomes at or below 80 percent of the area median income for Ward County, ND for a period of at least twenty (20) years after the completion of the project construction commencing upon the date that the Sub-recipient receives the certificate of occupancy issued by the City is complete (hereinafter "Affordability Period").

The original award for this project was made through a sub-recipient agreement between the Grantee and Lutheran Social Services Housing, Inc. In January, 2021, the sub-recipient's parent corporation, Lutheran Social Services North Dakota became insolvent and ceased operations. Prior to the date of insolvency, Lutheran Social Services Housing, Inc. had met the agreement obligations of acquiring the needed real property (Property previously described in this Agreement), undertaking necessary site improvements to the Property, and preparing the project design and construction specifications. The Grantee working in conjunction with the Court appointed receiver for Lutheran Social Services North Dakota, has been able to secure title to the Property and ownership of the construction specifications and design for the project. Sub-recipient, through this Agreement, has agreed to assume the role and responsibility for completing the project as originally conceived with Lutheran Social Services Housing, Inc. and the Grantee has through this Agreement agreed to convey title to the Property to Sub-recipient as well as the project design and construction specifications, so long as the Sub-recipient fulfills all of its obligations under this Agreement.

Contract Manager:

John Zakian, NDR Program Director and Chief Resilience Officer will serve as the Grantee's primary contract manager for this project. Mr. Zakian may designate a day-to-day contract manager for the project. All reports, notices, and other communications required under or related to this Agreement shall be directed to the individuals identified below. Mr. Zakian will be the final approver of project draw requests, notices to terminate the contract as provided herein, and will approve all changes except those that increase the total contract amount which must be approved by Mr. Zakian and by the City Council.

City of Minot NDR Program Manager:

Mr. John Zakian, Director and Chief Resilience Officer

Address: PO Box 5006, Minot, ND 58703

Phone: 701-420-4528

Email: john.zakian@minotnd.org

Sub-recipient:

Elizabeth Larson, Executive Director

Project BEE

400 E. Central Avenue, Suite 302

Minot, ND 58701

701-838-1812

Liz@projectbeend.org

A. List of Agreement Exhibits.

The Statement of Work will be contained in Exhibit C referenced in the table below. As Exhibits are completed, they will be incorporated into this Agreement and will be initialed and dated by the respective contract managers. The following Exhibits will be attached hereto and incorporated by reference into this Agreement:

Document	Description
Exhibit A	Project Application
Exhibit B	Project Description / Scope of Services
Exhibit C	Project Budget
Exhibit D	Current FMR
Exhibit E	2021 LMI Limits
Exhibit F	Affirmative Marketing Plan
Exhibit G	Legal Description and Deed

In accordance with 24 C.F.R. Part 570 (now in effect and as may be amended) and the terms and conditions of this Agreement, the Sub-recipient agrees to construct seventeen (17) new rental units for rental to LMI residents. The Sub-recipient will develop 17 affordable rental units as rental units on one site as described in Lutheran Social Services Housing, Inc. application to the Grantee and its attached scope of work (project description) and further described in the project plans and specifications to be developed, project budget, and project schedule (Exhibit C) to be submitted by Sub-recipient prior to payment of any funds by the Grantee. Sub-recipient shall furnish all labor, materials, services, supervision, equipment, licenses and permits necessary to complete the project.

B. Contract Amount

The Grantee shall provide funding assistance to Sub-recipient for this project in an amount not to exceed \$2,117,966 from CDBG-NDR funds to construct 17 rental units, which Sub-recipient ensure will be occupied by LMI eligible tenants for the Affordability Period. This amount constitutes the Grantee's participation and obligation in the performance and completion of work to be performed under this Agreement. Funds will be disbursed for actual eligible costs incurred in connection with this Agreement. Sub-recipient understands that this Agreement is funded by federal funds. In the unlikely event the federal funds supporting this Agreement become unavailable or are reduced, the Grantee may terminate or amend this Agreement. The amount of CDBG-NDR assistance within the maximum amount set forth in this Agreement cannot exceed the allowable per unit cost for new LMI rental housing construction set for 2021 by HUD for North Dakota.

C. Method of Payment

The Sub-recipient will submit to the Grantee requests for payment for activities funded under this Agreement that are consistent with an approved budget. Each Request for Payment will be broken down into requested draws against the budget line items shown in Exhibit C.

Payment shall be made on an eligible cost reimbursement basis only and in such amounts and increments approved by the Grantee's NDR Program Manager and the Grantee's Finance Department for various phases of work following submission by Sub-recipient of a proper request for payment, including applicable, accurate and complete supporting documentation that substantiates the payment request in accordance with the scope of work and the project budget. Pay requests shall be submitted using a Request for Payment form to be provided by the Grantee. The final request for payment must be approved by the City Council before the final payment for the project can be made and will be subject to a final inspection of the project prior to the City Council meeting.

The Grantee shall pay to the Sub-recipient CDBG-NDR funds available under this Agreement based upon information submitted by the Sub-recipient for allowable costs permitted under this Agreement and consistent with the approved budget in Exhibit C. Payments will be made for eligible expenses actually incurred by the Sub-recipient, not to exceed actual cash requirements. Payment will be made upon submission by the Sub-recipient of a properly executed Request for Payment, together with all supporting invoices, bills, time sheets, and other documents necessary to justify the payment.

It is acknowledged that no indirect cost rate shall be used for this project and for disbursement of any of the funds pursuant to this Agreement.

D. Fiscal Responsibility

It is understood and agreed that the total amount of the funds used under this Agreement shall be used for the Project outlined in this Agreement. Should the Project not be completed, be partially completed, or completed at a lower cost than the original budget, the amount reimbursed to Sub-recipient shall be only for the amount spent by Sub-recipient for eligible project expenses. For any funds received under this Agreement for which expenditure is disallowed subsequent to payment to Sub-recipient, Sub-recipient shall reimburse those funds back to the Grantee.

Sub-recipient acknowledges that the funds being provided by the Grantee for the Project are received by the Grantee pursuant to the Housing and Community Development Act of 1974 as amended and that expenditures of these funds shall be in accordance with the provisions of the Act and all pertinent regulations issued by agencies of the federal government. Sub-recipient agrees to comply fully with all federal, state, and local laws applicable to its operation whether or not expressly referred to in this Agreement.

All activities funded with CDBG-NDR funds must meet the criteria for one of the CDBG program's National Objectives. The Sub-recipient certifies that the activities carried out under this Agreement shall meet the following national objective and satisfy the following criteria: LMI Housing.

Sub-recipient must satisfy the requirements under 24 CFR 570.208(a)(3). Sub-recipient shall maintain documentation to demonstrate compliance. Documentation shall be maintained to demonstrate all units are occupied by LMI households.

E. Period of Performance

The period of performance for all activities assisted and funded by this Agreement shall commence on the contract date of 2021 and shall be completed by December 31, 2022 except for those activities required for closeout which shall be completed by February 15, 2023 and those activities required for National Objective Compliance which shall be completed at the end of the Affordability Period.

F. Performance Goals and Timelines

The Sub-recipient shall complete the activities required under this Agreement in accordance with the following timeframes and performance goals associated with each of the activities with dates to be adjusted as required through the environmental review process. If necessary, dates will automatically be adjusted based on the date of issuance by HUD of the RROF:

TASK	TIMELINE	DELIVERABLE
Development and Completion of Plans and Specification	Oct. 1- Oct. 31, 2021	Approved Plans and Specs
Procure Bids	Nov. 1- Dec. 15 2021	Bid Opening
Selection of Contractor	Dec. 15 - Dec. 31, 2021	Contract Award
Notice to Proceed	January 30, 2022	Notice to Proceed Letter
Completion of Construction	December 31, 2022	Punch List and Final Payment
Construction Project Close-out	February 15, 2023	Completed Close Out Documents
National Objective Compliance	Affordability Period	Quarterly Reports

In addition, the Sub-recipient will attend a mandatory kick-off meeting with the grantee within 28 days of the signed contract.

G. Independent Contractor

Nothing contained in this Agreement is intended to be construed in any manner as creating or establishing the relationship of employer/employee between the Parties. The Sub-recipient shall at all times remain an independent contractor, with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all unemployment compensation, FICA, retirement, life or medical insurance, and Worker's Compensation Insurance.

H. Indemnification

The Sub-recipient shall hold harmless, defend, and indemnify the Grantee from any and all claims, actions, suits, charges, and judgments whatsoever that arise out of the Sub-recipient's performance or nonperformance of the services or subject matter called for in this Agreement.

I. Contracting and Subcontractors

With any contractor or subcontractor, Sub-recipient must have a contract that complies with applicable

HUD requirements and regulations. All work or services covered under this Agreement, which is contracted by the Sub-recipient shall be subject to all provisions of this Agreement. Sub-recipient shall require any third party to complete with all lawful requirements necessary to ensure the Project is carried out in accordance with the Agreement. Sub-recipient shall not award any contract until their procurement policy has been reviewed and approved by the Grantee and subsequent project procurement activities should be reviewed prior to release of procurement advertising.

J. Debarment, Suspension, and Exclusion

Sub-recipient certifies to the best of its knowledge and belief that they are not presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from covered transactions by any federal department or agency. They have not, within a 3-year period preceding this Agreement, been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or perform a public (federal, state, or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property. They are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in this Agreement and have not been terminated for cause or default on a public transaction.

Sub-recipient further certifies that it shall immediately notify the Grantee if, at any time during the term of this Agreement, it is debarred, suspended, declared ineligible or otherwise excluded from participation, and that it shall not enter into a subcontract with a person or organization that is debarred, suspended, declared ineligible, or voluntarily excluded from participation. The Grantee may pursue available remedies in the event of such occurrence including immediate termination of this Agreement. The Subrecipient shall include without modification this Certification's language, entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion" with all contractors and sub-contractors in all covered transactions and in all solicitations for covered transactions in accordance with 45 CFR Part 76.

II. 17 UNIT MULTI-FAMILY PROJECT

The National Disaster Resilience program focuses on disaster recovery and resilience. It is important to identify the resilience goals of this project and the process used to evaluate and determine the specific resilience elements for the affordable rental units. In the aftermath of the historic 2011 flood in Minot, the Grantee has made efforts to respond to the housing needs of LMI families affected by the flood, evaluated the evolving housing challenges resulting from the flood, and the oil boom that further complicated the affordable housing challenge facing Minot. Affordable housing is frequently vulnerable during and after natural disasters and LMI residents are particularly challenged because they do not have the resources to help them recover from disasters. Because of the impact of the 2011 flood and the revised FEMA FIRM maps, there is a shortage of quality, long-term affordable housing in Minot. Long-term affordable rental units for LMI families are difficult to find in many resilient areas of the City. Providing long-term affordable rental units is essential to reducing the vulnerability of LMI families to disasters, hazards and environmental risks such as flooding.

Sub-recipient has agreed to continue and complete the Lutheran Social Services Housing, Inc. Inc. plan to construct 17 new long-term affordable rental units which Sub-recipient will make available for occupancy for LMI families and individuals outside of the new FEMA flood plains and within the Grantee's designated Resilience Area for the Affordability Period.

Investment in long-term resilience has proven to be a smart investment for communities and is essential for affordable housing assets that many vulnerable residents rely on. Resilient housing is more environmentally

sustainable, accessible, and energy efficient and investments in long term resilience can help to reduce expenses and costs helping to ensure more economically sustainable affordable housing.

III. SUB-RECIPIENT OBLIGATIONS

As a condition of receiving this sub-award, the Sub-recipient shall manage and administer the multifamily rental project, including all required project procurement, design, preparation of plans and specifications for new construction, preparation of bids for construction including green-building and accessibility, construction, inspection, and completion of the work described in this Agreement. The Sub-recipient shall complete the activities in a manner satisfactory to the Grantee and consistent with the terms of conditions of this Agreement and applicable Federal statutes and regulations.

In addition, Sub-recipient shall subdivide the Property described herein into 2 (two) parcels, one of which will be a parcel for the Family Homeless Shelter (which is funded under a separate sub-recipient agreement) and one which will be for the 17 unit LMI rent housing. Sub-recipient understands and agrees that both parcels shall be deed restricted as set forth in the two sub-recipient agreements and as required for receipt and use of the CDBG-NDR funds. The deed restriction pursuant to this Agreement shall include language approved by the City which includes the requirement that the Property and all improvements on the Property shall meet the affordability requirements for the 20 year Affordability Period set forth in this Agreement and that the property owner shall be responsible for providing the City quarterly status reports showing all units occupancy status throughout the Affordability Period. In addition, any deed relating to the Property described herein shall contain a right of reversion provision if there is any default of either sub-recipient agreement by the Sub-recipient. Sub-recipient shall cause any lien or encumbrance Sub-recipient creates with respect to any portion of the real property or improvements to the real property to be expressly subordinate to the Grantee's rights of reversion set forth in this Agreement and any deed relating to the real property associated with this Agreement.

A. Prohibited Activities

The Sub-recipient may only carry out the activities described in this Agreement. The Sub-recipient is prohibited from charging to the subaward the costs of CDBG ineligible activities, including those described at 24 CFR 570.207, and from using funds provided herein or personnel employed in the administration of activities under this Agreement for political activities, inherently religious activities, or lobbying.

B. Sub-recipient Obligations

The Sub-recipient agrees to comply with the following obligations prior to receipt of any funds:

1. The Sub-recipient must revise their proposed project submission to address clarifications needed regarding existing project debt; any debt payments; contribution of land to the project by the applicant; the Affordability Period for the project; compliance with HUD HQS requirements for the affordability period; clarify compliance with HUD accessible unit requirements for at least 10% of the units; revise financial documents as needed to address questions and inconsistencies; provide details to clarify all construction management, design, and contingency costs; provide a concept drawing to identify location of site improvements and construction utilities included in budget; provide detailed budget for services included in architect fees. It is recognized by the Grantee that as part of this Agreement the land for the project, the architectural design and construction specifications are conveyed to Sub-recipient based on completed tasks by Lutheran Social Services Housing, Inc.
2. Utilize normal and customary practices and procedures consistent with HUD's rules and regulations for the delivery of the Project and provide a level of service that is consistent with the level of service for similar programs administered by the Sub-recipient exclusive of this Agreement.

3. It is acknowledged by the Grantee that detailed building plans and specifications completed by an experienced and qualified architect will be provided to Sub-recipient upon execution of this Agreement but the Sub-recipient will secure the services of an experienced and qualified Architect licensed to conduct business in the State of North Dakota to prepare detailed building plans and specifications for the construction of affordable rental units outlined in the scope of work. The Architect will be selected through a procurement process that meets HUD requirements. The Architect will prepare a detailed project budget reflecting estimated costs for the construction and prepare a milestone schedule for the project. The project budget for construction, site improvements and construction utilities will provide the necessary details to fully flesh-out project costs and these must be adequately and correctly accounted for in project draw requests. Guidance will be provided to Sub-recipient regarding project budget requirements. Sub-recipient and their Architect will coordinate with the designated Grantee personnel during the preparation of the plans and specifications to ensure the final plans will meet HUD requirements and applicable City codes and ordinances, green building standards, and UFAS standards.
4. Sub-recipient may procure the services of a qualified construction manager and/or construction inspector to assist in the delivery of this project. Reasonable costs for these services will be included in the project budget in accordance with applicable HUD requirements and regulations.
5. Sub-recipient must have written approval for all contracts. Prior to awarding a contract using CDBG-NDR funds, Sub-recipient shall submit to the Grantee all procurement documents such as advertisements for professional services, Invitation to Bids, Request for Qualifications, cost estimates prior to advertisement, cost reasonableness analysis or other actions to procure contractors for this project. In addition, Sub-recipient shall provide a copy of the Project Plans and Specifications for new construction and the Cost Estimate prepared by Architect to the Grantee's NDR Program Manager and/or another designated representative. Sub-recipient and their Project Architect will meet with the Grantee's NDR Program Manager, other designated representatives, and Sub-recipient Project Manager to review the plans and specifications for the project and project budget.
6. The Sub-recipient shall provide the Grantee with a copy of their procurement policy and procedures prior to commencing any procurements pursuant to this Agreement.
7. The Sub-recipient shall provide the Grantee's NDR Program Manager and other designated representatives with a copy of proposed contract documents, conditions of contract, and related documents prior to executing a contract.
8. Sub-recipient must have a contract that complies with HUD regulations for all project procurements. All work or services covered by this Agreement shall be specified by written contract and subject to all provisions of this Agreement. Contracts will be reviewed by the Grantee prior to execution.
9. Sub-recipient shall adhere to the uniform administrative requirements as specified in 24 CFR 570.502.
10. Sub-recipient shall adhere to all applicable environmental regulations prior to the expenditure of any CDBG-NDR funds.
11. Sub-recipient shall comply with the requirements and standards of 2 CFR 200 et. seq. as applicable, including establishing and/or maintaining compliant accounting systems. Such systems will be subject to monitoring from time to time by the Grantee and/or by HUD.
12. Sub-recipient shall comply with the Grantee's indemnification and insurance requirements and provide insurance and evidence of insurance prior to the Kick-off Meeting.
13. Sub-recipient shall provide all notices and comply with laws, ordinances, building codes, and regulations of the Grantee as needed to perform the project activities.
14. Sub-recipient shall comply with and require all contractors and subcontractors paid with funds provided by this Agreement to comply with all applicable provisions of the Housing and Community Development Act of

1974, as amended 24 CFR Part 570 and Special Conditions for activities assisted pursuant to Title I of the Community Development Act of 1974 including Davis-Bacon.

15. Sub-recipient shall comply with Conflict of Interest provision for HUD and the Grantee and shall incorporate these provisions in all contractor and subcontractor agreements.
16. Sub-recipient shall prepare and submit to the Grantee and the project manager regular reports relating to the performance of this Agreement, in a form approved by the Grantee, on a quarterly basis.
17. Sub-recipient shall provide an Affirmative Marketing Plan to the Grantee prior to commencing rental activity.

IV. GRANTEE OBLIGATIONS

The Grantee shall disburse funds in a timely manner as described in this Agreement and will advise the Sub-recipient promptly if there are concerns about the project and work with the Sub-recipient to resolve issues of concern. The Grantee will provide reasonable technical assistance to the Sub-recipient to comply with applicable federal requirements and regulations governing the use of these federal funds. The Grantee will facilitate the preparation of the environmental review and ensure all environmental review requirements as described in 24 CFR 58 are met. The Grantee will comply with any applicable certifications that are included in the Exhibits.

V. AMENDMENTS

The Grantee or Sub-recipient may amend this Agreement provided that such amendments make specific reference to this Agreement and are executed in writing, signed by a duly authorized representative of both organizations. Such amendments shall not invalidate this Agreement nor relieve or release the Grantee or the Sub-recipient from its obligations under this Agreement. If any change orders are required, they will follow the Grantee's change order policy.

VI. PERFORMANCE MONITORING & REPORTING

A. Monitoring

The Grantee shall monitor the performance of the Sub-recipient as necessary and in accordance with regulations on Sub-recipient Monitoring and Management, 2 CFR 200.330 — 2 CFR 200.332, to ensure Sub-recipient compliance with all the requirements of this Agreement, including the timeframes and performance goals associated with the activities. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Sub-recipient within 30 days after being notified by the Grantee, the Grantee may impose additional conditions on the Sub-recipient and its use of CDBG-DR funds consistent with 2 CFR 200.207, suspend or terminate this Agreement, or initiate other remedies for noncompliance as appropriate and permitted under 2 CFR 200.338.

B. Reporting, Documentation, and Record Keeping

In accordance with federal regulations, the Grantee is responsible for ensuring the administration of the NDR program funds in accordance with all program requirements. The Sub-recipient shall maintain documentation and records as required.

C. Financial Records

Sub-recipient agrees to adhere to accounting principles and procedures, to utilize adequate internal controls and maintain necessary source documentation for all costs incurred as required in 2 CFR 200. Sub-recipient further agrees to maintain an adequate accounting system that provides for appropriate grant accounting including calculation of program income. Sub-recipient will adhere to applicable audit requirements as described and in

accordance with 2 CFR 200 et. seq. In addition, Sub recipient will provide annual audit reports or annual audited financial statements to the Grantee.

D. Budget

The Sub recipient shall complete all activities in this Agreement in accordance with the detailed budget that will be prepared by the project architect and attached in Exhibit C subject to approval by the Grantee. The budget shall identify activity delivery costs. No funds shall be paid by the Grantee pursuant to this Agreement until detailed budget is approved by the City and attached to this Agreement as Exhibit C.

E. Program Income

Program income is defined in Federal Register / Vol. 81, No. 109 / Tuesday, June 7, 2016 Notice. Sub recipient shall track all program income and provide annual documentation to the Grantee to monitor program income. Rental income from the 17 units shall not be treated as program income and will be used to support operation and maintenance of the 17 units as well as the Family Homeless Shelter (a separate CDBG-NDR project) on the same site. Prior to close-out the Grantee will make a final determination for the reuse of Program Income, that will continue to accrue until the close-out of the twenty-year affordability period for the project. Before the close of the affordability period the Grantee will monitor the project to comply with HUD's program income and asset requirements.

F. Termination

The Grantee may terminate this Agreement, in whole or in part, upon 90 days' notice, if they determine that the Sub recipient has failed to comply with the terms, conditions, requirements, and provisions of this Agreement and effort to correct these concerns have not been addressed in a reasonable amount of time. Failure to comply with this Agreement, include (but are not limited to) the following:

1. Failure to comply with the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure of the Sub recipient to fulfill in a timely and proper manner any of its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Sub recipient to the Grantee reports that are incorrect or incomplete in any material respect.

The Grantee shall promptly notify the Sub recipient, in writing, of its determination and the reasons for the termination together with the date on which the termination shall take effect and any other notifications required under 2 CFR part 200, subpart D. Upon termination, the Grantee retains the right to recover any improper expenditures from the Sub recipient and the Sub recipient shall return to the Grantee any improper expenditures no later than thirty (30) days after the date of termination. The Grantee may, at its sole discretion, allow Sub recipient to retain or be reimbursed for eligible expenditures 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 CFR Part 200, Subpart F, Cost Principles, and any other applicable state or Federal statutes, regulations, or requirements.

In addition to any other remedies provided under this Agreement, in the event this Agreement is terminated for Sub recipient's failure to comply with any term of this Agreement, including but not limited to the requirement to meet a CDBG National Objective (occupancy of 17 LMI Rental Units by LMI eligible tenants) until the expiration of the Affordability Period (20 years after completion of project construction and issuance of certificate of occupancy), the Property described herein and any improvements at issue in this Agreement shall revert to the Grantee as provided in the deed. Sub recipient agrees to immediately execute any and all documentation necessary to return

its interest in the real property and improvements to the Grantee within five (5) days upon receiving notice of termination of this Agreement.

Should the Sub-recipient default in completing any term or condition of this Agreement, the Grantee may pursue an action for specific performance of any term(s) or condition(s) of this Agreement.

If the Grantee must incur attorney's fees, costs, and expenses to enforce its rights under this Agreement, those fees, costs, and expenses shall be reimbursed to the Grantee by the Sub-recipient.

This Agreement may also be terminated in whole or in part by either the Grantee or the Sub-recipient, or based upon agreement by both the Grantee and the Sub-recipient in accordance with the requirements in 2 CFR part 200, subpart D.

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

The CDBG-NDR funds available to the Sub-recipient through this agreement constitute a subaward of the Grantee's Federal award under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200. This Agreement includes terms and conditions of the Grantee's Federal award that are imposed on the Sub-recipient, and the Sub-recipient agrees to carry out its obligations in compliance with all the obligations described in this Agreement.

The Sub-recipient shall comply with all applicable provisions of the Housing and Community Development Act of 1974, as amended, and the regulations at 24 CFR part 570, as modified by 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, Federal Register / Vol. 81, No. 109 / Tuesday, June 7, 2016 / Notice and Federal Register / Vol. 82, No. 150 / Monday, August 7, 2017 / Notice. Notwithstanding the foregoing, (1) the Sub-recipient does not assume any of Grantee's responsibilities for environmental review, decision-making, and action, described in 24 CFR part 58 and (2) the Sub-recipient does not assume any of the Grantee's responsibilities for initiating the review process under the provisions of 24 CFR Part 52. The Sub-recipient 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 Sub-recipient on an advance or reimbursement basis.

A. Duplication of Benefits

The Sub-recipient 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 USC 5155) and described in the Appropriations Act. The Sub-recipient must comply with HUD's requirements for duplication of benefits, imposed by Federal Register notice on the Grantee, which are: Federal Register / Vol. 81, No. 109 / Tuesday, June 7, 2016. The Sub-recipient shall carry out the activities under this Agreement in compliance with the Grantee's procedures to prevent duplication of benefits. Sub-recipient shall complete a Duplication of Benefit Affidavit and sign a Subrogation Agreement.

B. Drug-Free Workplace

Drug-free workplace. Sub-recipients must comply with drug-free workplace requirements in Subpart B of part 2429, which adopts the government wide implementation (2 CFR 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).

C. Insurance & Bonding

The Sub-recipient shall comply with the bonding and insurance requirements of 2 CFR 5200.325 and 5200.310.

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

The Sub-recipient shall comply with the applicable provisions in 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200 except as provided in 24 CFR 570.502(a) and (b). These provisions include:

1. Financial & Program Management

The Sub-recipient shall expend and account for all CDBG-DR funds received under this Agreement in accordance with the requirements in 2 CFR part 200, including 2 CFR part 200, subpart D, which covers Standards for Financial and Program Management. Go to <https://www.gpo.gov/fdsys/pkg/CFR-2014-title2-v011/pdf/CFR-2014-title2-v011-part200.pdf> for the specific requirements.

2. Cost Principles

Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with 2 CFR part 200, subpart E. All items of cost listed in 2 CFR part 200, subpart E, that require prior Federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in 2 CFR part 200, subpart E and are otherwise eligible under this Agreement, except for the following:

- A. Depreciation methods for fixed assets shall not be changed without the approval of the Federal cognizant agency;
- B. Fines, penalties, damages, and other settlements are unallowable costs to the CDBG program;
- C. 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 CFR 200.445); and
- D. Organization costs (2 CFR 200.455); and E. Pre-Award Costs, as limited by this Agreement.

E. Documentation and Record Keeping

The Sub-recipient shall establish and maintain records sufficient to enable the Grantee to (1) determine whether the Sub-recipient has complied with this Agreement, applicable Federal statutes and regulations, and the terms and conditions of the Grantee's Federal award and (2) satisfy recordkeeping requirements applicable to the Grantee. These records include the records described in Section I of this Agreement, Scope of Service. At a minimum, the Sub-recipient shall maintain records required by 24 CFR 570.506 as stated under Recordkeeping in Federal Register / Vol. 81, No. 109 / Tuesday, June 7, 2016 / Notice.

These records include but are not limited to: Records documenting compliance with the fair housing and equal opportunity requirements of the CDBG program regulations; Financial records as required by 24 CFR 570.502, and 2 CFR part 200, including records necessary to demonstrate compliance with all applicable procurement requirements; and Other records necessary to document compliance with this Agreement, any other applicable Federal statutes and regulations, and the terms and conditions of Grantee's Federal award.

As required by 2 CFR 200.331(a)(5), the Sub-recipient shall permit the Grantee and auditors to have access to the Sub-recipient's records and financial statements as necessary for the Grantee to meet its audit requirements under the Federal award. The U.S. Department of Housing and Urban

Development, Inspectors General, the Comptroller General of the United States, and the Grantee, or any of their authorized representatives, must have the right of access to any documents, papers, or other records which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the Sub-recipient's personnel for the purpose of interview and discussion related to such documents.

Prior to close-out of this Agreement, the Sub-recipient must transmit to the Grantee records sufficient for the Grantee to demonstrate that all costs under this Agreement met the requirements of the Federal award. Sub-recipient shall retain financial records, supporting documents, statistical records, and all other Sub-recipient records pertinent to this Agreement and Sub-recipient's subaward for the longer of 6 years after the expiration or termination of this Agreement, or 6 years after the submission of the Grantee's annual performance and evaluation report, as prescribed in 5 91.520 of this title or in the applicable Federal Register notices governing the use of the funds, in which the specific activity is reported on for the final time.

The preceding requirement is, however, subject to the following exceptions:

1. Records for activities subject to the reversion of assets provisions at 24 CFR 5 570.503(b)(7) or change of use provisions at 24 CFR 5 570.505 must be maintained for as long as those provisions continue to apply to the activity; otherwise, records for real property and equipment acquired under this Agreement must be retained for 3 years after final disposition;
2. Records for individual activities for which there are outstanding loan balances, other receivables, or contingent liabilities must be retained until such receivables or liabilities have been satisfied;
3. If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken;
4. When the Sub-recipient is notified in writing by HUD, the cognizant agency for audit as defined in 2 CFR 200.18, the oversight agency for audit as defined in 2 CFR 200.73, the cognizant agency for indirect costs as defined in 2 CFR 200.19, or the Grantee, the Sub-recipient shall extend the retention period consistent with the notification;
5. When records are transferred to or maintained by HUD or the Grantee, the 3-year retention requirement is not applicable to the Sub-recipient;
6. The retention period for the records pertaining to the earning of the program income (as defined in this Agreement) starts from the end of the Grantee's fiscal year in which the program income is earned.

The Sub-recipient must comply with 2 CFR 5200.303 and take reasonable measures to safeguard protected personally identifiable information, as defined in 2 CFR 200.82, and other information HUD or the Grantee designates as sensitive or the Sub-recipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

F. Audits, Inspections, and Monitoring

The Sub-recipient must be audited as required by 2 CFR part 200, subpart F when it is expected that the Sub-recipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 5200.501 Audit requirements.

The Sub-recipient shall permit the Grantee and auditors to have access to the Sub-recipient's records and financial statements as necessary for the Grantee to meet the requirements of 2 CFR part 200. The Sub-recipient must submit to monitoring of its activities by the Grantee as necessary to ensure that the sub-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 Sub-recipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the Sub-recipient 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 Sub-recipient from the Grantee as required by 2 CFR 5200.521.

The Grantee may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits. The Grantee may require the Sub-recipient to take timely and appropriate action on all deficiencies pertaining to the Federal award provided to the sub-recipient from the pass-through entity detected through audits, on-site reviews, and other means. In response to audit deficiencies or other findings of noncompliance with this Agreement, Grantee may impose additional conditions on the use of the CDBG-NDR funds to ensure future compliance or provide training and technical assistance as needed to correct noncompliance.

G. Procurement and Contractor Oversight

The Sub-recipient shall comply with the procurement standards in 2 CFR 5200.318 - 5200.326 when procuring property and services under this Agreement. The Sub-recipient shall impose the Sub-recipient's obligations under this Agreement on its contractors, specifically or by reference, so that such obligations will be binding upon each of its contractors.

The Sub-recipient shall maintain oversight of all activities under this Agreement and shall ensure that for any procured contract or agreement, its contractors perform according to the terms and conditions of the procured contracts or agreements, and the terms and conditions of this Agreement.

H. Property Standards

The Sub-recipient shall also comply with the Property Standards at 2 CFR 200.310, 2 CFR 200.312, 2 CFR 200.314 through 2 CFR 200.316. The Sub-recipient shall also comply with 2 CFR 200.313 Equipment, except that when the equipment is sold, the proceeds shall be program income, and equipment not needed by the Sub-recipient for activities under this Agreement shall be transferred to the Grantee for its CDBG-NDR program or shall be retained after compensating the Grantee. See also (R), Reversion of Assets.

I. Federal Funding Accountability and Transparency Act (FFATA)

The Sub-recipient shall comply with the requirements of 2 CFR part 25 Universal Identifier and System for Award Management (SAM). The grantee must have an active registration in SAM in accordance with 2 CFR part 25, appendix A, and must have a Data Universal Numbering System (DUNS) number. The grantee must also comply with provisions of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, and 2 CFR part 170 Reporting Subaward and Executive Compensation Information.

J. Relocation, Real Property Acquisition, and One-for-one Housing Replacement

The Sub-recipient shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), 42 USC 4601-4655, 49 CFR part 24, 24 CFR part 42, and 24 CFR 570.606.

In addition to other URA requirements, these regulations (49 CFR 5.24 403(a)) implement Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 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".

Sub-recipient will minimize displacement of persons as a result of activities assisted with CDBG funds. In addition, if applicable, Sub-recipient shall:

1. Comply with Sections 301-304 of Title III (Uniform Real Property Acquisition Policy) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Chapter 61), and HUD implementing instructions at 24 CFR Part 42 and 24 CFR 5570.606; and
2. Inform affected persons of their rights and of the acquisition policies and procedures set forth in the regulations at 24 CFR Part 42.

K. Nondiscrimination

The Sub-recipient will comply with 24 CFR 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 Sub-recipient 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 Sub-recipient shall comply with regulations of 24 CFR part 8, which implement Section 504 for HUD programs, and the regulations of 24 CFR part 146.

The Sub-recipient shall ensure that its activities are consistent with requirements of Architectural Barriers Act and the Americans with Disabilities Act. The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) 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 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR part 40 for residential structures, and appendix A to 41 CFR 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.

The Sub-recipient shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88352), as amended [if the Grantee is subject to 24 CFR part 570, subpart K, insert: "and 24 CFR 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 CFR 1.4 apply to the use of these funds. The Sub-recipient 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 CFR part 1, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing

under 24 CFR part 1. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of 2 CFR part 1, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

As a condition to the approval of this Agreement and the extension of any Federal financial assistance, the Sub-recipient 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 for is in the form of personal property or real property or interest therein or structures thereon, the Sub-recipient's assurance herein shall obligate the Sub-recipient 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 Sub-recipient for the period during which Federal financial assistance is extended pursuant to the contract or application. This assurance gives the Grantee 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-NDR funds and provided to the Sub-recipient Under this Agreement, the instrument effecting any disposition by the Sub-recipient 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.

Affirmative Action - The Sub-recipient agrees that it shall carry out pursuant to the Grantee'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 42 CFR chapter 60. The Grantee shall provide Affirmative Action guidelines to the Sub-recipient to assist in the formulation of such program. The Sub-recipient shall provide a copy of their plan for an Affirmative Action Program for approval prior to the release of funds under this Agreement.

1. **Women- and Minority-Owned Businesses (W/MBE):** The Sub-recipient shall take the affirmative steps listed in 2 CFR 200.321(b)(1) through (5) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible, when the Sub-recipient procures property or services under this Agreement.
2. **Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement:** The Sub-recipient shall, in all solicitations or advertisements for employees placed by or on behalf of the Sub-recipient, state that it is an Equal Opportunity or Affirmative Action employer.

L. Labor and Employment

The Sub-recipient shall comply with the labor standards in Section 110 of the Housing and Community Development Act of 1974, as amended and ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this Agreement shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 3141, et seq.), and 29 CFR part 1, 3, 5, 6, and 7, provided, that this requirement shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.

The Sub-recipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874) and its implementing regulations of the U.S. Department of Labor at 29 CFR part 3 and part 5. The Sub-recipient shall maintain documentation that demonstrates compliance with applicable hour and wage requirements. Such documentation shall be made available to the Grantee for review upon request.

M. Section 3 of the Housing and Urban Development Act of 1968

The Sub-recipient shall comply with the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u, and its implementing regulations at 24 CFR part 135. The Sub-recipient shall include the "Section 3 clause" at 24 CFR 135.38 in every "Section 3 covered contract" (as defined in 24 CFR 135.5).

N. Conduct

The Sub-recipient shall comply with the Hatch Act, 5 USC 1501 — 1508, and shall ensure that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

In the procurement of supplies, equipment, construction, and services pursuant to this Agreement, the Sub-recipient shall comply with the conflict of interest provisions in 2 CFR 200.317 and 200.318. In all cases not governed by 2 CFR 200.317 and 200.318, the Sub-recipient shall comply with the conflict of interest provisions in 24 CFR 570.611.

The Sub-recipient certifies that:

1. 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;
2. 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,
3. "Disclosure Form to Report Lobbying," in accordance with its instructions;
4. It shall require that the language of paragraph (a) through (d) of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly; and
5. 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.

O. Religious Activities

The Sub-recipient agrees that funds provided under this Agreement shall not be utilized for inherently religious activities prohibited by 24 CFR 570.200(g), such as worship, religious instruction, or proselytization.

P. Environmental Conditions

Sub-recipient shall not obligate nor expend funds for any choice-limiting Project activity under this Agreement until notified, in writing from the Grantee, that the environmental review requirements pursuant to 24 CFR 570.604

have been satisfactorily completed for the Project activity(s) and that a HUD approved Request for Release of Funds and certification has been issued. The Grantee's written notice shall specify the date upon which Sub-recipient may begin to obligate and expend funds under this Agreement. Sub-recipient does not assume responsibility for undertaking the environmental review process under 25 CFR Part 52. However, Sub-recipient shall provide the Grantee with timely and accurate Project information as the Grantee may require in order to cause the environmental review(s) to be satisfactorily undertaken. If there is a proposed change in the location or scope of a Project activity, SUBRECIPIENT shall not undertake any action to obligate or expend funds in connection with the proposed change without obtaining the Grantee's prior written approval. Any such Grantee approval shall be subject to Grantee's sole determination as to whether the proposed change requires an additional environmental review and clearance before any funds may be committed or expended for the Project activity.

The Sub-recipient must comply with the limitations in 24 CFR 58.22 even though the Sub-recipient 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 a prohibition on the use of Federal funds for the activity.

The Sub-recipient shall comply with the following requirements insofar as they apply to the performance of this Agreement:

1. Air quality. (1) The Clean Air Act (42 U.S.C. 7401 et. seq.) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)); and (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 CFR parts 6, 51, and 93).
2. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, including the requirements specified in Section 114 and Section 308 of the Federal Water Pollution Control Act, as amended, and all regulations and guidelines issued thereunder;
3. Flood Disaster Protection — NA
4. Lead-Based Paint. The Sub-recipient shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, J, K, and R, which apply to activities under this Agreement.
5. Historic Preservation — NA
6. Release of Funds (ROF). No funds may be encumbered prior to the completion of the Environmental Review. The Environmental Review Record (ERR) must be completed before any funds are obligated. The responsibility for certifying the appropriate ERR and ROF shall rest with the Grantee. It is the responsibility of the Sub-recipient to notify the Grantee and to refrain from making any commitments and expenditures on the project until an ROF has been issued by the Grantee.

Q. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 2 CFR Part 200 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Sub-recipient shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
2. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Sub-recipient for activities

under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee [an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

VIII. OTHER REQUIREMENTS IMPOSED BY GRANTEE

Sub-recipient will comply with HUD's requirements for new construction. The Sub-recipient must meet the standards of a certified Green Building Program for the construction of the rental units.
Sub-recipient will use the Energy Star Standards.

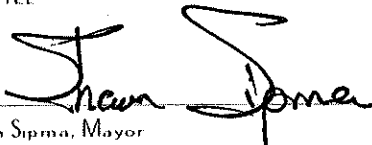
Sub-recipient will rebuild to model resilient building standards. Examples of such standards this Agreement contemplates the Sub-recipient will comply with include the I-Codes developed by the International Code Council (ICC), the Insurance Institute for Business 18 and Home Safety (IBHS) FORTIFIED home programs, and standards under development by the American National Standards Institute (ANSI) and the American Society of Civil Engineers (ASCE).

CCR Registration. No funds may be obligated or expended in any project activity except the administration activity until the Sub-recipient provides Grantee with documentation of registration in the Central Contractor Registration (CCR) system. The CCR system may be accessed online at www.sam.gov.

THE UNDERSIGNED, as authorized officials on behalf of the parties, have executed this Contract for Sub-recipient Assistance, which shall be effective as of the date of execution hereof on behalf of the Grantee.

GRANTEE

By:


Shaun Sipma, Mayor

Title:

Mayor

Date:

12/16/2021

SUB-Recipient

By:

Elizabeth Larsen, Executive Director Project BEC

Print Name and Title


Signature

11/23/21

Date

Exhibit A

17 Unit Multi Family Rental Project Proposal Submitted By Lutheran Social Services Housing

Exhibit B
CDBG-NDR Agreement
Project Description/Scope of Work

The National Disaster Resilience program focuses on disaster recovery and resilience. It is important to identify the resilience goals of this project and the process used to evaluate and determine the specific resilience elements for the affordable multi-family homes. In the aftermath of the historic 2011 flood in Minot, the City has made efforts to respond to the housing needs of LMI families affected by the flood, evaluated the evolving housing challenges resulting from the flood, and the oil boom that further complicated the affordable housing challenge facing Minot.

Affordable housing is frequently vulnerable during and after natural disasters and LMI residents are particularly challenged because they do not have the resources to help them recover from disasters. Because of the impact of the 2011 flood and the revised FEMA FIRM maps, there is a shortage of quality affordable multi-family resilient homes available in Minot. Affordable homes for LMI families are difficult to find in some resilient areas of the City. Providing long-term affordable rental units is essential to reducing the vulnerability of LMI families to environmental risks such as flooding. Sub-recipient primary goal is Developing and Enhancing Resident Community Resilience. Sub-recipient has proposed to continue to build seventeen (17) long-term affordable rental units to be rental units that are affordable to LMI families outside of the new FEMA flood plains and within the City's designated Resilience Area. These units will meet the green building standards (Energy Star) and UFAS for accessibility.

C

Exhibit C

Project Budget

The Project budget for the activities under this Agreement is mutually agreed will be attached under Exhibit C as Attachment C-1 upon completion of the project plans and specifications and the preparation and review of the project budget as described in the scope of work. Final project budget before effective will be approved by the NDR Grant Program Manager.

In the event of a Sub-recipient change to the Project Budget, the Sub-recipient shall provide a written explanation of the change and certification that sufficient other funds are committed to and available to the Project to enable satisfactory completion.

It is recognized that the project budget to be attached herein will need to be reconciled by the Subrecipient in assuming the project which had been commenced by Lutheran Social Services Housing.

Exhibit D
Current FMR

Exhibit E

2021 FMI Limits

Exhibit F
Affirmative Marketing Plan

Sub-recipient will prepare an affirmative marketing plan and submit it to the Grantee for review. The final affirmative marketing plan will be incorporated into this agreement and must be completed prior to the commencement of any activity leading to leasing rental units.

Exhibit G

INSERT LEGAL DESCRIPTION AND PHYSICAL ADDRESS OF PROPERTY

Copy of Deed

**QUIT CLAIM DEED**

THIS INDENTURE, made this 23 day of November, 2021, between the City of Minot, a municipal corporation under the laws of the State of North Dakota, whose post office address is P.O. Box 5006, Minot, North Dakota, 58702-5006, hereinafter referred to as "Grantor", and Project BEE, whose mailing address is 400 E Central Ave. Suite 302, Minot, ND 58701, hereinafter referred to as "Grantee";

For and in consideration of the sum of one dollars (\$1) and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor does hereby QUIT CLAIM, GRANT, AND CONVEY to the Grantee, all of its right, title, and interest in and to the following real property lying and being in the County of Ward, State of North Dakota, and described as follows, to-wit:

- ✓ Outlots 4, 6, and 7 of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ less that portion as recorded in Document No. 2817138 Section 25, Township 155 North, Range 83 West of the 5th P.M., Ward County, North Dakota

Subject to any easement, lease, right-of-way, or other encumbrance of record, together with all hereditaments and appurtenances belonging thereto; and

EXCEPTING and RESERVING unto Grantor, its successors and assigns, all oil, gas and other minerals of whatsoever nature or kind in and under and that may be produced from said property now owned by Grantor, including coal, sand, gravel, clay, and scoria, together with the right of ingress and egress thereto for the purpose of exploring for, drilling, mining, storing and transporting the same; and

Subject to the following deed restrictions,

1. Grantee must ensure all operations on the property subject to this deed are consistent with U.S. Housing and Urban Development (HUD) requirements and consistent with the requirements set forth in the Grantee's Sub-recipient Agreement with the City of Minot; and
2. Grantee must ensure that any lien or encumbrance Grantee creates with respect to any portion of the property subject to this deed is expressly subordinate to Grantee's right of reversion set forth in this Deed and the Grantee's Sub-recipient Agreement with the City of Minot; and

EXCEPTING and RESERVING unto Grantor, its successors and assigns, a right of reversion. Specifically, in the event Grantee should default on any of its obligations in their Sub-recipient Agreement with the City of Minot, the property will automatically revert back to the City of Minot.

WITNESS, the hand of the Grantor.

I certify that the requirement for a report of statement of full consideration paid does not apply because this deed is for one of the transactions exempted by Subdivisions (f) and (h) of Subdivision 6 of N.D.C.C. § 11-18-02.2

Signed EJR Dated 01/31/22
(Grantee or Agent)

City of Minot,

Shaun Sipma, Mayor

Mikayla McWilliams
Mikayla McWilliams, City Clerk

ATTEST:

STATE OF NORTH DAKOTA)
) ss
COUNTY OF WARD)

On this 8th day of February, 2022, before me, a Notary Public in and for said county and state, personally appeared Shaun Sipina and Mikayla McWilliams, known to me to be the Mayor and the City Clerk of the City of Minot, who are described in and who executed the within instrument and acknowledged to me that they executed the same.

Mary Hunt
Notary Public, Ward County, ND
My Commission Expires:

NANCY HORST
Notary Public
State of North Dakota
My Commission Expires Feb. 1, 2026

2

Taxes and special assessments paid
and transfer accepted this 14th day
of February, 2022
Sarah L. Walker, DT
Ward County Auditor / Treasurer

Recorder's Office, Ward, ND 02/14/2022 10:50:43 AM
I certify that this instrument was filed for record this date.
Kristin Kowalczyk, County Recorder

by

3061944

