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Sent: Thursday, August 6, 2020 10:55 AM

To: Geri Lopez geri.lopez@mymanatee.org

Cc: Mitchell Palmer <mitchell.palmer@mymanatee.org>; Alex Nicodemi

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Subject: Coronavirus Relief Fund Agreement with Florida Housing Finance Corporation; CAO Matter No. 2020-0349

Geri:

Pursuant to the above Request for Legal Services you have asked this Office to review a funding agreement between the Florida Housing Finance Corporation (Florida Housing) and the County to provide CARES Act funding for affordable housing activities. I provide the following advice in response to the RLS:

1. The Agreement follows a standard Florida Housing form. In our experience, Florida Housing, as a grantor for such projects, is reluctant to agree to significant changes to its forms. I have therefore limited my review to legal concerns that could give rise to claims against the County.
2. Attached are marked pages reflecting my suggested changes, which are limited to matters of clarification.
3. Staff should carefully review the business terms to assure that it is prepared to perform them. Staff should recognize that Florida Housing could demand repayment of funds in the event that it determines that funds have been spent in violation of the Agreement or the CARES Act. We have discussed this concern at length with staff in the course of responding to other Requests for Legal Services (specifically, RLS-2020-0317 and RLS-2020-0267).

Subject to resolution of the concerns identified above, I have no objection from a legal standpoint to the Agreement being scheduled for consideration by the Board. I express no opinion as to the business judgment of entering into the Agreement.

This concludes my response to the RLS. Please let me know if you have any questions or concerns.

William Clague, Chief Assistant County Attorney

Manatee County Attorney's Office

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CORONAVIRUS RELIEF FUND (CRF)
SUBRECIPIENT AGREEMENT

between

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THIS FUNDING AGREEMENT ("Agreement") is entered into by and among MANATEE COUNTY BOARD OF COUNTY COMMISSIONERS ("Subrecipient"), a local government that meets the State Housing Initiatives Partnership ("SHIP") Program eligibility requirements, and FLORIDA HOUSING FINANCE CORPORATION ("Florida Housing"), a public body corporate and politic duly created and existing under the laws of the State of Florida. Upon execution by both parties, this Contract shall become effective as of the date the last party signs ("Effective Date").

WITNESSETH:

WHEREAS, the Coronavirus (COVID-19) emergency has caused disruption in Florida's economy leading to high rates of unemployment and business closures;

WHEREAS, Many Floridians are in need of assistance with rental payments, mortgage payments and home repairs;

WHEREAS, the State of Florida has been awarded funds pursuant to section 601(d) of the Social Security Act, as amended by section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, div. A, Title V (Mar. 27, 2020);

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WHEREAS, a portion of the CARES Act Funds (designated the "Coronavirus Relief Funds or CRF funds") will be distributed by Florida Housing to and administered by Eligible Local Governments (as defined herein) and expended only for purposes authorized by this Agreement;

WHEREAS, the Subrecipient and Florida Housing wish to enter into this Agreement which will govern the disbursement and expenditure of CRF funds;

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

A. **Recitals:** The recitals stated above are true and correct, are incorporated herein, and form an integral part of this Agreement.

B. **Definitions:**

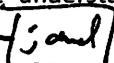
1. "Administrative Expenditures" means funds, not to exceed 10% of the allocation, expended by Subrecipient to carry out the activities of CRF. This expense may include salaries and benefits of staff, office supplies and equipment, required travel, advertising, recording costs.
2. "Annual income" means annual income as defined under the Section 8 housing assistance payments programs in 24 C.F.R. part 5; annual income as reported under the census long form for the recent available decennial census; or adjusted gross income as defined for purposes of reporting under Internal Revenue Service Form 1040 for individual federal annual income tax purposes.
3. "Eligible Housing" means any real and personal property located within the county or eligible municipality which is designed and intended for the primary purpose of providing decent,

3. Establishment of CRF Trust Fund: Subrecipient must establish and maintain a CRF trust fund or a pooled account where CRF funds are clearly designated.
4. Expenditure of Funds by Subrecipient: CRF funds shall be Expended by Subrecipient for the following:
 - a. Direct CRF Administrative Expenditures and Project Delivery Costs incurred on or after March 1, 2020 in an amount no more than a cumulative 10 percent of CRF funds incurred by Subrecipient, a consultant to Subrecipient, and/or a Sub-Grantee. CRF funds shall not be used to pay for Administrative Expenditures and Project Delivery Costs incurred prior to March 1, 2020.
 - b. Housing counseling services, direct rental assistance, relocation costs and awards to assist Eligible Housing for Eligible Persons or Households or Eligible Sponsors.
 - c. CRF funds may be used for the following pre-approved program purposes or activities:
 - i. Rental assistance payments (including back rent, deposits and utility payments);
 - ii. Mortgage payments and buydowns;
 - iii. Emergency repair of housing;
 - iv. Assistance to homeowners to pay insurance deductibles;
 - v. Housing re-entry assistance, such as security deposits, utility deposits, and temporary storage of household furnishings;
 - vi. Foreclosure or eviction prevention, including monthly rent and associated fees; and
 - vii. Homeownership counseling.

All other activities must be presented in writing to Florida Housing and approved in writing prior to implementation.

5. Term: The period of performance for this grant is March 1, 2020 – December 30, 2020. In executing this Agreement, Subrecipient is certifying that all CRF funds will be Expended by December 30, 2020. The term of this agreement will be from the Effective Date through March 31, 2021.
6. Advertisement of Availability of Funds:  CRF funding availability shall be advertised by Subrecipient in both a newspaper of general circulation and, where available, periodicals serving racially, ethnically and income diverse neighborhoods, at least 10 days before the beginning of the application period. This 10-day period does not prevent assistance to applicants that have already applied and been determined eligible prior to the application period. At a minimum, the advertisement shall contain:
 - a. The amount of funds projected to be received from the state for the fiscal year(s) 
 - b. The beginning and ending date of the application period; *and*
 - c. The name of the contact person and other pertinent information where applicants may apply for assistance (phone number, address, email, and hours of operation) 
7. Repayments:
 - a. The Subrecipient shall only expend funding under this Agreement for allowable costs resulting from obligations incurred during the eligible period of performance. The Subrecipient shall ensure that its contractors, subcontractors, and consultants only

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- expend funding under this Agreement for allowable costs resulting from obligations incurred during the period of performance.
- b. The Subrecipient shall refund to Florida Housing any unobligated funds which have been advanced or paid to the Subrecipient upon termination of this Agreement.
 - c. Any unexpended funds under this Agreement, including unexpended program income earned, must be returned to Florida Housing upon termination of this Agreement.
 - d. Upon termination of this Agreement, or upon any determination made indicating such, the Subrecipient shall refund to Florida Housing any funds paid in excess of the amount to which the Subrecipient or its contractors, subcontractors, or consultants are entitled under the terms and conditions of this Agreement.
 - e. The Subrecipient shall refund to Florida Housing any funds not spent in accordance with the conditions of this Agreement or applicable law. Such reimbursement shall be sent to Florida Housing within 30 calendar days from Subrecipient's receipt of notification of such non-compliance.
 - f. The Subrecipient's obligations under this section will survive the termination of the Agreement.
8. Performance under this Agreement is subject to 2 C.F.R Part 200, entitled "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards."
 9. Single Audit Act: Funds payments are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance. The Subrecipient shall conduct a single or program-specific audit in accordance with the provisions of 2 C.F.R. Part 200 and the related provisions of the Uniform Guidance, if it expends more than \$750,000 or more in Federal awards from all sources during its fiscal year. The Catalog of Federal Domestic Assistance (CFDA) number for these funds is 21.019.
- D. Application for CRF Eligible Person or Household Assistance: Subrecipient shall establish criteria for CRF assistance and develop an application for CRF eligibility.
- a. The application for assistance should contain all the necessary information to determine whether an applicant household is potentially eligible for CRF assistance. In accordance with the provisions of Sections 760.20-760.37, Fla. Stat., it is unlawful to discriminate on the basis of race, religion, color, sex, familial status, national origin, or handicap in the award application process for Eligible Housing.
 - b. At a minimum, an application for program assistance should contain the following items for each household members:
 - i. The number of people residing in the household including name, age, relationship to head of household, current address and home phone number;
 - ii. Name and address of employer(s), work phone number(s), position title and number of years on job with employer;
 - iii. Sources of annual income, including earned, unearned and asset income, and a statement signed by all of the adults who reside in the household consenting to the disclosure of information for the purpose of verifying income and assets for determining income eligibility for program assistance 
 - iv. A signed statement indicating that the applicant understands that all information provided is subject to Florida's public records laws 

- v. A statement that it is a first-degree misdemeanor to falsify information for the purpose of obtaining assistance.
- E. Allowable Rental Assistance (Subsidies): Assistance may be provided as direct rental assistance to Eligible Persons in any of the following manners:
- 1. Security and utility deposit assistance to secure temporary or permanent rental housing; or
 - 2. Eviction prevention not to exceed 10 months' rent; or
 - 3. A rent subsidy program for income eligible households that are displaced from rental units that are uninhabitable; or
- F. Allowable Mortgage Payments: Mortgage payment assistance may be awarded to eligible applicants. This may include principle and interest, insurance, and homeowner association fees. Real Estate taxes paid to a government entity are not eligible.
- G. Income Categories: All households assisted must be at or below 120% of the area median income.
- H. CRF Eligible Person Award Terms: CRF funds awarded directly to Eligible Persons must be in the form of a grant, deferred loan or hard pay loan.
- I. Reporting Requirements: The Subrecipient must provide Florida Housing with monthly reports beginning on October 1, 2020 and a closeout report by February 15, 2021. These funds must include the current status and progress of the expenditure of funds under this Agreement, in addition to any other information requested by Florida Housing. All funds must be accounted for on the CRF Data Upload Form as provided by Florida Housing. Quarterly reports are due to Florida Housing no later than 15 days after the end of each quarter. The first quarterly report due pursuant to this agreement is due for the quarter ending September 30, 2020.
- J. Program Compliance
- 1. File Management and Record Retention relating to CRF Eligible Persons or Sponsors: Subrecipient must maintain a separate file for every applicant, Eligible Person, Sub-Grantee or Sponsor, regardless of whether the request was approved or denied.
 - a. Contents of File: Each file must contain sufficient and legible documentation. Documents must be secured within the file and must be organized systematically.
 - b. Record and File Retention: Local governments are required to retain records and other relevant documentation for each applicant, Eligible Person, Sub-Grantee or Sponsor for five fiscal years after funds have been expended or five years after the expiration of a use restriction agreement. and accounted for and/or satisfaction of loans, whichever is later, provided applicable audits have been released.
 - i. The minimum requirements for documentation of award depend upon the type of assistance awarded and the funding sources. Every file should contain a section of notes and a file checklist, which tracks the efforts and progress of obtaining necessary documents. The checklist is a useful tool for all persons who must have access to the file. However, this checklist may be modified to accommodate a local government's need for additional documentation.

- ii. Eligible Sponsors(developers) who are awarded funds have the responsibility for maintaining clear and accurate files on project recipients and activities. Subrecipient must monitor the Eligible Sponsors files on a regular basis to ensure that all information is collected that will be needed for reporting. Subrecipient's housing administrator must also review the file documentation to ensure that assistance is awarded to Eligible Persons and that all project activities conform to program requirements.
- iii. In cases where a Sub-Grantee is used to administer CRF, Subrecipient is ultimately responsible for program compliance.
- iv. All other records that document the award or expenditure of CRF funds must be retained for five fiscal years after the funds have been expended or five years after the expiration of a use restriction agreement and accounted for and/or satisfaction of loans, whichever is later, provided applicable audits have been released. This means that for cases that were assisted Subrecipient must retain all records no less than five years after the loan has been satisfied, provided audits have been released, whichever is later. Housing records of this type include, but are not limited to:
 - 1) applications;
 - 2) program and set-aside records;
 - 3) housing agreements;
 - 4) income verifications and
 - 5) other records as required by Florida Housing or federal, state and local law or regulations.
- v. Records must be retained in electronic form. The standards used must comply with the Florida Administrative Code. Local record retention requirements may be stricter than the State.
- c. Access to Files: Florida Housing or any duly authorized representative shall be permitted to inspect any files relating to CRF Eligible Person or Sponsors including but not limited to advertisements, applications, income verifications and certifications, plan participation contracts, financial records, tracking system records, construction cost verification including receipts and contracts, rental development annual reviews, Eligible Sponsor reviews, Eligible Sponsor award lists, CRF fund recipient lists, and any other applicable documents at any reasonable time with or without notice. Such records shall be maintained within the participating county or eligible municipality at a place accessible to the Corporation staff or its designated monitoring agent.

2. Files Management and Record Retention relating to Subrecipient and Administration of this Agreement:

- a. The Subrecipient shall maintain books, records, and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by Florida Housing under this Agreement.
- b. Contents of the Files: Subrecipient must maintain files containing documentation to verify all compensation to Subrecipient in connection with this Agreement, as well as reports, records, documents, papers, letters, computer files, or other material received, generated, maintained or filed by Subrecipient in connection with this Agreement. Subrecipient must also keep files, records, computer files, and reports that reflect any compensation it receives or will receive in connection with this Agreement.

- b. If any warranty or representation made by Subrecipient in this Contract or any other outstanding agreement with Florida Housing is deemed by Florida Housing to be inaccurate, false or misleading in any respect;
- c. If Subrecipient fails to keep, observe, or perform any of the terms or covenants contained in this Contract, or is unable or unwilling to meet its obligations as defined in this Contract;
- d. If, in the sole discretion of Florida Housing, Subrecipient has failed to perform or complete any of the services identified in the attachments;
- e. If Subrecipient has not complied with all Florida laws, federal laws, Florida Housing rules or Florida Housing policies applicable to the work;
- f. If Subrecipient has discriminated on the grounds of race, color, religion, sex, national origin, or disability in performing any service identified in the attachments;
- g. If Subrecipient does not comply with the terms and conditions set forth in Section 420.512(5), Fla. Stat.;
- h. If Subrecipient commits fraud in the performance of its obligations under this Contract; or
- i. If Subrecipient refuses to permit public access to any document, paper, letter, computer files, or other material subject to disclosure under Florida's Public Records Law.

Upon the occurrence of any Event of Default listed in subparagraph 2. above, Florida Housing will provide written notice of the Default detailing the grounds that constitute the Event of Default.

- 3. Upon the occurrence of any Event of Default listed in subparagraph 2. above, Florida Housing may provide Subrecipient a reasonable period of time to cure the Event of Default (Cure Period). If Florida Housing provides a Cure Period, Florida Housing will notify the Subrecipient of the length of the Cure Period in the Notice of Default.
- 4. If Florida Housing provides a Cure Period and if the Subrecipient is unable or unwilling to cure the Event of Default within the Cure Period, Florida Housing may exercise any remedy permitted by law. The pursuit of any one of the following remedies shall not preclude Florida Housing from pursuing any other remedies contained herein or otherwise provided at law or in equity. The remedies include, but are not limited to the following:
 - a. Florida Housing may terminate the Contract on the 10th day after Subrecipient receives the Notice of Default or upon the conclusion of any applicable Cure Period, whichever is later;
 - b. Florida Housing may commence an appropriate legal or equitable action to enforce performance of the terms and conditions of this Contract; *or*
 - c. Florida Housing may exercise any corrective or remedial actions including, but not limited to, requesting additional information from Subrecipient to determine the reasons for or

the extent of non-compliance or lack of performance, issuing a written warning to advise that more serious measures may be taken if the situation is not corrected, advising the Subrecipient to suspend, discontinue or refrain from incurring fees or costs for any activities in question or requiring the Subrecipient to reimburse Florida Housing for the amount of costs incurred; or

- d. Florida Housing may exercise any other rights or remedies that may be otherwise available under law.

N. Termination

1. Florida Housing may terminate the Agreement, without cause, at any time upon 24-hour written notice delivered by courier service or electronic mail to the Subrecipient, from the date sent from Florida Housing.
2. The Subrecipient may terminate this Agreement, without cause, at any time upon 10 days written notice delivered by courier service or electronic mail to Florida Housing at the physical or electronic address, as applicable, of Florida Housing's Contract Administrator, Contract.Admin@floridahousing.org. The Subrecipient shall be responsible for all costs arising from the resignation of the Subrecipient.
3. Upon expiration or termination of this Agreement, the Subrecipient shall transfer to Florida Housing any CRF funds on hand at the time of expiration or termination, and any accounts receivable attributable to the use of CRF funds.

O. General Provisions

1. Compliance with all Applicable Laws and Regulations: Subrecipient must comply with all applicable federal, state and local laws, rules, regulations, and ordinances in administering CRF under this Agreement. Subrecipient acknowledges that this requirement includes, but is not limited to, compliance with all applicable federal, state, and local health and safety rules and regulations. Subrecipient further agrees to include this provision in all contracts with Eligible Persons, Sub-Grantees, Sponsors or subcontracts issued as a result of this Agreement. Subrecipient's failure to comply with any part of this provision is material and must be grounds for termination of this Agreement for cause by Florida Housing.
2. Indemnification: Nothing contained in this Agreement shall be construed to be a waiver by either party of any protections under sovereign immunity, Section 768.28 Florida Statutes, or any other similar provision of law. Nothing contained herein must be construed to be a consent by either party to be sued by third parties in any matter arising out of this Agreement or any other contract.
3. Insurance: Subrecipient agrees to carry liability and other appropriate forms of insurance. Florida Housing shall have no liability except as specifically provided in this Agreement.
4. Severability: If a court deems any provision of this Agreement void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement Number 074-2020, each through a duly authorized representative, effective on the Effective Date.

~~MANATEE COUNTY BOARD OF COUNTY COMMISSIONERS~~

By: _____

Name/Title: County Administrator

Date: _____

FEIN: _____

By: Board of County Commissioners

FLORIDA HOUSING FINANCE CORPORATION

By: _____

Name/Title: _____

Date: _____