

SUBRECIPIENT AGREEMENT BETWEEN
THE NORTH CAROLINA OFFICE OF RECOVERY AND RESILIENCY
AND
THE TOWN OF MOREHEAD CITY

This Subrecipient Agreement (the “Agreement”) is made between the North Carolina Office of Recovery and Resiliency (“NCORR” and “Grantee”), a division of the North Carolina Department of Public Safety, an agency of the State of North Carolina and the Town of Morehead City (“Subrecipient”), a municipal corporation organized under the laws of the State of North Carolina. Each, individually, a “Party”, and collectively, the “Parties”. This Agreement is effective January 20, 2023 (the “Effective Date”).

Article 1. RECITALS

- 1.1.** Pursuant to Public Law 115-254 (the FAA Reauthorization Act of 2018) and Public Law 116-20 (the Additional Supplemental Appropriations for Disaster Relief Act of 2019) and the Federal Register notice dated January 27, 2020 (85 Fed. Reg. 4681), and the Federal Register notice dated January 6, 2021 (86 Fed. Reg. 561), the US Department of Housing and Urban Development (“HUD”) has awarded \$542,644,000 in Community Development Block Grant Disaster Recovery (“CDBG-DR”) funds to NCORR for activities authorized under title I of the Housing and Community Development Act of 1974 (42 USC 5301 et seq.) (the “HCD Act”) and described in the HUD-approved State of North Carolina Hurricane Florence CDBG-DR Action Plan, as amended (the “Action Plan”); and
- 1.2.** CDBG-DR funds awarded to NCORR are also subject to the Federal Register notice dated February 9, 2018 (83 Fed. Reg. 5844), the Federal Register notice dated August 4, 2018 (83 Fed. Reg. 40314), the Federal Register notice dated February 19, 2019 (84 Fed. Reg. 4836), and the Federal Register notice dated June 20, 2019 (84 Fed. Reg. 28848) (together with the Federal Register notices in Section 1.1, the “Federal Register Notices”); and
- 1.3.** NCORR has designated \$8,300,000 of the allocation from these funds for use by Subrecipient to facilitate the development of 168 multifamily affordable housing units (the “Project”) to meet remaining unmet recovery needs caused by federally declared disasters, including Hurricanes Matthew and Florence, that were not met through FEMA, private insurance proceeds, loans, or other funding sources in at-risk locations; and
- 1.4.** NCORR wishes to engage Subrecipient to facilitate the development of multifamily affordable housing, pursuant to the terms of this Subrecipient Agreement by allocating up to \$8,300,000 in CDBG-DR funds (“Grant Funds”); and
- 1.5.** The Grant Funds made available for use by Subrecipient under this Agreement constitute a subaward of NCORR’s federal award, the use of which must be in accordance with requirements

imposed by federal statutes, regulations, and the terms and conditions of NCORR's federal award;
and

- 1.6. The Parties desire to enter into this Agreement and intend to be bound by its terms as described herein; and
- 1.7. Subrecipient has legal authority to enter into this Agreement, and by signing this Agreement, assures NCORR that it will comply with all requirements and obligations of this Agreement.
- 1.8. In consideration of the need for long-term recovery from Hurricane Matthew and Hurricane Florence and the premises and mutual covenants described herein, the Parties mutually agree to the terms described in this Agreement.

Article 2. GENERAL TERMS AND CONDITIONS OF AGREEMENT

2.1. Federal Subaward. The subaward from Grantee to Subrecipient, which is described below, is for the purpose of carrying out a portion of a federal award described in Article I of this Agreement and creates a federal assistance relationship with Subrecipient. This Agreement must be updated to reflect any changes to the federal award and award information in Section 2.2.

2.2. Award Identification Information. The following information applies to this Agreement.

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| Federal award identification number: | B-19-DV-37-0001 and B-19-DV-37-0002 |
| CFDA number and name: | 14.228 |
| Federal award date: | August 17, 2020 |
| Federal award project description: | Elijah's Landing; Development of 168 multifamily affordable housing units |
| Is this award for research and development? | No |
| Subrecipient's unique entity identifier: | UEI: QU2DJ1XFW6C8; TIN: 56-6001291 |
| Subrecipient's period of performance | January 20, 2023 to January 31, 2026 |
| Amount of federal funds obligated to Subrecipient by this Agreement: | \$8,300,000 |
| Total amount of federal funds obligated to Subrecipient: | \$8,300,000 |

2.3. Attachments. The following Addendum and Exhibits, as amended from time to time, are incorporated into this Agreement.

| | |
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| Addendum 1 | Additional Requirements to Comply with Federal Statutes, Regulations and the Terms and Conditions of the Federal Award |
| Exhibit A | Scope of Work |
| Exhibit B | NCORR Affordable Housing Development Subrecipient Billing Guide |
| Exhibit C | NCORR Compliance and Monitoring Manual |

2.4. Notice; Notice information. All required documentation, notices, requests or other communications permitted or required to be made by Subrecipient under this Agreement or

other documentation relating to this Agreement shall be given to Grantee or Grantee's designee.

Notice shall be in writing, signed by the party giving such notice. Notice shall be deemed given three (3) business days following the date when deposited in the mail, postage prepaid, registered or certified mail, return receipt requested. Electronic notice and signatures are acceptable as described in Section 7.13.

Grantee

Tracey Colores, Community Development Director
North Carolina Office of Recovery and Resiliency
PO Box 110465
Durham, NC 27709
919-522-7921
tracey.colores@ncdps.gov

Subrecipient

Jewel A. Lasater, Finance Director/ACM
Town of Morehead City
1100 Bridges Street
Morehead City, NC 28557
252-726-6848
jewel.lasater@moreheadcitync.org

Article 3. USE OF FUNDS

- 3.1. Eligible Use of Funds.** As a condition of receiving this subaward, Subrecipient will carry out the Project as described in the Action Plan, as defined above, and as permitted by this Agreement, which includes performing the program activities described in the Scope of Work (Exhibit A), which may be amended from time to time by mutual consent of the Parties or at the discretion of Grantee pursuant to the terms of this Agreement. The Action Plan may be amended from time to time and is incorporated herein by reference. Subrecipient shall complete the activities in a manner satisfactory to Grantee and consistent with the terms and conditions of this Agreement and applicable federal and state statutes and regulations.
- 3.2. Prohibited Activities.** Subrecipient may be reimbursed with Grant Funds for carrying out the activities described in this Agreement and for no other activities. Subrecipient is prohibited from charging to this award the costs of ineligible activities under CDBG-DR, 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. Subrecipient may be financially liable for carrying out any activities outside the parameters of the Scope of Work (Exhibit A) or this Agreement.
- 3.3. Program Delivery (CDBG-DR Eligible Activities).** Subrecipient shall use the Grant Funds provided to it pursuant to this Agreement to fund the CDBG-DR eligible activities outlined in the Scope of Work (Exhibit A).
- 3.4. Payments and Reimbursement.** Funds paid under this Agreement shall be paid on a reimbursement basis only. The NCORR Affordable Housing Development Subrecipient

Billing Guide (“NCORR Billing Guide”), which addresses payments and reimbursement policies, is attached as Exhibit B.

3.5. Pre-Award Costs. If Subrecipient believes there are appropriate and allowable pre-application and pre-award costs, the Parties may amend this Agreement, per Section 5.4, to specify requirements and procedures for pre-award and pre-application cost reimbursement per the Federal Register notice dated February 9, 2018 (83 Fed. Reg. 5844, at 5857), CPD Notice 2015–07, “Guidance for Charging Pre-Application Costs of Homeowners, Businesses, and Other Qualifying Entities to CDBG Disaster Recovery Grants,” as amended, and in compliance with 24 CFR 570.200(h), as well as any additional applicable guidance from HUD.

3.6. National Objective. All activities funded with Grant Funds must meet the criteria for one of the CDBG program’s national objectives. Activities funded by this Agreement must benefit low- and moderate-income persons; aid in the prevention or elimination of slum or blight; or meet community development needs having a particular urgency. The criteria for meeting these national objectives are found in 24 CFR 570.208, as amended, and the Federal Register Notices. This Agreement, together with the Action Plan, outlines the ways that the program activities funded by Grant Funds shall accomplish the national objectives.

This Project meets the national objectives by benefiting low-and moderate-income persons through an eligible housing activity. Subrecipient certifies that the activities carried out under this Agreement shall meet the national objectives.

3.7. Environmental Conditions and Review.

3.7.1. Prohibition on Choice Limiting Activities Prior to Environmental Review. Recipients of CDBG-DR funds are required to comply with the requirements of the National Environmental Policy Act of 1969 (NEPA) found at 24 CFR part 58 and complete an Environmental Review Record (ERR). Grantee is the Responsible Entity under 24 CFR part 58. No funds may be obligated or expended by Subrecipient until the environmental review procedures outlined in 24 CFR part 58 have been complied with. Full compliance with 24 CFR part 58 shall be confirmed by Grantee to Subrecipient in a Project-specific Award Letter (“Award Letter”) before funds may be obligated or expended with the exception of pre-award costs identified as described in Section 3.5.

3.7.2. Subrecipient Responsibilities if not Conducting Environmental Review. Subrecipient must comply with and be responsible for the limitation in 24 CFR 58.22 even though Subrecipient does not assume any of Grantee’s responsibilities for environmental review, decision-making, and action, described in 24 CFR part 58 and Subrecipient does not assume any of Grantee’s responsibilities for initiating the review process under the provisions of 24 CFR part 58. Limitations imposed on activities pending clearance by 24 CFR 58.22 include limits on commitments of HUD funds or non-HUD funds by any participant in the development process before completion of the environmental review. A violation of this requirement may result in prohibition on the use of Federal funds for the activity.

Subrecipient must, in a timely manner, comply with and implement any and all mitigation measures, including permits which should be obtained before construction, and other requirements set forth in any environmental reviews, environmental assessments, or environmental impact statements performed or to be performed in connection with, or records of decision or any similar documents, issues or to be

issued in connection with this Agreement. Completion of mitigation measures identified by Grantee is a condition of receiving Grant Funds under this Agreement.

- 3.7.3. Subrecipient Responsibilities if Conducting Environmental Review. Notwithstanding Section 3.7.1 and Section 3.7.2, it is the intent of the Parties, to the extent allowed by law, that Subrecipient perform the following activities as part of the environmental review related processes and documentation in relation to the Project on behalf of Grantee:
 - 3.7.3.1. In accordance with 24 CFR 58.22, ensure no funds are committed, or no choice limiting activity is taken, with regards to the Project prior to Grantee's receipt of an Authority to Use Grant Funds from HUD;
 - 3.7.3.2. Determine, in consultation with Grantee, what level of environmental review is required for the Project;
 - 3.7.3.3. Collect, review and analyze supporting documentation necessary to complete the "Environmental Assessment Determinations and Compliance Findings for HUD-assisted Projects 24 CFR Part 58" (the "Statutory Checklist"), which may be found at hud.gov.
 - 3.7.3.4. Submit to Grantee the Statutory Checklist and all supporting documentation in order for Grantee to determine if the Project will or will not result in a significant impact to the quality of the human environment;
 - 3.7.3.5. In a timely manner, comply with and implement any and all mitigation measures and other requirements set forth in any environmental reviews, environmental assessments, or environmental impact statements performed or to be performed in connection with, or records of decision or any similar documents, issues or to be issued in connection with this Agreement. Completion of mitigation measures identified by Grantee is a condition of receiving Grant Funds under this Agreement; and
 - 3.7.3.6. Provide any information in its possession requested from Grantee in a timely manner as to prevent any delays in securing an Authority to Use Grant Funds.
- 3.7.4. Grantee Responsibilities. If either Grantee or Subrecipient completes the environmental review activities, Grantee will remain responsible for the following:
 - 3.7.4.1. Ensuring the adequacy of the level of documentation necessary to satisfy a finding of no significant impact under 24 CFR part 58.
 - 3.7.4.2. Posting or publishing a Finding of No Significant Impact notice and/or any 24 CFR part 55 notices, if applicable.
 - 3.7.4.3. Submitting the Request for Release of Funds form to HUD.
 - 3.7.4.4. Notifying Subrecipient upon receipt of Authority to Use Grant Funds from HUD.
- 3.7.5. Air and Water. Subrecipient shall also comply with the following environmental compliance requirements, insofar as they apply to the performance of this Agreement:

(1) the Clean Air Act (42 USC 7401 et seq.) as amended, particularly sections 176(c) and (d); (2) determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 CFR parts 6, 51, and 93); and (3) the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., as amended, including the requirements specified in Sections 114 and 308 of the Federal Water Pollution Control Act, as amended, and all regulations and guidelines issued thereunder.

- 3.7.6. Flood Hazards and Flood Insurance. Subrecipient shall comply with the mandatory flood insurance purchase requirements of Section 102 of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994, 42 USC 4012a. Additionally, Subrecipient shall comply with Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 USC 5154a), which includes a prohibition on the provision of flood disaster assistance, including loan assistance, to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. Section 582 also includes a responsibility to notify property owners of their responsibility to notify transferees about mandatory flood purchase requirements. More information about these requirements is available in the Federal Register Notices governing the CDBG-DR award.

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

- 3.7.6.1. If the project occurs in a Coastal High Hazard Area (V Zone) or a floodway, federal assistance may not be used at this location if the project is a critical action pursuant to 24 CFR 55.1(c) and 55 subpart B, except as provided therein. For projects allowed under 24 CFR 55.1(c) and 55 subpart B, the eight-step process shall be followed pursuant to 24 CFR 55.20.
- 3.7.6.2. If the project occurs in a 100-year floodplain or Special Flood Hazard Area (A Zone), the 8-Step Process is required as provided for in 24 CFR 55.20 or as reduced to the 5-Step Process pursuant to 24 CFR 55.12(a), unless an exception is applicable pursuant to 24 CFR 55.12(b).
- 3.7.6.3. If the project occurs in a 500-year floodplain (B Zone or shaded X Zone), the 8-Step Process is required for critical actions as provided for in 24 CFR 55.20 or as reduced to the 5-Step Process pursuant to 24 CFR 55.12(a), unless an exception is applicable pursuant to 24 CFR 55.12(b).

Additional elevation standards as may be required by the Federal Register Notices apply to projects funded by this Agreement. All structures, defined at 44 CFR 59.1, designed principally for residential use and located in the 1 percent annual (or 100-year) floodplain or Special Flood Hazard Area that receive assistance for new construction, repair of substantial damage, or substantial improvement, as defined at 24 CFR 55.2(b)(10), must be elevated with the lowest floor, including the basement, at least two feet above the 1 percent annual floodplain elevation. Residential structures with no dwelling units and no residents below two feet above the 1 percent annual floodplain, must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3) or successor

standard, up to at least two feet above the 1 percent annual floodplain. All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 0.2 percent annual floodplain (or 500-year) floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 0.2 percent annual floodplain flood elevation or three feet above the 1 percent annual floodplain. If the 0.2 percent annual floodplain or elevation is unavailable for Critical Actions, and the structure is in the 1 percent annual floodplain, then the structure must be elevated or floodproofed at least three feet above the 1 percent annual floodplain level. Applicable State, local, and tribal codes and standards for floodplain management that exceed these requirements, including elevation, setbacks, and cumulative substantial damage requirements, must be followed.

Article 4. ADMINISTRATIVE REQUIREMENTS, MONITORING, REPORTING, AND AUDIT

4.1. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Subrecipient shall comply with the applicable provisions in 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, except as modified by Federal Register notices dated February 9, 2018 (83 Fed. Reg. 5844) and January 27, 2020 (85 Fed. Reg. 4681) and other applicable Federal Register notices and HUD guidance. These provisions include:

4.1.1. Financial & Program Management. Subrecipient 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.

4.1.2. 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:

4.1.2.1. Depreciation methods for fixed assets shall not be changed without the approval of the federal cognizant agency.

4.1.2.2. Fines penalties, damages, and other settlements are unallowable costs to the CDBG program.

4.1.2.3. 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

4.1.2.4. Organization costs (2 CFR 200.455).

4.2. Documentation; Recordkeeping. Subrecipient shall establish and maintain records sufficient to enable Grantee to (1) determine whether Subrecipient 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 4.3 of this Agreement. At a minimum, the Subrecipient shall maintain records required by 24 CFR 570.506, as if the requirements in 24 CFR 570.506 were directly imposed upon the Subrecipient and any additional, applicable recordkeeping requirements imposed by the Federal Register notices.

4.3. Records to be Kept. Subrecipient must maintain records in order meet recordkeeping requirements imposed by federal statute, regulation, specifically 24 CFR 570.506, and the terms and conditions of the Grantee's federal award, and to assist the Grantee in meeting its recordkeeping and reporting requirements. The following list is not exhaustive.

- 4.3.1. Records providing a full description of each Project activity undertaken;
- 4.3.2. Records demonstrating that each Project activity undertaken meets one of the National Objectives of the CDBG-DR program;
- 4.3.3. Records required to determine the eligibility of Project activities;
- 4.3.4. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with Grant Funds;
- 4.3.5. Records documenting compliance with the fair housing and equal opportunity requirements of the federal regulations;
- 4.3.6. Financial records as required by 2 CFR part 200, including records necessary to demonstrate compliance with all applicable procurement requirements; and
- 4.3.7. 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

4.4. Confidentiality of Data. Subrecipient is required to maintain potentially sensitive data under this Agreement and must maintain and preserve the confidentiality of any and all information and records that are subject to protection by state and federal laws, which include, but are not limited to, the laws regarding: Personally Identifiable Information (including names, addresses, birth dates, driver's license information, social security numbers, and financial information); data provided to Subrecipient and Grantee in the form of FEMA Individual Assistance, Public Assistance, Hazard Mitigation Assistance, National Flood Insurance Program, as well as Small Business Administration disaster loans; trade secrets; tax records; and, individually identifiable health information. Subrecipient may not disclose information to current or prospective vendors regarding ongoing procurements. If Subrecipient receives a public record request or request for protected information, Subrecipient must notify and refer the request to Grantee. Subrecipient must ensure that all employees and contractors return all physical and electronic copies of all Grantee files and other records containing confidential information upon termination or completion of his or her position with Subrecipient.

4.5. Reporting. Subrecipient shall report to Grantee regular performance metrics that are necessary to comply with Grantee's and HUD's Grant Fund reporting requirements, including those metrics necessary for Grantee's Quarterly Performance Report (QPR) submitted to HUD. Grantee will provide reporting templates and schedules to Subrecipient if requested by Subrecipient. Grantee will provide a list of required data and metrics that must be included in the reports in the Agreement, which may be amended from time to time and automatically incorporated herein. Grantee, at its discretion, may provide technical assistance to Subrecipient on topics relating to the program.

Subrecipient shall use Grantee's designated system (at this time, Microsoft SharePoint) to upload reporting documents and other records as requested. Access to the designated system shall be provided to Subrecipient by Grantee as required.

4.6. Nonperformance Standard. If (i) after one (1) year from the execution of this Agreement the program activity has not begun or (ii) if Subrecipient fails to accomplish the performance goals and timelines set forth by Grantee, Grantee may, at its option, terminate this Agreement in accordance with termination provisions in Section 5.5. No contract extensions may be granted by Grantee unless Subrecipient can document circumstances beyond its control that prevented start of the activity. Grantee will review the documentation and Grantee reserves the right to make a determination based on the reasons stated and prevailing circumstances.

4.7. Audits, Inspections, and Monitoring.

4.7.1. Single Audit. Subrecipient must be audited as required by 2 CFR part 200, subpart F when it is expected that Subrecipient's federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR 200.501, Audit requirements.

4.7.2. Inspections and Monitoring. Subrecipient shall permit Grantee and auditors to have access to Subrecipient's records and financial statements as necessary for Grantee to meet the requirements of 2 CFR part 200. Subrecipient must submit to monitoring of its activities by Grantee as necessary to ensure that the award is used for authorized purposes, in compliance with federal statutes, regulations, and the terms and conditions of this Agreement. This review must include: (1) reviewing financial and performance reports required by Grantee; (2) following-up and ensuring that Subrecipient takes timely and appropriate action on all deficiencies pertaining to the federal award provided to Subrecipient from 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 Subrecipient from the state agencies as required by 24 CFR 200.521.

Grantee shall monitor the performance of Subrecipient as necessary and in accordance with the North Carolina Office of Recovery and Resiliency Compliance and Monitoring Manual, as amended from time to time, and attached here as Exhibit C, and 2 CFR 200.328–200.330, to ensure Subrecipient compliance with all requirements of this Agreement, including the timeframes and performance goals associated with activities specified in the Scope of Work (Exhibit A) and the Award Letter. At all times, Subrecipient must comply with Grantee rules and policies that Grantee has certified to HUD for Grant Fund certifications.

4.7.3. Corrective Actions. Grantee may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits. Substandard performance, as determined by Grantee, will constitute noncompliance with this Agreement. Grantee may require Subrecipient to take timely and appropriate action on all deficiencies pertaining to the federal award provided to Subrecipient 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 Grant Funds to ensure future compliance or provide training and technical assistance as needed to correct noncompliance. If action to correct such substandard performance is not taken by Subrecipient within a time period specified by Grantee after notification, Grantee may impose additional conditions on Subrecipient and its use of Grant Funds consistent with 2 CFR 200.208, suspend or terminate this Agreement, or initiate other remedies for noncompliance as appropriate and permitted under 2 CFR 200.339-200.343.

Article 5. PERIOD OF PERFORMANCE, TERM, AMENDMENTS AND TERMINATION

- 5.1. HUD Grant Agreement.** Subrecipient hereby acknowledges that this Agreement is subject to the requirements of the grant agreement between the State of North Carolina, Grantee, and HUD (the “Federal Grant Agreement”) and the availability of the allocated CDBG-DR funds. Subrecipient also acknowledges and agrees that any suspension, cancellation, or termination of the CDBG-DR allocation(s) or funds by HUD will result in the immediate suspension, cancellation, or termination of this Agreement, upon Grantee’s notice to Subrecipient.
- 5.2. Period of Performance and Term.** The “Period of Performance” for Subrecipient, meaning the time during which Subrecipient may incur new obligations to carry out activities under this Agreement, commences on the Effective Date and ends on the later of: (i) January 31, 2026; (ii) the date as of which the Parties agree in writing that all grant closeout requirements have been satisfied or, where there are no closeout requirements are applicable to this Agreement, the date as of which the parties agree in writing that no grant closeout requirements are applicable; or (iii) such later date as the parties may agree to in a written, executed amendment to this Agreement. This Agreement and its terms and conditions shall remain in effect during any period in which Subrecipient has control over Grant Funds provided through this Agreement, including program income as defined in this Agreement, Grantee’s Program Income Policy, and 24 CFR 570.489(e), to the extent that applicable Federal Register Notices further waive or define program income.
- 5.3. Extensions.** The burden is on Subrecipient to request deadline extensions under this Agreement, unless explicitly stated otherwise. Requests for extensions must be made in writing, addressed to Grantee, explain why an extension is needed and must propose a new deadline. Grantee must receive this request at least 30 days before the applicable deadline. Within its sole discretion, Grantee may or may not approve the extension, based on project performance and other contributing factors. Grantee is not responsible for notifying Subrecipient of any approaching deadlines.
- 5.4. Amendments.** Grantee and Subrecipient may amend this Agreement at any time provided that such amendments are in writing, make specific reference to this Agreement, are approved by all Parties, and are signed by a duly authorized representative of each Party. Such amendments shall not invalidate this Agreement, nor relieve or release Grantee or Subrecipient from their obligations under this Agreement.

Amendments to this Agreement will generally be required when any of the following are anticipated: i) revision to objectives of the Program and Scope of Work; ii) extension of the availability of Grant Funds; iii) revision that would result in the need for additional funding; and iv) revision of expenditures on items for which applicable cost principles require prior approval. If amendments result in a change in the funding amount, a significant change to the services provided by Subrecipient, or significant changes to the schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated by written amendment signed by Grantee and Subrecipient.

Grantee may, unilaterally and in its discretion, amend this Agreement to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons with written notice to Subrecipient.

5.5. Suspension or Termination.

- 5.5.1. Termination for Convenience. Grantee may terminate this Agreement, in whole or in part, for convenience, with 30 days written notice to Subrecipient.
- 5.5.2. Termination in the Event of Default. Grantee may suspend, reduce, or terminate its obligations under this Agreement, in whole or in part, including by project, upon 30 days' notice, whenever Grantee determines that Subrecipient has failed to comply with any term, condition, requirement, or provision of this Agreement. Subrecipient shall be afforded a reasonable period of time to cure any noncompliance. Failure to comply with any terms of this Agreement, include (but are not limited to) the following:
- 5.5.2.1. *Default in Performance.* The default by Subrecipient or a subsequent recipient in the observance or performance of any of the terms, conditions, or covenants of this Agreement.
- 5.5.2.2. *Misrepresentation.* If any representation or warranty made by Subrecipient or any information, certificate, statement, or report given by Subrecipient in connection with the Grant shall be untrue or misleading in any material respect at the time made.
- 5.5.2.3. *Abandonment of the Project.* If Subrecipient abandons or otherwise ceases to continue to make reasonable progress towards completion of the program, activities or Project as outlined in Scope of Work (Exhibit A) and Award Letter.

If, after notice of default or non-compliance, Subrecipient has not cured such default within a reasonable time or is not diligently pursuing a cure satisfactory to Grantee, then Grantee shall promptly notify Subrecipient, in writing, of its determination and the reasons for the termination together with the date on which the termination shall take effect, along with other notifications required by law. Upon termination, Grantee retains the right to recover any improper expenditures from Subrecipient and Subrecipient shall return to Grantee any improper expenditures no later than 30 days after the date of termination. Grantee may, at its sole discretion, allow Subrecipient to be reimbursed for costs reasonably incurred prior to termination, that were not made in anticipation of termination and cannot be canceled, provided that said costs meet the provisions of this Agreement, NCORR Billing Guide (Exhibit B), 24 CFR part 200, subpart E, Cost Principles, and any other applicable state or federal statutes, regulations or requirements.

- 5.6. **Additional Remedies.** If Subrecipient defaults, Grantee shall have the power and authority, consistent with statutory authorities: (a) to prevent any impairment of the Grant activities by any acts which may be unlawful or in violation of this Agreement or any other item or document required hereunder; (b) to compel specific performance of any of Subrecipient's obligations under this Agreement; (c) to obtain return of all Grant Funds, including equipment if applicable; and (d) to seek damages from any appropriate person or entity. Grantee shall be under no obligation to complete the activities funded by this Agreement.
- 5.7. **Nonwaiver.** No delay, forbearance, waiver, or omission by Grantee to exercise any right, power or remedy upon any event of default shall exhaust or impair any such right, power or

remedy or shall be construed to waive any such event of default or to constitute acquiescence therein.

5.8. Closeout. Subrecipient shall closeout its use of the Grant Funds and its obligations under this Agreement by complying with the closeout procedures in 2 CFR 200.344. Activities during this closeout period may include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that Subrecipient has control over Grant Funds, including program income. The rules governing program income acquired after closeout are modified in the Federal Register notices applicable to this Agreement.

5.8.1. Record Retention and Transmission of Records to Grantee. Prior to closeout of this Agreement, Subrecipient must transmit to Grantee records sufficient for the Grantee to demonstrate that all costs under this Agreement met the requirements of the federal award. Subrecipient shall retain financial records, supporting documents, statistical records, records and all other Subrecipient records pertinent to this Agreement and Subrecipient's subaward for the longer of 5 years after the expiration or termination of this Agreement. Subrecipient must continue to collect and maintain records to ensure that any real property under Subrecipient's control that was acquired or improved, in whole or part, with Grant Funds is used to meet one of the national objectives until 5 years after expiration of this Agreement.

The following exceptions apply to the 5-year retention requirement:

- 5.8.1.1. If any litigation, claim, or audit is started before the expiration of the 5-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken; or
- 5.8.1.2. When the Subrecipient is notified in writing by HUD, the cognizant agency for audit as defined in 2 CFR 200.1, the oversight agency for audit as defined in 2 CFR 200.1, the cognizant agency for indirect costs as defined in 2 CFR 200.1, or the Grantee, the Subrecipient shall extend the retention period consistent with the notification;

5.9. Deobligation of Unused Funds. When project costs are less than the award of Grant Funds, Subrecipient shall deobligate excess Grant Funds back to Grantee.

5.10. Refunds; Unexpended Funds. Subrecipient shall repay to Grantee, or its successor, any Grant Funds received that exceed the amount that has been allocated per this Agreement, including any interest earned on excess Grant Funds. If Subrecipient has Grant Funds on hand or accounts receivable attributable to the use of Grant Funds at the time of termination of this Agreement, Subrecipient must transfer all Grant Funds and attributable accounts receivable to Grantee, or its successor.

5.13. Improper Expenditures. In the sole discretion of Grantee, or its successor, Grantee, or its successor, may recapture from Subrecipient any amount of Grant Funds improperly expended, either deliberately or non-deliberately, by any person or entity.

Article 6. PROCUREMENT, OVERSIGHT, PROPERTY STANDARDS

6.1. Procurement and Contractor Oversight.

- 6.1.1. Procurement Policies. Subrecipient's procurement policies shall comply with the procurement standards in 2 CFR 200.318 - 200.326 and Appendix II, when procuring property and services under this Agreement. Subrecipient shall impose Subrecipient's obligations under this Agreement on its contractors, specifically or by reference, so that such obligations will be binding upon each of its contractors.
- 6.1.2. Contractor and Developer Oversight. Subrecipient shall impose Subrecipient's obligations under this Agreement on its contractors, specifically or by reference, so that such obligations thereunder will be binding upon each of its contractors and borrowers. Subrecipient must comply with regulations regarding debarred or suspended entities including 24 CFR 570.489(i), 2 CFR part 180, subparts A-I, and 2 CFR part 2424. Subrecipient is responsible to ensure that it has checked the federal System for Awards Management (SAM) (<https://www.sam.gov/portal/SAM>) and the State Debarred Vendors Listing (<https://ncadmin.nc.gov/documents/nc-debarred-vendors>) to verify that contractors, borrowers, developers and their subcontractors, or subsequent recipients have not been suspended or debarred from doing business with the federal or state government. Subrecipient shall maintain oversight of all activities under this Agreement and shall ensure that for any procured contract or agreement, its contractors and borrowers perform according to the terms and conditions of the procured contracts or agreements, and the terms and conditions of this Agreement.

6.2. Property Standards. Subrecipient and its contractors shall abide by the terms as set forth in the Federal Register Notices regarding property standards, which include the following:

- 6.2.1. Green Building. Pursuant to the Federal Register notice of February 9, 2018 (83 Fed. Reg. 5844, at 5862), the Federal Register notice of February 19, 2019 (84 Fed. Reg. 4836, at 4844), and the Federal Register Notices, as applicable, all new construction of residential buildings and all replacement of substantially damaged residential buildings funded under this Agreement must meet an industry-recognized standard that has achieved certification under at least one of the following programs: (i) ENERGY STAR (Certified Homes or Multifamily High-Rise), (ii) Enterprise Green Communities; (iii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development), (iv) ICC-700 National Green Building Standard, (v) EPA Indoor AirPlus (ENERGY STAR a prerequisite), or (vi) any other equivalent comprehensive green building program acceptable to HUD. Subrecipient must identify, in each project file and in documentation as requested by Grantee, which Green Building Standard will be used on any building covered by the Federal Register Notices and this Agreement, along with a checklist or other documentation demonstrating the elements of the chosen standard have been followed. If an equivalent program is selected, proof of HUD acceptance will also be required.
- 6.2.2. Rehabilitation. For rehabilitation work funded by this Agreement, Subrecipients must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist, available at <https://www.hudexchange.info/resource/3684/guidance-on-the-cpd-green-building-checklist/>. When older or obsolete products are replaced as part of the rehabilitation work, rehabilitation is required to use ENERGY STAR-labeled,

WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products and appliances.

6.3. Relocation, Real Property Acquisition, and One-for-one Housing Replacement. Subrecipient shall comply, when applicable, 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 implement Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5181, which provides: “Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the [URA] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.” Portions of these regulations have been waived for the funds provided under this Agreement, pursuant to the Federal Register Notices.

6.4. Historic Preservation. Subrecipient shall comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended, 54 USC 300101 – 300321, and the procedures set forth in 36 CFR part 800 insofar as they apply to the performance of this Agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list.

6.5. Broadband Infrastructure in Housing. Pursuant to the Federal Register notice dated February 3, 2022 (87 Fed. Reg. 6364, at 6372), if funds under this Agreement are used for any new construction or substantial rehabilitation (as defined by 24 CFR 5.100) of a building with more than four rental units, those structures must include installation of broadband infrastructure, except where Subrecipient documents that: (a) the location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible; (b) the cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or (c) the structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

Article 7. MISCELLANEOUS PROVISIONS

7.1. Complaints. Subrecipient may address complaints to Grantee and/or through the Rebuild NC website (<https://www.rebuild.nc.gov/>). Citizen complaints can be filed directly to Grantee and/or through the Rebuild NC website (<https://www.rebuild.nc.gov/>).

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

and Subrecipient, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

- 7.3. Further Assurance.** In connection with and after the disbursement of Grant Funds under this Agreement, upon the reasonable request of Grantee, Subrecipient shall execute, acknowledge, and deliver or cause to be delivered all such further documents and assurances, and comply with any other requests as may be reasonably required by Grantee or otherwise appropriate to carry out and effectuate this Agreement. Grantee may require the delivery of documents in hard copy or by electronic media.
- 7.4. Independent Status of the Parties.** The Parties are independent entities and neither this Agreement nor any provision of it or any of the documents or records that may or may not be made part of this Agreement shall be deemed to create a partnership or joint venture between the Parties. Further, neither the Agreement nor any of the documents or records that may or may not be made part of this Agreement shall in any way be interpreted or construed as making Subrecipient, its agents or employees, agents, or representatives of Grantee. Given that Subrecipient is independent and apart from Grantee, and therefore acting as an “independent contractor,” Subrecipient is and shall be wholly responsible for the work to be performed and for the supervision of its employees. In no event shall Grantee be liable for debts or claims accruing or arising against Subrecipient. Subrecipient represents that it has, or shall secure at its own expense, all personnel required in the performance of this Agreement. Such employees shall not be employees of, nor have any individual contractual relationship with Grantee.
- 7.5. Indemnity.** Subrecipient agrees, to the fullest extent permitted by law, to release, defend, protect, indemnify and hold harmless Grantee and its employees and agents against claims, losses, liabilities, damages, and costs, including reasonable attorney fees, which result from or arise out of: (a) damages or injuries to persons or property caused by the negligent acts or omissions of Subrecipient, its employees, or agents in use or management of the Grant; and (b) for any claims, whether brought in contract, tort, or otherwise, arising out of this Agreement, if related to Subrecipient’s actions or omissions. The obligations under this section are independent of all other rights or obligations set forth herein. This indemnity shall survive the disbursement of the Grant funds, as well as any termination of this Agreement.
- 7.6. Binding Effect, Contract Not Assignable by Subrecipient.** The terms hereof shall be binding upon and inure to the benefit of the successors, assigns, and personal representatives of the parties hereto; provided, however, that Subrecipient may not assign this Agreement or any of its rights, interests, duties or obligations hereunder or any Grant Funds, program income or other moneys to be advanced hereunder in whole or in part unless expressly allowed under this Agreement, without the prior written consent of Grantee, which may be withheld for any reason and that any such assignment (whether voluntary or by operation of law) without said consent shall be void.
- 7.7. Successor in Interest and Assignment by Grantee.** This Agreement shall be transferred from Grantee to any successor in interest designated by the US Department of Housing and Urban

Development as Grantee for the CDBG-DR program for the State of North Carolina immediately upon that designation.

- 7.8. Savings Clause.** Invalidation of any one or more of the provisions of this Agreement, or portion thereof, shall in no way affect any of the other provisions hereof and portions thereof which shall remain in full force and effect.
- 7.9. Additional Remedies.** Except as otherwise specifically set forth herein, the rights and remedies provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available in connection with this Agreement.
- 7.10. Survival.** Where any representations, warranties, covenants, indemnities, or other provisions contained in this Agreement by its context or otherwise, evidences the intent of the parties that such provisions should survive the termination of this Agreement or closeout of the Agreement, the provisions shall survive any termination or Closeout.
- 7.11. Headings.** The headings of the various sections of this Agreement have been inserted for convenience only and shall not modify, define, limit, or expand the express provisions of this Agreement.
- 7.12. Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. All recitals, exhibits, schedules, and other attachments hereto are incorporated herein by reference.
- 7.13. Counterpart.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same agreement. Execution by facsimile, by scanned attachments, or by electronic signature (including, but not limited to DocuSign) has the same force and effect as a wet signature. An executed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the undersigned, as authorized officials on behalf of the Parties have executed this Agreement.

GRANTEE

NORTH CAROLINA OFFICE OF RECOVERY AND RESILIENCY,
a division of the North Carolina Department of Public Safety,
an agency of the state of North Carolina

By: _____

Laura Hogshead, Director

Date: _____

SUBRECIPIENT

THE TOWN OF MOREHEAD CITY,
a municipal corporation

By: _____

Gerald A. Jones, Mayor

Date: _____

Addendum 1

Requirements to Comply with Federal Statutes, Regulations and the Terms and Conditions of the Federal Award

The Grant Funds available to Subrecipient through this Agreement constitute a subaward of 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 Grantee's federal award that are imposed on Subrecipient, and Subrecipient agrees to carry out its obligations in compliance with all the obligations described in this Agreement.

- 1. General Compliance.** Subrecipient 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 the Federal Register notices that govern the use of CDBG-DR funds available under this Agreement. These Federal Register notices include, but are not limited to, the Federal Register Notice dated January 27, 2020 (85 Fed. Reg. 4681), the Federal Register Notice dated January 6, 2021 (86 Fed. Reg. 561), the Federal Register Notice dated February 9, 2018 (83 Fed. Reg. 5844), the Federal Register Notice dated August 4, 2018 (83 Fed. Reg. 40314), the Federal Register Notice dated February 19, 2019 (84 Fed. Reg. 4836), and the Federal Register Notice dated June 20, 2019 (84 Fed. Reg. 28848). Notwithstanding the foregoing, (1) Subrecipient does not assume any of Grantee's responsibilities for environmental review, decision-making, and action, described in 24 CFR part 58 and (2) Subrecipient does not assume any of Grantee's responsibilities for initiating the review process under the provisions of 24 CFR part 58. Subrecipient shall also comply with all other applicable federal, state, and local laws, regulations, and policies that govern the use of the CDBG-DR funds in complying with its obligations under this Agreement.
- 2. Duplication of Benefits.** Subrecipient shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5155). Subrecipient may not use funds provided by this Agreement to carry out the same activities that were funded by another source, including other federal or state sources or private insurance. Subrecipient must repay any assistance later received for the same purpose as those awarded or provided by this Agreement.
- 3. Drug-Free Workplace.** Subrecipient must comply with drug-free workplace requirements in subpart B of 2 CFR 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 USC 701 – 707).
- 4. Insurance and Bonding.** In compliance with applicable State law and Federal law (2 CFR 200.326 and 200.310), Subrecipient shall carry sufficient insurance coverage and bonding to protect assets acquired with the use of Grant Funds to protect from loss due to theft, fraud, and/or undue physical damage.
- 5. Nondiscrimination.**

 - 5.1. 24 CFR part 6.** Subrecipient 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 USC 5309) (HCDA). 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. Subrecipient will adhere to the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 USC 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 USC 794) (Section 504). Section 109 of the HCDA makes these requirements applicable to programs or activities funded in whole or in part with Grant Funds. Thus, Subrecipient shall comply with regulations of 24 CFR part 8, which implement Section 504 for HUD programs, and the regulations of 24 CFR part 146, which implement the Age Discrimination Act for HUD programs.

5.2. Architectural Barriers Act and the Americans with Disabilities Act. Subrecipient shall ensure that its activities funded under this Agreement are consistent with requirements of the Architectural Barriers Act and the Americans with Disabilities Act, as well as other applicable federal and state accessibility statutes and regulations.

5.2.1. The Architectural Barriers Act of 1968 (42 USC 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. The Architectural Barriers Act applies to any facility that is intended for use by the public or that may result in the employment or residence therein of individuals with disabilities, which is to be (1) constructed or altered by, or on behalf of, the United States; (2) leased in whole or in part by the United States; or (3) financed in whole or in part by a grant or loan made by the United States, if the building or facility is subject to standards for design, construction, or alteration issued under the authority of the law authorizing such a grant or loan (41 CFR 102-76.60). The Architectural Barriers Act Accessibility Standard applies to all buildings, other than residential facilities, Department of Defense facilities, and United States Postal Service facilities, and is set forth in Appendices C and D to 36 CFR part 1191 (41 CFR 102-76.65(a)). Residential facilities subject to the Architectural Barriers Act must meet the standards prescribed by the Department of Housing and Urban Development (HUD) (41 CFR 102-76.65(b)), which standards are set forth in the Uniform Federal Accessibility Standards (24 CFR 40.4) (available by contacting the HUD Office of Fair Housing and Equal Opportunity and at <https://www.access-board.gov/aba/ufas.html>).

5.2.2. The Americans with Disabilities Act (ADA) (42 USC 12131; 47 USC §155, 201, 218 and 225) 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.

5.2.3. Accessibility Requirements for Federally Assisted Housing. All Federally assisted new construction housing developments with 5 or more units must design and construct 5 percent of the dwelling units, or at least one unit, whichever is greater, to be accessible for persons with mobility disabilities. These units must be constructed in accordance with the Uniform Federal Accessibility Standards (UFAS) or a standard that is equivalent or stricter. An additional 2 percent of the dwelling units, or at least one unit, whichever is greater, must be accessible for persons with hearing or visual disabilities. For more information on the accessibility requirements for Federally assisted new construction and substantial alterations of existing Federally assisted housing, see Section 504: Disability Rights in HUD Programs.

- 5.2.4. State Building Code. Subrecipient must comply with the North Carolina Building Code's standards for constructing or altering building and facilities to make them accessible to and useable by the physically handicapped.
- 5.3. State and Local Nondiscrimination Provisions. Subrecipient agrees to comply with state nondiscrimination provisions found at N.C. Gen. Stat. 143-422.1 – 422.3 (Equal Employment Practices); and 41A-1–10 (NC Fair Housing Act).
- 5.4. Title VI of the Civil Rights Act of 1964 (24 CFR part 1).
 - 5.4.1. General Compliance. Subrecipient shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352), as amended 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. Subrecipient shall not intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by Title VI of the Civil Rights Act of 1964 or 24 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 24 CFR part 1, including conducting of any investigation, hearing, or judicial proceeding arising thereunder.
 - 5.4.2. Assurances and Real Property Covenants.
 - 5.4.2.1. As a condition to the approval of this Agreement and the extension of any Federal financial assistance, Subrecipient assures that the program or activities described in this Agreement will be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this Agreement.
 - 5.4.2.2. If the federal financial assistance under this Agreement is to provide or is in the form of personal property or real property or interest therein or structures thereon, Subrecipient's assurance herein shall obligate Subrecipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient or beneficiary retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate Subrecipient and beneficiary for the period during which Federal financial assistance is extended pursuant to the contract or application. This assurance gives the State and the United States a right to seek judicial enforcement of the assurance and the requirements on real property.
 - 5.4.2.3. In the case of real property, structures or improvements thereon, or interests therein, acquired with Federal financial assistance under this Agreement or acquired with Grant Funds and provided to Subrecipient or beneficiary under this Agreement, the instrument effecting any disposition by Subrecipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

5.4.2.4. If Subrecipient or beneficiary receives real property interests or funds for the acquisition of real property interests under this Agreement, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of 24 CFR part 1 shall extend to any facility located wholly or in part in such space.

5.5. Equal Opportunity and Nondiscrimination.

5.5.1. Compliance. Subrecipient agrees that it shall comply with the provisions of this subsection and shall ensure that its contractors comply with all applicable provisions of this subsection, including with the President's Executive Order 11246 of September 24, 1966, as amended, and implementing regulations at 41 CFR part 60.

5.5.2. Women- and Minority-Owned Businesses (W/MBE). Where applicable, consistent with N.C. Gen. Stat. 143-128.2, Subrecipient must include a 10% goal for participation by minority- and women- owned businesses in total value of work for every building project funded by this Agreement and shall make good-faith effort to recruit minority- and women-owned businesses for the work. Subrecipient shall take the affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used where possible when Subrecipient procures property or services under this Agreement.

5.5.3. Notifications. Where applicable, Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5.5.4. Equal Employment Opportunity (EEO)Statement. Subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that it is an Equal Opportunity employer.

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

7. Section 3 of the Housing and Urban Development Act Notice.

7.1. Subrecipient shall follow the regulations of 24 CFR part 75 et seq. that implement Section 3 of the Housing and Urban Development Act of 1968. If applicable, Subrecipient agrees to the following:

7.1.1. Any work to be performed under this Agreement that is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u (Section 3) shall follow the requirements of 24 CFR part 75. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing, community development assistance, public housing financial assistance, or assistance from the Lead Hazard Control and

Healthy Homes programs, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970, the Lead-Based Paint Poisoning Prevention Act, and the Residential Lead-Based Paint Hazard Reduction Act of 1992.

- 7.1.2. Subrecipient agrees to include Section 3 language in every contract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the contract or in this Section 3 language, upon a finding that the contract is in violation of the regulations in 24 CFR part 75. Subrecipient will not subcontract with any entity where Subrecipient has notice or knowledge that the entity has been found in violation of the regulations in 24 CFR part 75.
- 7.1.3. Execution of this Agreement is contingent upon the acceptance and approval by Grantee of a Section 3 Utilization Plan consistent with HUD guidelines. If Subrecipient does not have a Section 3 Utilization Plan consistent with 24 CFR part 75 regulations upon signature, Subrecipient shall abide by the Grantee Section 3 guidelines. Grantee will include the Grantee Section 3 Policy on its website at www.rebuild.nc.gov or available on Grantee's System of Record (such as SharePoint). Grantee's Section 3 Policy and subsequent amendments shall be automatically incorporated herein with this Agreement if Subrecipient does not have Section 3 Utilization Plan, or until Subrecipient has a final Section 3 Utilization Plan.
- 7.1.4. Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- 7.1.5. Pursuant to 24 CFR 75.27, Subrecipient shall include, or cause its borrowers, contractors, and subcontractors receiving Grant Funds under this Agreement to include Section 3 language and Section 3 requirements in every Section 3 project (as defined in 24 CFR 75.3(A)(2)). Recipients of Section 3 funding must require subrecipients, contractors, and subcontractors to meet the requirements of 24 CFR 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.
- 7.1.6. Subrecipient will certify that any vacant employment positions, including training positions, that are filled (1) after Subrecipient is selected but before the contract (or subrecipient agreement) is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent Subrecipient's obligations under 24 CFR part 75.
- 7.1.7. With respect to work performed in contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 USC 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 USC 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of 24 CFR part 75.

8. Conduct.

- 8.1. Hatch Act. Subrecipient shall comply with the Hatch Act, 5 USC 1501 – 1508, ensuring that no funds provided, nor personnel employed under this Agreement shall be in any way engaged in the conduct of political activities in violation of Chapter 15 of Title V of the United States Code.
- 8.2. Conflict of Interest. In the procurement of supplies, equipment, construction, and services pursuant to this Agreement, Subrecipient shall comply with the conflict of interest provisions of

Grantee's procurement policies, including but not limited to the Grantee Procurement Manual and N.C. Gen. Stat. 14-234. In all cases not governed by Grantee's procurement policies, Subrecipient shall comply with the conflict of interest provisions in 24 CFR 570.489(h) and State law. Subrecipient shall disclose any potential or actual conflicts of interest before executing this Agreement, and Grantee will have available a form to make such disclosures. Certain limited exceptions to the conflict of interest rules listed in 24 CFR 570.489 may be granted in writing by Grantee or HUD upon written request and the provision of information specified in 24 CFR 570.489(h)(4).

8.3. Lobbying Certification. Subrecipient hereby certifies that:

- 8.3.1. 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;
- 8.3.2. 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, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- 8.3.3. It shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and
- 8.3.4. 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, USC 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.

9. Religious Activities. Subrecipient agrees that funds provided under this Agreement shall not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

10. Environmental Conditions.

- 10.1. Recipients of Grant Funds are required to comply with the requirements of the National Environmental Policy Act of 1969 (NEPA) found at 24 CFR part 58 and complete an Environmental Review Record (ERR), if applicable. Grantee may also require additional environmental reviews for projects that receive these funds. No funds may be obligated or expended by Subrecipient until the environment review procedures outlined in Part 58 have been complied with. Full compliance with 24 CFR part 58 shall be confirmed by Grantee to Subrecipient in a Project-specific Award Letter before funds may be obligated or expended with the exception of pre-award costs identified as described in Section 3.5.
- 10.2. Subrecipient shall comply with the mandatory flood insurance purchase requirements of Section 102 of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994, 42 USC 4012a. Additionally, Subrecipient shall comply with Section 582 of

the National Flood Insurance Reform Act of 1994, as amended, (42 USC 5154a), which includes a prohibition on the provision of flood disaster assistance, including loan assistance, to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. Section 582 also includes a responsibility to notify property owners of their responsibility to notify transferees about mandatory flood purchase requirements. More information about these requirements is available in the Federal Register notices governing the Grant Funds.

- 11. Lead-Based Paint.** Subrecipient agrees that any construction or rehabilitation of residential housing with assistance provided under this Agreement shall be subject to HUD's Lead-Based Paint Regulations at 24 CFR 570.608, 24 CFR part 35, subpart B, and Chapter 130A of the North Carolina General Statutes, Article 19A (Lead-Based Paint Hazard Management Program).
- 12. Eligibility Restrictions for Certain Resident Aliens.** Subrecipient shall comply with regulations set forth under the 24 CFR 570.613 regarding the eligibility requirements of certain resident aliens where applicable.
- 13. No Funding to Private Utilities.** No funds provided under this Agreement may be used to assist a privately-owned utility for any purpose.

EXHIBIT A

Scope of Work
TOWN OF MOREHEAD CITY – ELIJAH’S LANDING

1. **Summary.** This Scope of Work outlines the Affordable Housing Development Fund program (the “Program”) requirements for the Subrecipient. This Scope of Work may be amended from time to time by mutual consent of the Parties.
 - 1.1. **Program Purpose.** The Program uses CDBG-DR funds to provide additional monies to augment public and private financing methods for the construction of affordable rental housing units using Low-Income Housing Tax Credits (LIHTC), administered by North Carolina Housing Finance Agency (NCHFA) under Section 42 of the Internal Revenue Code.
 - 1.2. **National Objective.** Activities under the Program meet the national objective of benefitting low- and moderate-income persons through housing (LMH). The national objective will be achieved at the point when a project is occupied by at least 51% low- or moderate-income households.
 - 1.3. **Project Description.** The Project, developed by East Carolina Community Development, Inc. the “Developer”), is a 168-unit multi-family development in Carteret County, North Carolina, which is a HUD identified Most Impacted and Distressed County. The Project has been awarded 4% Low Income Housing Tax Credit by NCHFA under the 2019 Qualified Allocation Plan (QAP). The Developer entered into an agreement (the “Developer Agreement”) with Subrecipient on September 26, 2022 in order to participate in the Program.
2. **Program Activity.** Under the Program, Subrecipient will provide loan(s) to Developer, the funds of which shall be used only for construction and/or rehabilitation of low-income housing properties. Subrecipient shall perform only the activities detailed in this Scope of Work with respect to the Project.
 - 2.1. **Management.** The activities under this program will be managed by Subrecipient. Technical assistance is available upon request by Subrecipient regarding monitoring, compliance, or any other questions that arise.
3. **Loan Documents.** Subrecipient must submit all loan documents to Grantee in draft form prior to the anticipated execution of these documents. Failure to submit draft loan documents may trigger an Event of Default per the terms of Section 5.5.2 of this Agreement. Final executed copies loan documents between Subrecipient and Developer must be submitted to Grantee within 30 days of execution.
4. **Payments and Reimbursements.** The NCORR Billing Guide (Exhibit B), as well as the Developer Agreement and this Agreement, explain the requirements and procedures for the disbursement of Grant Funds to Subrecipient and from Subrecipient to Developer.

- 4.1. Comingling Funds. Subrecipient shall not commingle these funds with any other funds and will assure that Grantee has access to monitor the bank account where CDBG-DR and other funds applicable to this agreement are held.
- 4.2. Timing. After Subrecipient's receipt of Grant Funds for reimbursement payments intended for Developer, Subrecipient shall have no more than five business days to disburse such funds to Developer.

5. Project Documentation.

- 5.1. Pre-award. Developer and Subrecipient must submit to Grantee the proposed scope, budget, schedule, and sources for the Project. These materials were submitted to Grantee during the application process.
- 5.2. Material Changes. If material changes are made to scope, budget, schedule or sources for the Project, Subrecipient and Developer must submit to Grantee documentation of such change within 30 days of the change being made.
- 5.3. Cost Analysis. Any and all cost analyses performed by Subrecipient and Developer must also be submitted to Grantee and information from the cost analyses verified as requested by Grantee.
- 5.4. Lease Up, Operations, and Close Out. Upon completion of construction, Subrecipient and Developer shall make available to Grantee all records and documentation related to Project lease-up and operations in preparation of close out, including, but not limited to, the following information:
 - 5.4.1. Certificate of Completion or Cost Certification by NCHFA Authorized Signatory
 - 5.4.2. Household Characteristics Reports for all housing units
 - 5.4.3. Household Income Worksheets and Certification for all housing units
 - 5.4.4. Final Expenditure Report with documentation
 - 5.4.5. Section 3 Report form HUD-60002
 - 5.4.6. Progress photos from the project
 - 5.4.7. Fair Housing Report
 - 5.4.8. Status reports from Grantee monitoring, if any
 - 5.4.9. MBE/WBE Reports
 - 5.4.10. Flood Insurance coverage, if applicable
 - 5.4.11. Green Building Standard and proof of certifications
 - 5.4.12. Broadband Infrastructure documentation (plans and/or pictures confirming installation)
 - 5.4.13. Most recent single audit report
- 5.5. Additional Documentation. Developer and Subrecipient shall submit any documentation regarding the Project to Grantee as requested.

6. **Affordability Period and Land Use**. The affordability period for projects funded under the Program will be at least 20 years.

6.1. Land Use Restriction Agreement. In addition to recording of a loan in the amount of award, all funding awards will be subject to a minimum twenty (20) year Land Use Restriction Agreement (LURA). The executed LURA must contain the following affordability/compliance covenants:

- 6.1.1. Affordability period of not less than twenty (20) years;
- 6.1.2. Rents charged to LMI tenants are based upon HUD's published rents in accordance with QAP requirements;
- 6.1.3. Definition of the number of rental units set aside for Extremely Low-, Very Low-, and Low-Income tenants.

6.2. Other Restrictions. Other affordable housing subsidies (e.g., Low-Income Housing Tax Credits) layered in the financing structure may require additional rental restrictions. In all cases where other federal, state, or local subsidies are a component of the sources used, the most restrictive requirements will be applied. Subrecipient must require the Project Owner/Developer to record a LURA as described above.

7. **Monitoring**. Per Section 4.2, Subrecipient will comply with Grantee's monitoring of Subrecipient and the Project. Subrecipient will monitor the performance of Developer against goals and performance standards stated in the Project's LIHTC application and as well as the terms and conditions in this Agreement.

8. Work Performed by Subrecipient:

- 8.1. Ensure Uniform Relocation Act compliance, if applicable.
- 8.2. Review and approve financial closing documents related to the project.
- 8.3. Ensure all required insurance coverage is established for project.
- 8.4. Maintain documentation of all activities and expenditures undertaken in a system of record.
- 8.5. Submit appropriate reimbursement requests for funds with documentation to Grantee on a monthly basis.
- 8.6. Pre-audit of monthly certifications for payment when and if requested by NCORR.
- 8.7. Disbursement of monthly certifications for payment.
- 8.8. Enforcement of provisions in the Developer Agreement for instances of non-performance or insufficient performance. Any such instances shall be reported to Grantee along with suggested corrective action.
- 8.9. Reporting and data management, including delivery of ad hoc reports when requested by Grantee or its designee(s).
- 8.10. Final cost certification review, as needed.
- 8.11. Providing documentation for closeout as requested by NCORR.
- 8.12. Monitor and enforce affordability period.
- 8.13. Management of agreed upon program budget. Any variances or expected variance which would cause significant impacts on the program must be reported to Grantee along with recommended corrective action.
- 8.14. Maintain adequate staffing levels to support program activities funded in whole or in part by CDBG-DR.

- 8.15. Ensure sufficient human resource management for all staff dedicated in whole or in part to programs funded by CDBG-DR.
- 8.16. Translate program documents, if required to be publicly available by law and by request.
- 8.17. Provide Grantee with any required or requested documentation and information and other documents required pursuant to law.
- 8.18. Facilitate the process of tax-exempt bond financing and closing in accordance with the requirements of Section 42(h)(4) of the Internal Revenue Code of 1986, as amended, including serving as bond issuer and hiring underwriters for tax-exempt bonds for 4% LIHTC projects in the event that the local jurisdiction is unable to offer or issue the bonds, or the Project is located across more than one jurisdiction.
- 8.19. Monitor Developer's compliance with Davis-Bacon, including collection of weekly certified payroll and on-site payroll interviews.
- 8.20. Coordinate environmental reviews with Grantee and Developer, as needed.
- 8.21. Perform other duties as requested by Grantee.

9. Work overseen by Subrecipient:

- 9.1. Monitor the financial closing of the Project.
- 9.2. Environmental monitoring, which includes monitoring of Developer's compliance with mitigation measures as required by Grantee, and to the extent that Grantee provides additional environmental review and on-site requirements and reporting pursuant to this Agreement, Subrecipient shall inform Developer and ensure enforcement of those requirements and recordkeeping of those forms designated by Grantee.
- 9.3. Monitor relocation plan implementation, if applicable.
- 9.4. Inspect construction work
- 9.5. Approval of timely site and hard construction payments.
- 9.6. Approve construction retainage payment.

10. Project Timeline. Subrecipient and Grantee recognize that adjustments to the timeline may be needed due to variance in project underwriting, unforeseen environmental review findings, financing changes or shifting market conditions, and potential acts of God with respect to construction disruptions. If Subrecipient and Developer cannot provide documentation that the project is progressing in a manner consistent with the expenditure and placed in service deadlines, Grantee reserves the right to enforce the applicable termination provisions in the Agreement.