

TEXAS GENERAL LAND OFFICE
is
REQUESTING APPLICATIONS
for
Rehabilitation, Reconstruction, and New Construction Services
for
2018 South Texas Floods
Affordable Rental Housing Program

REQUEST FOR APPLICATIONS NO. RFA ARP-001-JC

Release Date: May 1, 2021, 2020

Deadline for Submission: June 30, 2021 at 2:00 PM CT

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An announcement and link to this RFA and all relevant documentation will be posted to the State of Texas's eGrants website, <https://egrants.gov.texas.gov/>. Applicants are responsible for checking the Texas General Land Office's website, www.recovery.texas.gov, for any addenda to this RFA. Applicant's failure to periodically check the GLO's website for updates will in no way release Applicant from addenda or additional information resulting in additional requirements of the Application.

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ARTICLE I. EXECUTIVE SUMMARY, DEFINITIONS, AND AUTHORITY

1.1. EXECUTIVE SUMMARY

The Texas General Land Office’s (“GLO” or “agency”) Community Development and Revitalization (“CDR”) division seeks applications from eligible applicants for the provision of rehabilitation, reconstruction, and new construction services for the Community Development Block Grant for Disaster Recovery (“CDBG-DR”) Affordable Rental Program (“ARP”) being administered by the GLO in response to 2018 Texas severe storms and flooding.

The GLO is directly administering ARP to assist in the rehabilitation, reconstruction, and new construction of multi-family rental housing units in areas damaged by severe storms and flooding events in 2018. Applications will be reviewed and awards will be prioritized in accordance with Article IV. Selected Providers will provide rehabilitation, reconstruction, and new construction services to multi-family rental properties located within the Affected Regions outlined in **Exhibit D**, *Affected Regions Map*.

It is the intent of the GLO to award funds to all eligible Applicants, in accordance with the criteria listed herein, for the totality of funding available. It is possible that Applications may not be funded.

The GLO will consider making awards to Applicants that demonstrate the ability to implement the requested services in compliance with all applicable federal, state, and local laws, ordinances, rules, and regulations, including the Code of Federal Regulations ("CFR"), U.S. Department of Housing and Urban Development ("HUD") requirements, and CDBG-DR rules and regulations.

Applicants must execute **Exhibit A**, *General Affirmations and Applications Acceptance*, and **Exhibit B**, *Federal Affirmations*, and **Exhibit E**, *Multifamily Uniform Application*, and all relevant documentation listed on the Submission Checklist in Article VII of this RFA to be considered. Additional information about the GLO and its programs can be found at <http://www.glo.texas.gov/recovery/index.html>.

1.2. DEFINITIONS

“**2018 Floods**” means the 2018 Texas severe storms and flooding for which a presidential disaster declaration (DR-4377) was issued and funding was allocated via Public Law 116-20.

“**Act**” means Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. Sec. 5301 et seq.).

“**Action Plan**” means the State of Texas plan submitted to and approved by HUD outlining the proposed activities for long-term recovery for a Presidentially-declared disaster.

Action Plans are available on the GLO's disaster recovery website at <http://recovery.texas.gov/local-government/hud-requirements-reports/index.html>.

“Americans with Disabilities Act” or “ADA” means the American with Disabilities Act of 1990, as amended (42 U.S.C. 12101, et seq.).

“Addendum” means a written clarification or revision to the RFA issued by the GLO. Applicants must acknowledge receipt of any addenda in the submission of its Application.

“Affected Regions” means the HUD MID and State MID Regions outlined in **Exhibit D, *Affected Regions Map***, covering Hidalgo, Cameron, and Jim Wells Counties, that is eligible for funding through the Affordable Rental Program.

“Affiliate” means any individual or entity that, directly or indirectly, is in control of, is controlled by, or is under common control with, Applicant. Applicant shall be deemed to control another entity if either possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other entity, whether through the ownership of voting securities, membership interests, by contract, or otherwise.

“Affirmatively Furthering Fair Housing” or “AFFH” means the standard developed by the Department of Housing and Urban Development to assess whether programs implemented by grantees meet statutory obligations under the Fair Housing Act at 42 U.S.C. 3608.

“Affordable Rental Program” or “ARP” means the GLO multifamily housing program described in the Action Plan.

“Affordability Period” means the fifteen or twenty-year period, as outlined in Section 2.2, for which housing units are to be utilized as affordable rental units for low- and moderate-income persons or households earning 80% or less of the Area Median Family Income (“AMFI”).

“Applicant” means the entity responding to this RFA.

“Application” means the Applicant's entire response to this RFA, including all documents requested in this RFA.

“Application Response” means an Applicant's entire response to this RFA, including all requested documents.

“CDBG-DR” means the Community Development Block Grant Disaster Recovery Program, as authorized under Title I of the Housing and Community Development Act of 1974, as amended.

“CFR” means the Code of Federal Regulations, the codification of the general and permanent rules and regulations (sometimes called administrative law) published in the Federal Register by the executive departments and agencies of the federal government of the United States.

“COG” means the Council of Governments, a voluntary organization of local governmental entities that coordinate programs and services to address needs that cross jurisdictional boundaries.

“Developer” also referred to as “Provider,” means a private individual or a profit-making or non-profit organization receiving award under this RFA for the purposes of completing

new construction, reconstruction, or rehabilitation of multi-family residential properties for which at least 51% of the units shall be dedicated to serving low- to moderate-income residents.

“Fair Housing Act” means the “Fair Housing Act of 1968,” Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284, 82 Stat. 73 (April 11, 1968), as amended.

“FEMA” means the Federal Emergency Management Agency.

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means Governmental Accounting Standards Board.

“GLO” means the Texas General Land Office.

“GLO-CDR” means the General Land Office – Community Development and Revitalization division.

“HAP” means Homeowner Assistance Program.

“Hard Costs” means the construction-related costs as deemed as eligible expenses under ARP.

“High Opportunity Zone” means the economically distressed communities, defined at the individual census tract level, as certified by the U.S. Secretary of the Treasury. More information can be found at <https://opportunityzones.hud.gov/>.

“Housing Guidelines” means the guidelines adopted by the GLO to govern the implementation of CDBG-DR programs as published to the GLO recovery website.

“HUD” means the U.S. Department of Housing and Urban Development.

“HUD MID Region” means, collectively, the assessment area designated by HUD as most impacted and distressed that encompasses Hidalgo County, as presented in **Exhibit D**, *Affected Regions Map*.

“HUD Minimum Property Standards” or “MPS” means the Minimum Property Standards (MPS) established in HUD Handbook 4910.1, as amended or superseded.

“Land Use Restriction Agreement” or “LURA” means the land use restriction agreement, as contained in **Exhibit C**, that outlines the applicable Affordability Period and related provisions.

“Multifamily Uniform Application” or “MUA” means the 2018 Floods Multifamily Uniform Application as posted to the GLO’s texasrebuilds.org website as three separate files accompanying this RFA and must be submitted with the required documentation listed in Article VII.

“New Construction” means a single-family housing unit or multi-family residential complex constructed on property not formerly used for residential purposes.

“PIA” means the Public Information Act, Chapter 552 of the Texas Government Code.

“PII” means “personal identifying information,” as defined in Section 521.002(a)(1) of the Texas Business and Commerce Code.

“Project” means the services solicited herein.

“Provider” means the Applicant(s) awarded a contract under this RFA.

“Reconstruction” means the demolition and rebuilding of a single-family housing unit or a multi-family residential complex that replaces a similar structure on the same property. Reconstruction activities are considered ‘rehabilitation’ for the purposes of 24 C.F.R. 570.202(b)(1).

“Rehabilitation” means the repair or restoration of an existing single-family housing unit or a multi-family residential complex damaged by a Presidentially-declared disaster.

“RFA” means this Request for Applications.

“Section 3” means Section 3 of the Housing and Urban Development Act of 1968, Pub. L. 90-448, 82 Stat. 476 (August 1, 1968), as amended.

“Scattered Site Developments” means multiple contiguous or non-contiguous sites all under control of a single ownership entity. All sites in a Scattered Site Development must be located within an area that is one mile or less in circumference.

“SPII” means “sensitive personal identifying information,” as defined in Section 521.002(a)(2) of the Texas Business and Commerce Code.

“State” means the State of Texas and any state agency; the GLO or state agency identified in this RFA, its officers, employees, or authorized agents.

“State MID Region” means, collectively, the assessment area designated by the State of Texas as most impacted and distressed that encompasses Cameron and Jim Wells Counties, as presented in **Exhibit D**, *Affected Regions Map*.

“Subrecipient” means a local government body or political subdivision that receives a subaward from the GLO for disaster response and recovery activities.

“System of Record” means the GLO system of record for disaster grant processing, tracking, and reporting; currently, the Texas Integrated Grant Reporting (TIGR) system, developed using the Microsoft Dynamics rapid application development platform and hosted in the Microsoft Azure Government Cloud.

“Task” means a defined work or service eligible to be accomplished using CDBG-DR funds. Tasks are specified in Attachment A to **Exhibit C**.

“TAC” means the Texas Administrative Code.

“U.S.C.” means the United States Code, the official compilation and codification of the general and permanent federal statutes of the United States.

1.3. AUTHORITY

The GLO is authorized to make grant awards pursuant to Tex. Gov’t Code Chapters 783 and 2105 in conjunction with the Housing and Community Development Act of 1974 (the “Act”) and the appurtenant federal regulations at 24 C.F.R. . § 570.201(m) and 24 C.F.R. § 570.202(b)(1). Grants shall be governed in accordance with 24 C.F.R. Part 570, Community Development Block Grants, 2 C.F.R. Part 200, Uniform Administrative

Requirements, Cost Principles, and Audit Requirements for Federal Awards, and Chapter 783 of the Texas Government Code, Uniform Grant and Contract Management Act.

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ARTICLE II. OVERVIEW, GENERAL REQUIREMENTS, AND GRANT TERMS

2.1 OVERVIEW

2.1.1 Overview

In 2018 the State of Texas experienced severe storms and flooding (DR-4377). Following these disaster events, the U.S. Congress appropriated funds under Public Law 115-254 and Public Law 116-20 to the Department of Housing and Urban Development for allocation to affected states under the Community Development Block Grant Program related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the impacted areas. Of the total, HUD allocated \$10.1M to the State of Texas for expenses related to the restoration, rebuilding, or replacement of rental housing in the Affected Area.

HUD and the GLO have separately assessed and identified two areas as most impacted and distressed (“MID”) (individually a “Region” and collectively the “Regions”). These Regions are shown in **Exhibit D**, *Affected Regions Map*.

Funding has been delegated to each Region as follows:

Affected Region	Allocation Amount
HUD-MID Region Hidalgo County	\$ 8,088,000.00
GLO-MID Region Cameron County and Jim Wells County	\$ 2,022,000.00
TOTAL	\$ 10,110,00.00

The Application period for this RFA shall span sixty (60) calendar days. Eligible Applications will be scored against the criteria listed herein and Applications receiving the highest score shall be prioritized for grant award. It is the intent of the GLO to award multiple grants under this RFA, as funding permits, directly to multifamily rental property owners, developers, or other entities. Funding awards shall be made to the listed Applicant only.

Grant award structure and all applicable documents are attached hereto and should be reviewed carefully by each Applicant. GLO awarded funds may only be used to reimburse approved expenditures for hard construction costs including, but not limited to, site work, direct construction costs, and developer fees. Acquisition, soft costs, and financing costs will not be considered for reimbursement.

In the event of a tie under Section 4, prioritization will be given to the Application with the lowest CDBG-DR funds requested per unit.

Any award made under this RFA shall be structured as a grant directly to the Applicant in accordance with Section 2.1.3 below. Any alternative financial structuring shall not be permitted and refusal to agree to the terms presented shall be deemed grounds for Application disqualification and loss of prioritization.

To be considered eligible for award under this RFA, an Applicant must provide a detailed narrative in its Application Response, demonstrating the experience and ability to perform or cause the performance of all requested services described below. Applicant must indicate if it intends to provide these services in house, with existing staff, or through subcontracting or partnership arrangements.

Applicants must execute **Exhibit A**, *General Affirmations and Applications Acceptance*, and **Exhibit B**, *Federal Affirmations*, **Exhibit E**, *Multifamily Uniform Application*, and complete other documentation listed on the Submission Checklist in Article VII of this RFA to be considered.

2.1.2 Project Overview and Services Requested

Selected Applicants shall perform, or cause to be performed, services related to the rehabilitation, reconstruction, or new construction of eligible multifamily housing developments. Applicant must complete **Exhibit E**, *Multifamily Uniform Application*, along with all other documentation required under this RFA, to be considered for funding. It should be noted that the information provided in **Exhibit E** shall be used to inform a Project-specific scope of work and to structure appropriate correlating payment Benchmarks.

All services performed must be completed within eighteen (18) months of Contract execution. Payment for services provided will be rendered in accordance with Project-specific Benchmarks and Applicants may refer to Attachment A to **Exhibit C** as a general reference.

Note: It is the intention of the GLO to utilize all available information provided in the Application Response to draft Project-specific Benchmarks and payment schedules.

2.1.3 General Grant Terms

Grants awarded under this RFA for the rehabilitation, reconstruction, and new construction are subject to, at a minimum, the following general requirements:

- a) The minimum amount eligible for award for each grant is \$250,000.00 (two hundred and fifty thousand dollars);
- b) The maximum amount eligible for award to a single Project, from any GLO-administered grant either individually or in combination, is limited to a total maximum grant of \$5,000,000.00 (five million dollars);
- c) Grants awarded under this RFA may utilize funds from State MID areas for the

benefit of HUD MID areas, if applicable, and so long as compliance with applicable federal law is maintained. It should be noted that funds from HUD MID areas may not be utilized for the benefit of State MID areas.

- d) Applicant properties must be physically located within the Affected Regions and, with the exception of New Construction Projects, have sustained damage or been destroyed by the 2018 Floods;
- e) All Projects must meet or exceed the Construction Requirements in Section 2.2;
- f) All Projects must meet the Affordability Periods outlined in Section 2.2;
- g) Rehabilitation and Reconstruction Project sites must have sustained damage or been destroyed by the 2018 Floods;
- h) Rehabilitation and Reconstruction Projects must consist of a minimum of eight (8) or more continuous units OR meet the Scattered Site Development criteria contained herein; and
- i) New Construction Projects must consist of a minimum of eight (8) or more continuous units OR meet the Scattered Site Development criteria contained herein AND be constructed in a High Opportunity Zone as determined by HUD.

2.2 ELIGIBLE ACTIVITIES, APPLICATION PRIORITIZATION, AFFORDABILITY REQUIREMENTS, CONSTRUCTION STANDARDS, AND APPLICANT ELIGIBILITY

2.2.1 Eligible Activities

Eligible activities include those permissible under Section 105(a) of the Act and the federal regulations found at 24 C.F.R. Part 570 which govern the repair, rehabilitation, reconstruction, and new construction under ARP in the Affected Regions.

2.2.2 Affordability Requirements

Affordability Periods shall be enforced via a Land Use Restriction Agreement. If a property is subject to an existing GLO LURA, the Applicant agrees to adhere to the terms of both LURAs, concurrently. Compliance with LURAs may be monitored by HUD, the GLO, or an assigned entity. Affordability Periods must be in accordance with the following:

- a) A minimum of 51% of the total units for any Project for which grant funds are awarded must be reserved for use as affordable rental housing for low- and moderate-income persons or for households earning 80% or less than the Area Median Family Income. Affordability periods must meet the following minimums:
 - i. For Rehabilitation and Reconstruction Projects, a minimum of fifteen (15) years from the date of substantial construction completion; and
 - ii. For New Construction Projects, a minimum of twenty (20) years from the date of substantial construction completion.

- b) Additionally, Scattered Site Developments must adhere to the following:
 - i. Projects funded with CDBG-DR grant funds must reserve 100% of the units for use as affordable rental housing for low- and moderate-income persons or for households earning 80% or less than the Area Median Family Income; and
 - ii. Regardless of rehabilitation, reconstruction, or new construction services performed, Scattered Site Developments, and all units on each site, must enforce an Affordability Period of a minimum of twenty (20) years from the date of substantial completion.

Units designated to meet the affordability requirements presented above must comply with the high HOME rents published by HUD under the HOME Program at <https://www.hudexchange.info/programs/home/home-rent-limits/>. Rents must comply with the rent limit through the affordability period and compliance with the rent limit is calculated in the same manner as the HOME program.

2.2.3 Construction Standards

In general, all Projects receiving funding under this RFA must meet or exceed the HUD Minimum Property Standards (“MPS”) found at 24 C.F.R. §200.925 or §200.926. Additionally, multifamily housing developments must meet the design and construction requirements under 10 Tex. Admin. Code §§ 60.201-211).

Covered multifamily dwellings, as defined at 24 C.F.R. § 100.201, as well as common use facilities in developments with covered dwellings must meet the design and construction requirements at 24 C.F.R. § 100.205, which implement the Fair Housing Act (42 U.S.C. 3601- 3619), and the design and construction requirements of the Fair Housing Act Design Manual.

Additionally, developments involving new construction (excluding new construction of nonresidential buildings) where some units are two-stories and are sometimes exempt from Fair Housing accessibility requirements, a minimum of 20% of each unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the design and construction requirements of the [Fair Housing Act Design Manual](#), and include a minimum of one bedroom and one bathroom or powder room at the entry level. A compliance certification will be required after the development is completed from an inspector, architect, or accessibility specialist. Any developments designed as single-family structures must also satisfy the requirements of Texas Government Code §2306.514.

All Projects also must meet, at a minimum, the following construction standards:

- a) Housing rehabilitated, reconstructed, or newly constructed with funds awarded under this RFA must meet all applicable local codes, rehabilitation standards, and ordinances at the time or project completion. In the absence of a local code, Projects must meet either:
 - i. The International Building Code 2012 (“IBC 2012”) or later; OR
 - ii. The International Residential Code 2012 (“IRC 2012”).

Rehabilitated housing must follow the guidelines specified in the HUD CPD Green must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist, available at <https://www.hudexchange.info> .

- b) Housing newly constructed or substantially rehabbed with funds awarded under this RFA must meet at least one of the following HUD-required green standards:
 - i. ENERGY STAR (Certified homes or multifamily high-rise);
 - ii. LEED (New construction, homes, midrise, existing buildings operations and maintenance, or neighborhood development);
 - iii. ICC-700 National Green Building Standard; or
 - iv. Environmental Protection Agency Indoor AirPlus.
- c) Properties located in a 100-year floodplain that are being rehabilitated or reconstructed must be elevated or have other acceptable flood mitigations in place in accordance with the FEMA’s advisory flood elevations as well as those mitigations required by the local jurisdiction, if applicable. Such developments shall be subject to the requirements of 24 C.F.R. 24 C.F.R. § 570.605. **Properties located within the boundaries of a designated floodway are not eligible even if they are elevated above flood elevation.**
- d) All properties must meet the accessibility requirements at 24 C.F.R. Part 8. Applicants should be advised that the accessibility standards used by the GLO are the 2010 ADA Standards for Accessible Design (with HUD exceptions) and not the Uniform Federal Accessibility Standards (“UFAS”).

2.2.4 Eligible Applicants

Applicants eligible for funding under this RFA may include qualified multifamily rental property owners, developers, or other entities that, in the sole discretion of the GLO, are determined eligible.

Private owners or developers must be either the current owner of the property or, at the time of submission of its Application, be a party to a binding contract to purchase the property. Additionally, the seller of the property must have been the owner of record at the time of the disaster.

2.2.5 Ineligible Applicants

The following circumstance shall, in the sole discretion of the GLO, disqualify an Applicant or a submitted Application from eligibility for award under this RFA:

- a) The Applicant is or was a party to a previously funded contract for which GLO funds have been partially or fully de-obligated due to failure to meet contractual obligations during the twelve (12) months prior to Application submission date, unless the de-obligation was voluntary and approved by the GLO prior to the contract term expiration date or the de-obligated amounts were excess funds remaining on a completed contract;
- b) The Applicant has failed to submit a response to provide a requested explanation, evidence of corrective action, or a payment of disallowed costs or fees resulting in a monitoring review;
- c) The Applicant has failed to make timely payment or is delinquent on any loans or fee commitments made with the GLO as of the date of Application submission;
- d) The Applicant or any managing partner, consultant, or other party deemed by the GLO to play a substantial role in the Applicant's course of business, has been or is currently barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs;
- e) The Applicant, at the time of Application submission, is subject to an enforcement or disciplinary action under state or federal securities law or by the Financial Industry Regulatory Authority ("FINRA"); subject to a federal tax lien; and/or is the subject of an enforcement proceeding with any governmental entity;
- f) The Applicant, in the sole discretion of the GLO, has either:
 - i. Excessive omissions of documentation from the Application submission or threshold criteria; or
 - ii. Provided Application documentation that is so unclear, disjointed, or incomplete that a thorough review cannot be reasonably performed by the GLO.
- g) The Applicant nor any of its affiliates, agents, or consultants have any open GLO or HUD audit findings or concerns for which a satisfactory response to resolve the findings or concerns has not been submitted as of the date of Application submission;
- h) The Applicant or a party with controlling ownership interest in the Applicant's organization with rent restricted rental housing properties in the State of Texas is in material noncompliance with a LURA; or
- i) Any Application that includes financial participation by a person who, during the five (5) year period preceding the date of Application submission, has been convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result

of previous disasters occurring after September 25, 2012, or was assessed a federal civil or administrative penalty in relation to such contract.

2.3 CONTRACT AND TERM

The GLO intends to award multiple awards, as funding permits, for the services requested herein. Any grant award contract resulting from this RFA shall be effective as of contract execution and shall terminate after eighteen (18) months. The GLO, at its own discretion, may extend the contract, subject to terms and conditions mutually agreeable to both parties.

A sample contract is attached to this RFA as **Exhibit C**. These terms and conditions are subject to change prior to the execution of any contract that may result from this RFA.

2.4 NO GUARANTEE OF VOLUME OR USAGE

The GLO makes no guarantee of volume or usage under any contract, grant award, or subaward resulting from this RFA.

2.5 CONTRACT AUDIT

Provider(s) must maintain accurate accounting records and other evidence pertaining to costs incurred in providing services. Provider(s) shall make such records and evidence available to GLO and State and federal auditors at all times during the contract period and for three (3) years after the date of grant closeout for any particular CDBG-DR allocation.

ARTICLE III. ADMINISTRATIVE INFORMATION

3.1 SCHEDULE OF EVENTS

EVENT	DATE/TIME
Issue Request for Applications	May 1, 2021
Pre-Proposal Conference 1 (Optional)	May 4, 2021
Pre-Proposal Conference 2 (Optional)	May 6, 2021
Pre-Proposal Conference 3 (Optional)	May 11, 2021
Pre-Proposal Conference 4 (Optional)	May 13, 2021
Pre-Proposal Conference 5 (Optional)	May 18, 2021

Pre-Proposal Conference 6 (Optional)	May 20, 2021
Deadline for Submission of Questions or Requests for Clarification.	May 21, 2021
Anticipated Release Date of GLO's Response to Questions	May 24, 2021
Deadline for Submission of Applications	June 30, 2021
Evaluation Period	July 1, 2021
Selection and Notice of Award	August 1, 2021
Contract Formation, Negotiation, and Execution	January 1, 2022
Deadline for Insurance and Bonds	Prior to commencement of work

NOTE: These dates represent a tentative schedule of events. The GLO reserves the right to modify these dates at any time prior to the deadline for submission of Applications upon notice posted on the Affordable Rental page of the GLO's website at www.recovery.texas.gov.

3.2 INQUIRIES

3.2.1 Contact

All requests, questions, or other communications about this RFA shall be made **in writing** to the GLO's Purchasing Department, addressed to the person listed below.

Name Jeff Cozier, Multifamily Manager
Address 1700 N. Congress Ave., Austin, Texas 78701
Phone 512-475-5067
Email jeff.crozier.glo@recovery.texas.gov

3.2.2 Clarifications

The GLO will allow written requests for clarification of this RFA during the application period. Questions may be e-mailed to the point-of-contact listed in Section 3.2.1 above. Applicants' names shall be removed from questions in the

responses released. Questions shall be submitted in the following format. Submissions that deviate from this format may not be accepted:

- a) Identifying Request for Applications number.
- b) Section number.
- c) Paragraph number.
- d) Page number.
- e) Text of passage being questioned.
- f) Question.

Applicant names and/or identifying information shall be removed from questions and requests in the responses released.

NOTE: The deadline for submitting questions is noted in Section 3.1 above. Please provide company name, address, phone number, e-mail address, and name of contact person when submitting questions.

3.2.3 Responses

All accepted questions will result in written responses with copies posted to the Affordable Rental page of the GLO's disaster recovery website found at www.recovery.texas.gov. Responses shall be posted as an Addendum to the RFA. It is Applicant's responsibility to check the GLO website for updated responses.

3.2.4 Prohibited Communications

On issuance of this RFA, except for the written inquiries described in Section 3.2 above, the GLO, its representative(s), or partners will not answer questions or otherwise discuss the contents of this RFA with any potential Applicant or their representative(s). Attempts to ask questions by phone or in person will not be allowed or recognized as valid. **Failure to observe this restriction may disqualify Applicant.** Applicant shall rely only on written statements issued through or by the contact listed in Section 3.2. This restriction does not preclude discussions between affected parties for the purposes of conducting business unrelated to this RFA.

3.2.5 Pre-Proposal Conferences (Optional)

The GLO will conduct optional pre-proposal conferences in accordance with the Schedule of Events listed in Section 3.1. Interested parties may email attendance requests to the email address listed in Section 3.4.2 below. All Respondents and potential subcontractors are highly encouraged to attend; however, pre-proposal conferences are non-mandatory and Respondents shall not be penalized for failure to attend. The agenda and attendance list for each conference shall be posted to the ESBD as a part of an official Addendum to this RFA.

3.3 APPLICATION RESPONSE COMPOSITION

3.3.1 General Requirements

Applicant shall complete and email the documents listed below to the email address listed Section 3.4:

- a) One Proposal, including all documents requested in Part 1 of the *Submission Checklist*, submitted as one Portable Document Format (.pdf) file titled “**RFA-ARP-001-JC_(Applicant name)_Part 1_Proposal**”; and
- b) One Multifamily Uniform Application, including all documents requested in Part 2 of the *Submission Checklist*, submitted in specified file formats and titled “**RFA-ARP-001--JC_(Applicant name)_Part 2_MUA**”.

Any terms and conditions attached to a Application Response not specifically referred to in this RFA will not be considered and may result in disqualification.

3.3.2 Application Format

For ease of review, the Application shall be presented in a format requested in Article VII, *Submission Checklist*.

3.3.3 Page Limit and Supporting Documentation

The Narrative Proposal and all documents required in Part 1 of the *Submission Checklist* shall not exceed 25 pages in length. **Exhibit A**, *General Affirmations and Application Acceptance*; **Exhibit B**, *Federal Affirmations*, signed acknowledgments of addenda, résumés, annual report, and Financial Statement Components Worksheets are considered supporting documentation and are not included in the 25-page limit. The Application Response should be formatted using 12-point or larger font, except for charts, graphs, or other graphical representations of data.

3.4 APPLICATION RESPONSE SUBMISSION AND DELIVERY

3.4.1 Labeling

Each file uploaded to shall be labeled as specified in Section 3.3 above.

3.4.2 Delivery

Applicants must email Application Responses to the following email address:

2018floodsarp@recovery.texas.gov

The GLO shall not accept Application Responses submitted by any other means. Please contact the point-of-contact listed in Section 3.2 above for assistance with Application submission.

The GLO encourages Applicant to allow sufficient time for the submission of Application Responses to ensure timely receipt. If all or any portion of the Application Response is received late, is illegible, or is otherwise rendered non-responsive due to equipment failure or operator error, the Application Response or the applicable portion of the Application Response will not be considered. The GLO shall not be liable for equipment failure or operator error.

3.4.3 Alterations, Modifications, and Withdrawals

Application Responses may be modified, altered, or withdrawn by e-mailing the point-of-contact listed in Section 3.2 above, provided such notice is received prior to the deadline for submission of Application Responses.

ARTICLE IV. EVALUATION AND AWARD PROCESS

4.1 MINIMUM QUALIFICATIONS FOR AWARD CONSIDERATION, SELECTION CRITERIA, AND MINIMUM POINT THRESHOLDS

4.1.1 Minimum Qualifications for Award Consideration

Applicants must meet the minimum qualifications listed below in order for their Applications to be considered for funding awards. Applications that are determined, in the sole discretion of the GLO, to be unrealistic in terms of technical commitment, show a lack of technical competence, or indicate a failure to comprehend the risk and complexity of a potential contract may be rejected.

Applicants shall submit a summary (not to exceed two pages) that provides specific support for meeting each of the minimum qualifications outlined in this Section. This summary can specifically state how Applicant meets each minimum qualification or can direct the evaluators to the appropriate section of the Application that provides support for Applicant satisfying each minimum qualification.

4.1.1.1 Applicant must either own the property at the time of the storm or, if an acquisition is being facilitated, be a party to a currently binding contract to purchase the property from a party who was the owner of record at the time of the disaster.

4.1.1.2 Applicant must be financially solvent and adequately capitalized, as

demonstrated by the appropriate documentation to be provided in **Attachment E, Multifamily Uniform Application** requested in Article II of this RFA.

4.1.1.3 Applicant must meet all criteria stipulated in Section 2 and must not be determined to be ineligible under Section 2 this RFA.

4.1.2 Selection Criteria

Applications shall be consistently evaluated and scored in accordance with the criteria below. Points correlating with the proposed construction type shall be awarded as a base score for each Application. Additional points may be awarded for Projects that meet or exceed the criteria presented in Section 4.1.2.1 through 4.1.2.7 below.

Total points awarded to Applications shall determine prioritization of funding. It is the intent of the GLO to issue awards for the totality of funding available under this RFA.

4.1.2.1 Construction Type - The Project provides Rehabilitation, Reconstruction, or New Construction services. If the Project is for a Scattered Site Development that utilizes two differing construction types, the Applicant will be awarded the lower point value between the two construction types. (Up to 15 points).

Construction Type	Points
Rehabilitation	15
Reconstruction	10
New Construction	5

4.1.2.2 Exceeding the LMI Requirement – The Project provides at 80% or more of the total proposed units for rental to low- and moderate-income families earning 80% or less of the AMFI for the applicable Affordability Period (5 points);

4.1.2.3 Extremely Low-Income Targeting – The Project provides at least 20% of the total proposed units for rental to families or individuals with income at 30% or less of the area median income (5 points);

4.1.2.4 Serving Persons with Disabilities – The Project increases the number of accessible units beyond the minimum required under Section 504 of the Rehabilitation Act of 1973, the Fair Housing Accessibility Guidelines, or other mandated minimums by 10% for handicap units and 4% for hearing impaired units (5 points);

- 4.1.2.5 High Opportunity Zones – Project is located entirely in a census tract(s) that has a poverty rate of less than 20% (5 points); and
- 4.1.2.6 Leveraging of Public and Private Financing – The Project shall utilize, in addition to CDBG-DR funds, other local, state, federal, or private contributions that account for 25% or more of the Total Housing Development Costs as reflected in the CDBG Rental Housing Development Budget and Disbursement Plan in MUA, Part B (5 points).

Tie Breaker

- 4.1.2.7 If, after all scoring has been completed, one or more Applications yield the same point total, priority shall be given to the most cost-effective Project. Cost effectiveness shall be determined by calculating the lowest cost per unit (total number of units divided by the total amount of CDBG-DR funds requested).
- 4.1.2.8 If, after all scoring and a tie breaker under 4.1.2.7 above have been completed, one or more Applicants yield the same lowest cost per unit, preference shall be given to the Application with the highest total number of LMI units.

NOTE: To clarify any response, the Application evaluation committee may contact references provided in response to this RFA, contact Applicant's clients, or solicit information from any available source concerning any aspect of the RFA deemed pertinent to the evaluation process.

4.2 GRANT AWARD

It is the intent of the GLO to award multiple grants or subawards, as funding permits, under this RFA. An award notice will be sent to the selected Applicant(s). Neither the GLO's issuance nor an Applicant's receipt or acceptance of an award notice forms a contract between the GLO and a selected Applicant. Any award is contingent upon the successful completion of the due diligence process which includes, but is not limited to, applicable environmental clearance, financial feasibility review, and AFFH review. Any award remains contingent upon the successful negotiation of final contract terms and upon approval of the Chief Clerk of the GLO. Negotiations shall be confidential and not subject to disclosure to competing Applicants unless and until an agreement is reached. If contract negotiations cannot be concluded successfully, the GLO may negotiate a contract with the next prioritized Applicant or may withdraw this RFA.

NOTE: Applications are subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code, and will be withheld from or released to the public only in accordance therewith.

ARTICLE V. REQUIRED APPLICANT INFORMATION

5.1 APPLICANT INFORMATION

In addition to the summary of minimum qualifications required under Section 4.1 of this RFA, Applicant must provide satisfactory evidence of its ability to manage and coordinate the types of activities described in this RFA and to produce the specified products or services on time. In accordance with this requirement, Applicant shall provide the following information:

5.1.1 Project Narrative

Provide a detailed narrative explaining the proposed Project and the damages sustained by the 2018 Floods.

5.1.2 Company Narrative

Provide a detailed narrative explaining why Applicant is qualified to provide the rehabilitation, reconstruction, or new construction services with a focus on the company's key strengths and competitive advantages.

5.1.3 Company Profile

The company profile should include:

- a. The location of your company headquarters and any field office(s) that may provide services for any resulting contract under this RFA, including subcontractors;
- b. The number of employees in your company, both locally and nationally, and the location(s) from which employees may be assigned, excluding subcontractors;
- c. The name, title, mailing address, e-mail address, and telephone number of Applicant's point of contact for any resulting contract under this RFA; and

- d. Indicate whether your company has ever been engaged under a contract by any Texas state agency. If “Yes,” specify when, for what duties, and for which agency.

NOTE: An Applicant that is not organized under the laws of the state of Texas must register with the Texas Secretary of State before it may transact business in Texas. Applicant must provide proof of registration before the GLO may award a contract under this RFA. Pending registration will not be accepted.

5.1.4 Key Staffing Profile

Applicant must provide a key staffing profile and résumés for key staff that will be responsible for the performance of the services requested under this RFA.

“Key staff” is defined as experienced, professional and/or technical personnel who will have major responsibilities under a contract and/or provide unusual or unique expertise essential for successful completion of the work performed. Provider shall ensure key staff remain available for the entire term of a contract. If key staff become unavailable for work, Provider shall promptly notify the GLO and assign alternative staff of equal ability and qualifications. The GLO reserves the right to approve changes to key staff.

Name, title, and specific work to be performed/services to be provided shall be included for each identified staff member along with a description of each person’s relevant experience, including project description, time period(s), and project role. Applicant shall provide a work plan that identifies what qualified staff will be available to provide services under the contract and when they will be available, including but not limited to, having all necessary monitoring, compliance, or administrative grant training.

Staff members listed in the key staffing profile who are independent contractors, and not employees, of Applicant may also qualify as subcontractor. Please evaluate your key staffing profile accordingly.

5.2 TECHNICAL PROPOSAL

Applicant must describe clearly, specifically, and as completely as possible, its proposed methodology for achieving the objectives and requirements of this RFA. Applicant should identify all tasks to be performed to be responsive to Article II, including activities, materials, and other products, services, and reports to be generated during the contract period and relate them to the stated purposes and specifications described in this RFA. Applicant shall provide a detailed Project task schedule and timeline which shall correspond directly with a tentative draw request schedule.

5.3 REFERENCES

Applicant shall provide a minimum of three (3) **non-GLO** references for projects of similar type and size performed within the last three years, preferably for state and/or local government entities. The GLO reserves the right to check references prior to award. Any negative responses received may be grounds for disqualification of the proposal.

Applicant must verify current contacts. Information provided shall include:

- a. Client name;
- b. Project description;
- c. Total dollar amount of project;
- d. Key staff assigned to the referenced project that will be designated for work under this RFA; and
- e. Client project manager name, telephone number, and e-mail address.

The GLO checks references by e-mail. Applicants who do not provide accurate e-mail addresses waive the right to have those references considered in the evaluation of their Applications.

5.4 LITIGATION HISTORY

Applicant must include in its Application Response a complete disclosure of any actual or alleged breaches of contract it has engaged in. In addition, Applicant must disclose any civil or criminal litigation or investigation pending at any time during the last three years that involves Applicant or in which Applicant has been judged guilty or liable. For each instance of litigation or investigation, Applicant shall list: basic case information (e.g., cause number/case number, venue information, names of parties, name of investigating entity); a description of claims alleged by or against Applicant or its parent, subsidiary, or other affiliate; for each resolved case, a description of the disposition of Applicant's involvement (e.g., settled, dismissed, judgment entered, etc.). Failure to comply with the terms of this provision may disqualify any Applicant. Application Responses may be rejected based upon Applicant's prior history with the state of Texas or with any other party that demonstrates, without limitation, unsatisfactory performance, adversarial or contentious demeanor, or significant failure(s) to meet contractual obligations.

If Applicant has no litigation history, as described above, Applicant shall so indicate in the Company Narrative.

5.5 CONFLICTS

Applicant must disclose any potential conflict of interest it may have in providing the services described in this RFA, including all existing or prior arrangements. Please include any activities of affiliated or parent organizations and individuals who may be assigned to

manage this account. If Applicant has no conflicts, as described above, Applicant shall so indicate in the appropriate section of the Application Response.

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ARTICLE VI. TERMS, CONDITIONS AND EXCEPTIONS

6.1 GENERAL CONDITIONS

6.1.1 Amendment

The GLO reserves the right to alter, amend, or modify any provision of this RFA, or to withdraw this RFA, at any time prior to the award, if it is in the best interest of the GLO.

6.1.2 Informalities and Irregularities in Application Responses

The GLO reserves the right to waive minor informalities and irregularities in any Application Response received.

6.1.3 Rejection

The GLO reserves the right to reject any or all Application Responses received prior to contract award.

6.1.4 Irregularities

Any irregularities or lack of clarity in this RFA should be brought to the attention of the point-of-contact listed in Section 3.2 as soon as possible so that corrective addenda may be furnished to prospective Applicants.

6.1.5 Open Records

The GLO is a government agency subject to the Texas Public Information Act (PIA), Chapter 552, Texas Government Code. The Application Response and other information submitted to the GLO by the Applicant are subject to release as public information. The Application Response and other submitted information shall be presumed to be subject to disclosure unless a specific exception to disclosure under the PIA applies. If it is necessary for Applicant to include proprietary or otherwise confidential information in its Application Response or other submitted information, Applicant must clearly label that proprietary or confidential information and identify the specific exception to disclosure of that information in the PIA. Merely making a blanket claim that the entire Application Response is protected from disclosure because it contains some proprietary information is not acceptable and shall make the entire Application Response subject to release under the PIA. In order to trigger the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Application Response Applicant considers proprietary or confidential must be clearly labeled as described above. Any information which is not clearly identified

as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA, except as provided by law.

Applicants are required to make any information created or exchanged with the State pursuant to this RFA and any contract that may result from this RFA, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

Information related to the performance of this contract may be subject to the PIA and will be withheld from public disclosure or released only in accordance therewith. Applicant shall make any information created or exchanged with the State/GLO, and not otherwise excepted from disclosure under the PIA, available in a format that is accessible by the public at no additional charge to the State/GLO. Applicant shall make any information required under the PIA available to the GLO in Portable Document Format (PDF) or any other format agreed between the parties. The original copy of each Application Response shall be retained in the official files of the agency as a public record.

Application Responses and all other documents associated with this RFA will be withheld or released upon written request only in accordance with the PIA. To the extent that a Applicant wishes to prevent the disclosure of portions of its Application Response to the public, Applicant shall demonstrate the applicability of any exception to disclosure provided under the PIA in accordance with the procedures prescribed by the PIA. Applicant may clearly label individual documents “confidential” or “trade secret” to demonstrate that it believes certain information is excepted from disclosure and may legally be withheld from the public. Applicant thereby agrees to indemnify and defend the GLO for honoring such a designation. The failure of Applicant to clearly label such documents shall constitute a complete waiver of any and all claims for damages caused by the GLO’s release of these records.

Pursuant to Texas Government Code Chapter 2261, any contract that results from this RFA, including the selected Applicant’s Response, shall be posted to the GLO’s website.

6.1.6 Grant Award Responsibility

Applicant shall be solely responsible for the performance of all contractual obligations that may result from an award based on this RFA. Applicant shall not be relieved of its obligations for any nonperformance by its subcontractors.

6.1.7 Public Disclosure

Applicant will not advertise that it is doing business with the GLO or use a contract resulting from this RFA as a marketing or sales tool without prior written consent

of the GLO. Furthermore, Applicant may not distribute or disclose this RFA to any other vendors or companies without permission from the GLO.

6.1.8 Remedies

All remedies available to the GLO for breach or anticipatory breach of any contract that results from this RFA are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies. Liquidated damages, actual damages, cost projections, and/or injunctive relief may also be invoked either separately or combined with any other remedy in accordance with applicable law.

6.2 INSURANCE

6.2.1 Required Coverages

For the duration of any contract resulting from this RFA, Applicant shall acquire insurance with financially sound and reputable independent insurers, in the type and amount as follows:

6.2.1.1 Workers Compensation & Employers Liability

Provider must maintain Workers' Compensation insurance coverage in accordance with statutory limits.

Workers Compensation: Statutory Limits
Employers Liability: Each Accident \$1,000,000
Disease - Each Employee \$1,000,000
Disease - Policy Limit \$1,000,000

This website (coverage starts with 406 of the Labor code) addresses what Texas requires of Workers Compensation:
<http://www.tdi.texas.gov/wc/act/index.html>

6.2.1.2 Commercial General Liability: Occurrence based:

Bodily Injury and Property Damage
Each occurrence limit: \$1,000,000
Aggregate limit: \$2,000,000
Medical Expense each person: \$5,000
Personal Injury and Advertising Liability: \$1,000,000
Products / Completed Operations Aggregate Limit: \$2,000,000
Damage to Premises Rented to You: \$50,000

6.2.1.3 Commercial Automobile Liability – coverage of \$1,000,000 Combined Single Limit; and

6.2.1.4 Errors and Omissions – coverage of \$1,000,000 per occurrence.

The required coverage is to be with companies licensed in the state of Texas, with an “A” rating from A.M. Best, and authorized to provide the corresponding coverage.

Work on any contract shall not begin until after Applicant has submitted acceptable evidence of insurance. Failure to maintain insurance coverage or acceptable alternative methods of insurance shall be deemed a breach of contract.

6.2.2 Alternative Insurability

Notwithstanding the preceding, the GLO reserves the right to consider reasonable alternative methods of insuring the contract in lieu of the insurance policies customarily required. It will be Applicant’s responsibility to recommend to the GLO alternative methods of insuring the contract. Any alternatives proposed by Applicant should be accompanied by a detailed explanation regarding Applicant’s inability to obtain the required insurance and/or bonds. The GLO shall be the sole and final judge as to the adequacy of any substitute form of insurance coverage.

6.3 PERFORMANCE AND PAYMENT BONDS

Prior to commencing any activity under a grant award contract, Applicant is required to tend to the GLO performance and payment bonds, as required under Chapter 2253 of the Texas Government Code. Bonds must be provided by the Applicant or the Applicant’s prime contractor.

6.3.1 Performance Bond

A performance bond is required if the grant award or subaward amount is in excess of one hundred thousand dollars (\$100,000.00). The performance bond is solely for the protection of the State, must be in the full amount of the grant award or subaward, and must be conditioned upon the faithful performance of work based on the scope of the grant award contract. The form of the performance bond shall be as approved by the Texas Attorney General.

6.3.2 Payment Bonds

A payment bond is required if the grant award or subaward is in excess of twenty-five thousand dollars (\$25,000.00). The payment bond is for the protection of the State and payment bond beneficiaries that have a direct contractual relationship with the Applicant

or Applicant's prime contractor or a supplier of materials and labor. The form of the payment bond shall be as approved by the Texas Attorney General.

6.4 PROTEST

Any actual or prospective Applicant who is aggrieved in connection with the RFA, evaluation, or award of a purchase contract may formally protest to the commissioner of the General Land Office in accordance with Title 31, Section 3.50 of the Texas Administrative Code.

6.5 CONTRACT TERMS AND APPLICATION ACCEPTANCE

Exhibit C, *Sample Contract*, is the standard contract used by the GLO for services sought under this RFA; please review the terms and conditions therein. The GLO reserves the right to negotiate final contract terms with any selected Applicant. The terms and conditions in **Exhibit C** are subject to change prior to the execution of any contract that may result from this RFA.

Execution of **Exhibit A** of this RFA, *General Affirmations and Application Acceptance*, shall constitute an agreement to all terms and conditions specified in this RFA, including, but not limited to, **Exhibit B**, *Federal Assurances (Construction) and Certifications*.

6.6 VENDOR PERFORMANCE REPORTING

The GLO is required by Texas Government Code Chapter 2261 to report grant award contract performance through the Vendor Performance Tracking System ("VPTS"). Additional information on this system can be found on the Texas Comptroller of Public Accounts website through this link: <https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/>.

As of January 24, 2017, the VPTS reporting methodology was revised so that vendors are assigned a letter grade (A-F) rather than the historic satisfactory/unsatisfactory ratings. The report grades for historic reports will be displayed as "Legacy Satisfactory" or "Legacy Unsatisfactory." New reports will be graded on the A-F scale as now required by statute. A Applicant's past performance shall be measured in the VPTS by a letter grade that combines any historic ratings with ratings using the new letter grade system in the method described in [34 TAC §20.115](#).

The GLO is authorized to consider past performance when determining contract award as part of the "Best Value" standard, in compliance with applicable provisions of Texas Government Code §§2155.074, 2155.075 and 2156.125. The GLO may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the VPTS, the GLO may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments

of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of the GLO, and any negative findings, as determined by the GLO, may result in non-award to the Applicant.

6.7 CERTIFICATE OF INTERESTED PARTIES

Pursuant to Section 2252.908 of the Texas Government Code, a state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties (Form 1295 Certificate of Interested Parties – “Form 1295”) to the state agency at the time of contracting.

To complete Form 1295, a business entity will visit the Texas Ethics Commission’s website and access the Form 1295 Certificate of Interested Parties Electronic Filing Application. An authorized agent of the business entity must sign the printed copy of the form affirming under the penalty of perjury that the completed form is true and correct. Form 1295, bearing the unique certification of filing number, must be filed with the Texas General Land Office. Form 1295 is not required at the time of submission of the Application Response; the GLO shall request the form concurrent with issuance of a notice of contract award.

Additional information about Form 1295, including frequently asked questions and instructional videos for business entities, may be found on the Texas Ethics Commission’s website: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

6.8 STATEMENTS OR ENTRIES

WARNING: ANY PERSON WHO KNOWINGLY MAKES A FALSE CLAIM OR STATEMENT TO HUD MAY BE SUBJECT TO CIVIL OR CRIMINAL PENALTIES UNDER 18 U.S.C. § 287, 18 U.S.C. § 1001, AND 31 U.S.C. § 3729.

Except as otherwise provided under federal law, any person who knowingly and willfully falsifies, conceals, or covers up a material fact by any trick, scheme, or device or who makes any materially false, fictitious, or fraudulent statement or representation or who makes or uses any false writing or document despite knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry shall be prosecuted under Title 18, United States Code, § 1001.

Under penalties of 18 U.S.C. § 287, 18 U.S.C. § 1001, and 31 U.S.C. § 3729, by the action of submitting its Application Response to the GLO for consideration, Applicant certifies that any statements, entries, or claims made by Applicant in the Application Response are true, complete, and accurate.

ARTICLE VII. SUBMISSION CHECKLIST

This checklist is provided for Applicant’s convenience only and identifies documents that must be submitted with this RFA to be considered responsive. Any Application Responses received without these requisite documents may be deemed nonresponsive and may not be considered for contract award.

A COMPLETE APPLICATION PACKAGE SHALL INCLUDE:

1. Part 1 – Proposal (one .pdf file);
2. Part 2 – Multifamily Uniform Application Requirements (one Microsoft Word file and two Microsoft Excel files);

PART 1 – PROPOSAL

Please present documents in the following order:

1. **Exhibit A**, General Affirmations and Application Acceptance _____
 - If Applicant is a Corporation or other legal entity, attach a corporate resolution or other appropriate official documentation, which states that the person signing this Application Response is an authorized person that can legally bind the corporation or entity.
 - Attach proof of registration with the Texas Secretary of State.
 - Attach a copy of IRS Letter 147C, Verification of Employer Identification Number, or any IRS document listing both the EIN and Entity name on IRS letterhead.
2. **Exhibit B**, Federal Affirmations _____
3. Signed Acknowledgments of Addenda (if applicable) _____
4. Summary of Minimum Qualifications (Section 5) _____
5. Company Narrative (Section 5) _____
6. Company Profile (Section 5) _____
7. Key Staffing Profile (Section 5) _____
8. Technical Proposal (Section 5) _____
9. References (Section 5) _____
10. Litigation History (Section 5) _____
If not applicable, please indicate in the proposal.
11. Conflicts (Section 5) _____
If not applicable, please indicate in the proposal.

PART 2 – MULTIFAMILY UNIFORM APPLICATION REQUIREMENTS

Applicant must provide a completed MUA, per Section 2.1 of this RFA, to be considered for funding award under this RFA. The following checklist is for reference purposes only and Applicant remains responsible for submitting all information and documentation requested in **Exhibit E**, *Multifamily Uniform Application*.

- 1. DUNS Number/ Tax Identification Number _____
- 2. Current Financial Statements _____
- 3. Current Operating Budget _____
- 4. Annual Operating Expenses and Proforma _____
- 5. Utility Allowance _____
- 6. Rent Roll Information _____
- 7. Scope of Work _____
- 8. Phase I Environmental _____
- 9. Duplication of Benefits Form _____
- 10. Financing Participants _____
- 11. Special Interest Identification _____
- 12. Development Team Information _____
- 13. Nonprofit Organization Information _____
- 14. Certification of Principals _____
- 15. Accessibility Certification _____

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EXHIBIT A. GENERAL AFFIRMATIONS AND APPLICATION ACCEPTANCE

GENERAL AFFIRMATIONS AND SOLICITATION ACCEPTANCE

Execution of this **Exhibit A**, constitutes an agreement to all terms and conditions in the Solicitation, including, without limitation, this **Exhibit A**. If Respondent fails to sign this **Exhibit A** or signs it with a false statement, Respondent's Solicitation Response and any resulting contract(s) shall be void. Respondent agrees without exception to the following general affirmations and acknowledges that any contract resulting from this Solicitation may be terminated and payment withheld if any of the following affirmations or certifications are inaccurate:

1. Respondent represents and warrants that all statements and information prepared and submitted in its Solicitation Response are current, complete, true, and accurate. Submitting a Solicitation Response with a false statement or making a material misrepresentation during the performance of a contract is a material breach of contract and may void the Solicitation Response and any resulting contract.
2. Pursuant to Section 2155.003 of the Texas Government Code, Respondent represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Solicitation Response.
3. Pursuant to Section 2155.004(a) of the Texas Government Code, Respondent certifies that neither Respondent nor any person or entity represented by Respondent has received compensation from the GLO to participate in the preparation of the specifications or solicitation on which its Solicitation Response is based. Under Section 2155.004(b) of the Texas Government Code, Respondent certifies that the individual or business entity named in its Solicitation Response is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate. This Section does not prohibit a Respondent from providing free technical assistance.
4. Under the Texas Family Code, Section 231.006, a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services. Under Section 231.006, Texas Family Code, the vendor or applicant [Respondent] certifies that the individual or business entity named in this contract, bid, or application [Solicitation Response] is not ineligible to receive the specified grant, loan, or payment. The Solicitation Response must include the name and social security number of any individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application. This information must be provided prior to execution of any contract resulting from this Solicitation.
5. The GLO is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, blocking property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism and any subsequent changes made to it. The GLO will cross-reference Respondents/vendors with the federal System for Award Management (<https://www.sam.gov/>), which includes the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Respondent certifies: 1) that Respondent and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, proposed debarment, or similar ineligibility or exclusion by any federal, state, or local governmental entity; 2) that Respondent is in compliance with the State of Texas statutes and rules relating to procurement; and 3) that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov/>. This provision shall be included in its entirety in all subcontracts to contracts resulting from this Solicitation.
6. Respondent agrees that any payments due under any contract resulting from this Solicitation will be applied towards any debt or delinquency Respondent owes to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.
7. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Respondent certifies that it is not (1) the executive head of the GLO, (2) a person who at any time during the four years before the date of the contract was the executive head of the GLO, or (3) a person who employs a current or former executive head of a state agency.

8. If any contract resulting from this Solicitation is for services, Respondent shall comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.
9. Respondent shall retain in its records the Solicitation and its Solicitation Response and all documents related to this Solicitation or any contract resulting from this Solicitation. Unless a longer retention period is specified by applicable federal law or regulation, Respondent may destroy such records only after the seventh anniversary of the date: the contract is completed or expires; or all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the Solicitation, Solicitation Response, contract, or related documents are resolved. Respondent acknowledges that the State has a right of access to information in Respondent's possession relating to State property and agrees to make such information reasonably available upon request of the GLO.
10. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under a contract resulting from this Solicitation or indirectly through a subcontract under such contract. The acceptance of funds directly under such contract or indirectly through a subcontract under such contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Respondent shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through a contract and the requirement to cooperate is included in any subcontract it awards. Any contract resulting from this Solicitation may be amended unilaterally by the GLO to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.
11. In accordance with Section 2252.901 of the Texas Government Code, for the categories of contracts listed in that section, Respondent represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were employees of the GLO during the twelve (12) month period immediately prior to the date of execution of the contract. Solely for professional services contracts as described by Chapter 2254 of the Texas Government Code, Respondent further represents and warrants that if a former employee of the GLO was employed by Respondent within one year of the employee's leaving the GLO, then such employee will not perform services on projects with Respondent that the employee worked on while employed by the GLO.
12. The Respondent shall not discriminate against any employee or applicant for employment because of race, disability, color, religion, sex, age, or national origin. The Respondent shall take affirmative action to ensure that applicants are employed and that employees are treated without regard to their race, disability, color, sex, religion, age, or national origin. Such action includes, but is not limited to: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Respondent shall post notices, setting forth the provisions of this non-discrimination article, in conspicuous places available to employees or applicants for employment. Respondent shall include the above provisions in all subcontracts to any contract resulting from this Solicitation.
13. Respondent represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such a firm, corporation, partnership, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of its Solicitation Response to any competitor or any other person engaged in the same line of business as Respondent.
14. By signing this Solicitation Response, Respondent certifies that if a Texas address is shown as the address of the Respondent, Respondent qualifies as a "Texas Bidder" as defined in Section 2155.444(c) of the Texas Government Code.
15. Respondent understands that the GLO does not tolerate any type of fraud. The GLO's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, GLO policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Respondents are expected to report any possible fraudulent or dishonest acts, waste, or abuse to the GLO's Internal Audit Director at 512.463.6078 or Tracey.Hall@glo.texas.gov.

16. Respondent certifies that it will comply with the federal Immigration Reform and Control Act of 1986, the Immigration Act of 1990, and the Immigration Act of 1996 regarding employment, employment verification, and retention of verification forms of individuals who will prospectively perform work described in this proposal.
17. Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit state agencies from accepting a Solicitation Response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response is not ineligible to receive the specified contract and acknowledges that such contract may be terminated, and payment withheld if this certification is inaccurate.
18. Respondent represents and warrants that it shall comply with the applicable provisions of and rules and regulations related to the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101-8106).
19. The Respondent represents that payment to the Respondent and the Respondent's receipt of appropriated or other funds under any contract resulting from this Solicitation are not prohibited by Section 556.005 or Section 556.008 of the Texas Government Code.
20. If the Solicitation is for completion of a "project" (as defined by Texas Government Code §2252.201) in which iron or steel products will be used, Respondent agrees any iron or steel product produced through a "manufacturing process" (as defined by Texas Government Code §2252.201) and used in the project shall be produced in the United States.
21. If Texas Government Code Chapter 2270 prohibiting state contracts with companies boycotting Israel applies to Respondent and any contract awarded to Respondent pursuant to this Solicitation, then Respondent verifies it does not boycott Israel and will not boycott Israel during the term of any contract awarded to Respondent pursuant to this Solicitation.
22. If Respondent is submitting a Solicitation Response for the purchase or lease of computer equipment, then Respondent certifies it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in Title 30 Texas Administrative Code, Chapter 328.
23. Upon the GLO's request, Respondent shall provide copies of its most recent business continuity and disaster recovery plans.
24. If the Solicitation is for consulting services, as defined in Texas Government Code Chapter 2254, in accordance with Section 2254.033 of the Texas Government Code, Respondent certifies it does not employ an individual who has been employed by the GLO or another agency at any time during the two years preceding the submission of the Solicitation Response or, in the alternative, Respondent has disclosed in its Solicitation Response the following: (i) the nature of the previous employment with the GLO or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.
25. Respondent must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve any dispute arising under any contract resulting from this Solicitation.
26. Any contract resulting from this Solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature. Respondent understands that all obligations of the GLO under a contract resulting from this Solicitation are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the GLO may terminate such contract. Any contract resulting from this Solicitation shall not be construed as creating a debt on behalf of the GLO in violation of Article III, Section 49a of the Texas Constitution.
27. Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
28. Any contract resulting from this Solicitation shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the GLO.

29. Respondent has disclosed in writing to the GLO all existing or potential conflicts of interest relative to the performance of any contract resulting from this Solicitation.
30. The GLO will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material associated with this Solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Respondent shall make any information created or exchanged with the State pursuant to the Solicitation and any resulting contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
31. The person signing this Solicitation Response represents and warrants that he/she is duly authorized and legally empowered to submit this Solicitation Response, execute a contract on behalf of Respondent, and contractually bind the Respondent.
32. Respondent expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Respondent represents and warrants that any technology provided to the GLO for purchase under this Solicitation is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: providing equivalent access for effective use by both visual and non-visual means; presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this Section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.
33. If any contract resulting from this Solicitation is for the purchase or lease of covered television equipment as defined by Section 361.91(3) of the Texas Health and Safety Code, Respondent certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.
34. The requirements of Subchapter J, Chapter 552, Government Code, may apply to a contract awarded under this Solicitation and Respondent agrees that the contract can be terminated if Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.
35. If Respondent, in its performance of a contract awarded under this Solicitation, has access to a state computer system or database, Respondent must complete a cybersecurity training program certified under Texas Government Code Section 2054.519, as selected by the GLO. Respondent must complete the cybersecurity training program during the initial term of the contract and during any renewal period. If awarded a contract, Respondent must verify in writing to the GLO its completion of the cybersecurity training program.
36. Under Section 2155.0061, Government Code, the Respondent certifies that the individual or business entity named in this bid (Solicitation Response) or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated, and payment withheld if this certification is inaccurate.

Check below if preference claimed under Title 34 Texas Administrative Code § 20.306.

- Supplies, materials, equipment, or services produced in Texas/offered by Texas bidders or Texas bidder that is owned by a service-disabled veteran
- Agricultural products produced/grown in Texas
- Agricultural products and services offered by Texas bidders
- Texas vegetation native to the region for landscaping purposes
- USA produced supplies, materials, or equipment
- Products of persons with mental or physical disabilities
- Products made of recycled, remanufactured, or environmentally sensitive materials, including recycled steel
- Covered television equipment
- Energy efficient products

- Rubberized asphalt paving material
- Recycled motor oil and lubricants
- Products and services from economically depressed or blighted areas
- Products produced at facilities located on formerly contaminated property
- Vendors that meet or exceed air quality standards
- Paper containing recycled fibers
- Recycled Computer Equipment of other manufacturers
- Foods of Higher Nutritional Value
- Travel agents residing in Texas

I have read, understand, and agree to comply with the terms and conditions specified in this Solicitation Response. Checking "YES" indicates acceptance, while checking "NO" denotes non-acceptance.

YES _____ NO _____

SIGNATURE PAGE FOLLOWS

RESPECTFULLY SUBMITTED:

Authorized Signature of the person authorized to bind Respondent to any contract that may result from this Solicitation¹

Date

**Printed Name and Title of Signatory
Full Legal Name of Respondent's company as registered with the Texas Secretary of State, and as it should appear on any Contract resulting from this Solicitation²**

Respondent's Employer Identification Number (must match IRS Letter)³

Telephone

Email

Address

City/State/Zip

¹ If Respondent is a Corporation or other legal entity, attach a corporate resolution or other appropriate official documentation, which states that the person signing this Solicitation Response is an authorized person that can legally bind the corporation or entity.

² Attach proof of registration with the Texas Secretary of State.

³ Attach a copy of IRS Letter 147C, Verification of Employer Identification Number, or any IRS document listing both the EIN and Entity name on IRS letterhead.

EXHIBIT B. FEDERAL AFFIRMATIONS

FEDERAL AFFIRMATIONS AND SOLICITATION ACCEPTANCE

In the event federal funds are used for payment of part or all of the consideration due under any contract resulting from this Solicitation Response, Respondent must execute this **Exhibit B**, which shall constitute an agreement, without exception, to the following affirmations:

1. Debarment and Suspension

Respondent certifies, by signing this Attachment, that neither it nor any of its principals or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), “Debarment and Suspension” Respondent understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension.”

2. Americans with Disabilities Act

Respondent and any potential subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program- specific regulations.

3. Discrimination

Respondent and any potential subcontractors shall comply with all Federal statutes relating to nondiscrimination as applicable. These may include, but are not limited to:

- a) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d *et seq.*), which prohibits discrimination on the basis of race, color, or national origin;
- b) Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. §§3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental, or financing of housing against any person on the basis of race, color, religion, sex, national origin, familial status, or handicap;
- c) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex;
- d) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps;
- e) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101- 6107), which prohibits discrimination on the basis of age;
- f) Section 109 of Title I of the Housing and Community Development Act of 1974, as amended, which prohibits discrimination on the basis of race, color, national origin, disability, age, religion, and sex within community development programs or activities;

- g) Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits genetic information discrimination in employment;
- h) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
- i) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- j) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-2 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- k) Any other nondiscrimination provisions in the specific statute(s) or federal regulation(s) under which application for Federal assistance is being made; and
- l) The requirements of any other nondiscrimination statute(s) that may apply to the application.

4. Wages

Respondent and any potential subcontractors have a duty to and shall pay the prevailing wage rate under the Davis Bacon Act, 40 U.S.C. 276a – 276a-5, as amended, and the regulations adopted thereunder contained in 29 C.F.R. pt. 1 and 5.

5. Lobbying

If Respondent, in connection with any resulting contract from this Solicitation, is a recipient of a Federal contract, grant, or cooperative agreement exceeding \$100,000 or a Federal loan or loan guarantee exceeding \$150,000, the Contractor shall comply with the requirements of the new restrictions on lobbying contained in Section 1352, Title 31 of the U.S. Code, which are implemented in 15 C.F.R. Part 28. Respondent shall require that the certification language of Section 1352, Title 31 of the U.S. Code be included in the award documents for all subcontracts and require that all subcontractors submit certification and disclosure forms accordingly.

6. Minority and Women's Businesses

Respondent and any potential subcontractors shall take affirmative steps to assure that minority and women's businesses are utilized when possible as sources of supplies, equipment, construction, and services, as detailed in the federal requirements relating to minority and women's business enterprises: Executive Order 11625 of October 13, 1971, 36 Fed. Reg. 19967, as amended by Executive Order No. 12007 of August 22, 1977, 42 Fed. Reg. 42839; Executive Order No. 12432 of July 14, 1983, 48 Fed. Reg., 32551; and Executive Order No. 12138 of May 18, 1979, 44 Fed. Reg. 29637.

7. Environmental Standards

Respondent and any potential subcontractors shall comply with environmental standards that may be prescribed pursuant to the following:

- a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;

- b) Notification of violating facilities pursuant to EO 11738;
- c) Protection of wetlands pursuant to EO 11990;
- d) Evaluation of flood hazards in floodplains in accordance with EO 11988;
- e) Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);
- f) Conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.);
- g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and
- h) Protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

8. Historic Properties

Respondent and any potential subcontractors shall assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

9. All Other Federal Laws

Respondent and any potential subcontractors shall comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the Solicitation.

I have read, understand, and agree to comply with the Federal Affirmations specified above. Checking “YES” indicates acceptance, while checking “NO” denotes non-acceptance.

YES _____ NO _____

RESPECTFULLY SUBMITTED:

Authorized Signature: _____

Printed Name and Title: _____

Telephone: _____

Respondent’s Tax I.D.: _____

DUNS Number: _____

CAGE Code: _____

If Respondent is a Corporation or other legal entity, please attach a corporate resolution or other appropriate official documentation that states that the person signing this Solicitation Response is an authorized person to sign for and legally bind the corporation or entity.

EXHIBIT C. SAMPLE CONTRACT



**GLO CONTRACT NO. «CONTRACTNO.»
MULTI-FAMILY RESIDENTIAL CONSTRUCTION REPAIR SERVICES GRANT
AGREEMENT
2018 SOUTH TEXAS FLOODS AFFORDABLE RENTAL HOUSING PROGRAM**

The **GENERAL LAND OFFICE** (the “GLO”) and «COMPANYNAME», Texas Identification Number (TIN) «TIN» (“Developer”), each a “Party” and collectively the “Parties,” enter into this grant agreement for residential construction repair services for disaster recovery (the “Contract”) pursuant to applicable sections of the Uniform Grant Management Standards (“UGMS”) in conjunction with the requirements located at 2 C.F.R. Part 200 and 24 C.F.R. Part 570.

I. DEFINITIONS, INTERPRETIVE PROVISIONS, AND PROJECT DESCRIPTION

1.01 DEFINITIONS

“[Administrative and Audit Regulations](#)” means all applicable statutes, regulations, and other laws governing administration or audit of this Contract (including the regulations included in Title 2, Part 200, of the Code of Federal Regulations; Chapter 321 of the Texas Government Code; Subchapter F of Chapter 2155 of the Texas Government Code; and the requirements of Article VII herein).

“[Amendment](#)” means a written agreement, signed by the Parties hereto, that documents alterations to the Contract other than those permitted by Technical Guidance Letters or Revisions, as herein defined.

“[Attachment](#)” means documents, terms, conditions, or additional information physically attached to this Contract after the execution page or incorporated by reference, as if physically attached, within the body of this Contract.

“[Budget](#)” means the Budget, a copy of which is included in [Attachment A](#), for the Tasks funded by the Contract.

“[CDBG-DR](#)” means the Community Development Block Grant Disaster Recovery program administered by the U.S. Department of Housing and Urban Development (“HUD”). Such program includes residential repair, construction, or reconstruction projects or programs administered by HUD in cooperation with the GLO.

“[C.F.R.](#)” means the Code of Federal Regulations, the codification of the general and permanent rules and regulations (sometimes called administrative law) published in the Federal Register by the executive departments and agencies of the federal government of the United States.

“Contract” means this entire document, its Attachments and documents incorporated by reference, and any Amendments, Revisions, or Technical Guidance Letters the GLO issues, which are to be incorporated by reference herein for all purposes as they are issued.

“Contract Period” means the period of time between the effective date of the Contract and its expiration or termination date.

“Developer,” also referred to as “Provider,” means a private individual or a profit-making or non-profit organization receiving CDBG-DR funds under this Contract for the purposes of completing new construction, reconstruction, or rehabilitation of multi-family residential properties for which at least 51% of the units shall be dedicated to serving low-to moderate-income residents.

“Federal Assurances” means Standard Form 424B (for non-construction projects) or Standard Form 424D (for construction projects) in **Attachment B**, attached hereto and incorporated herein for all purposes.

“Federal Certifications” means the “Certification Regarding Lobbying – Compliant with Appendix A to 24 C.F.R. Part 87” and Standard Form LLL, “Disclosure of Lobbying Activities,” also in **Attachment B**, attached hereto and incorporated herein for all purposes.

“Fiscal Year” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

“Forms” means the documents required under the CDBG-DR program and made available on the GLO’s website at www.recovery.texas.gov.

“GAAP” means generally accepted accounting principles.

“GASB” means the Governmental Accounting Standards Board.

“General Affirmations” means the statements in **Attachment C**, attached hereto and incorporated herein for all purposes, that Developer agrees to and affirms by executing this Contract.

“GLO” means the Texas General Land Office and its officers, employees, and designees.

“Green Building Standards” means any of the following: (a) ENERGY STAR (Certified Homes or Multifamily High-Rise); (b) Enterprise Green Communities; (c) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development); or (d) ICC-700 National Green Building Standard.

“HSP” means HUB subcontracting plan, as described in Chapter 2161 of the Texas Government Code.

“HUB” means historically underutilized business, as defined by Chapter 2161 of the Texas Government Code.

“HUD” means the United States Department of Housing and Urban Development.

“Intellectual Property” means patents, rights to apply for patents, trademarks, trade names, service marks, domain names, copyrights and all applications and worldwide registration of such, schematics, industrial models, inventions, know-how, trade secrets, computer software programs, other intangible proprietary information, and all federal, state, or international registrations or applications for any of the foregoing.

“Land Use Restriction Agreement,” or “LURA,” means the CDBG-DR Land Use Restriction Agreement, attached hereto and incorporated herein for all purposes as **Attachment G**, that was executed by and between the GLO and Developer and sets forth certain occupancy and rental restrictions as contained therein (as it may be amended from time to time) for the Project.

“Mentor Protégé” means the leadership program of the Comptroller of Public Accounts, which can be found at <https://comptroller.texas.gov/purchasing/vendor/hub/mentor.php>.

“Minimum Property Standards,” or “MPS,” means the Minimum Property Standards (MPS) established in HUD Handbook 4910.1, as amended or superseded. The MPS, as read in the context of this Contract, encompass housing quality standards established by HUD to provide “decent, safe and sanitary” housing.

“New Construction” means a single-family housing unit or a multi-family residential complex constructed on property not formerly used for residential purposes.

“Payment Benchmarks” means the Tasks identified in **Attachment A** that define the Tasks required for release of funding throughout the life of the Contract.

“Performance Statement, Budget, and Rental Benchmarks” means the statement of work that is contained in **Attachment A** and identifies specific Project details, the Project’s relation to the disaster event, the Budget, payment benchmarks, Project location(s), and Project beneficiaries.

“Program” means HUD’s CDBG-DR program (including residential construction, reconstruction, and projects or programs administered by HUD in cooperation with the GLO).

“Program Guidelines” means any and all GLO-approved documents reflecting specific rules and regulations governing the implementation of the Program.

“Project” means the GLO-authorized scope of work (more fully described in **Attachment A**) to be performed on a residential structure as facilitated by the Developer.

“Project Manager” means the authorized representative of the GLO responsible for the day-to-day management of a Project and the direction of staff and independent contractors in the performance of work relating thereto.

“Prompt Pay Act” means Chapter 2251 of the Texas Government Code.

“Property Condition Assessment,” or “PCA,” means the report outlining the baseline condition of the property upon which the Project shall be completed.

“Public Information Act” means Chapter 552 of the Texas Government Code.

“Reconstruction” means the demolition and rebuilding of a single-family housing unit or a multi-family residential complex that replaces a similar structure on the same property.

“Rehabilitation” means the repair or restoration of an existing single-family housing unit or a multi-family residential complex damaged by Hurricane Harvey.

“Request for Payment Form(s)” means the GLO-specified form(s) required under **Section 3.01** of this Contract to facilitate the timely processing of a properly submitted draw request.

“Revision” means written GLO approval of changes to Task due dates, movement of funds among budget categories, and other Contract adjustments that may be approved outside the GLO’s formal Amendment process.

“State” means the State of Texas and any state agency (including the GLO and its officers, employees, or authorized agents).

“Subcontractor” means an entity that contracts with Developer to perform part or all of Developer’s obligations under this Contract.

“Task” means a defined work or service eligible to be accomplished using CDBG-DR funds. Tasks are specified in the Performance Statement and Budget under the Payment Benchmarks in **Attachment A**.

“Technical Guidance Letter,” or “TGL,” means an instruction, clarification, or interpretation of the requirements of a GLO disaster-recovery or disaster-response program that the GLO issues to specified recipients regarding specific subject matter and to which the addressed Program participants shall be subject.

“Travel Regulations” means all applicable statutes, regulations, laws, and Comptroller guidance related to reimbursement for Developer’s travel expenses, including: Title 34, Section 5.22, of the Texas Administrative Code; Chapter 660 of the Texas Government Code; the General Appropriations Act; and *Textravel*, the Comptroller’s travel regulation guidance available on the Comptroller’s website.

“U.S.C.” means the United States Code.

1.02 INTERPRETIVE PROVISIONS

- (a) The meaning of a defined term applies to its singular and plural forms.
- (b) The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or payment benchmark schedule of this Contract, unless otherwise specified.
- (c) The term “including” means “including, without limitation.”
- (d) Unless otherwise expressly provided in this Contract, references to contracts (including this Contract) and other contractual instruments include all subsequent Amendments and other modifications thereto, to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract. A reference to a statute or regulation includes all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.
- (e) The captions and headings of this Contract are for convenience of reference only and shall not affect the interpretation of this Contract.
- (f) All Attachments to this Contract, including those incorporated by reference, and any amendments are considered part of the terms of this Contract.
- (g) This Contract may use several limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and shall be performed in accordance with their terms.

- (h) Unless otherwise expressly provided, reference to any action of or by the GLO by way of consent, approval, or waiver shall be deemed modified by the phrase “in its/their sole discretion.” Notwithstanding the preceding sentence, the GLO shall not unreasonably withhold or delay any approval, consent, or waiver required or requested of it.
- (i) All due dates and/or deadlines referenced in this Contract that occur on a weekend or State or federal holiday shall be considered as if they occur on the next business day.
- (j) All time periods in this Contract shall commence on the day after the date when the applicable event occurred, report was submitted, or request was received.
- (k) Time is of the essence in this Contract.
- (l) If this Contract and its Attachments conflict, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of precedence: **Attachment D**, the Contract, GLO-approved Program Guidelines, **Attachment A**, Property Condition Assessment, **Attachment B**, **Attachment C**, **Attachment F**, **Attachment E**, and **Attachment G**.

1.03 PROJECT

Developer submitted a grant application under the CDBG-DR program. The GLO enters into this Contract based on Developer’s approved grant application. The purpose of this Contract is to set forth the terms and conditions of Developer’s participation in the CDBG-DR program. In strict conformance with the terms and conditions of this Contract, Developer shall perform, or cause to be performed, multi-family residential rehabilitation, reconstruction, and/or new construction repair services for disaster recovery (the “Project”), as stated in **Attachment A**. Such services shall assist the GLO in fulfilling State and federal responsibilities related to recovery from Hurricane Harvey.

Developer shall perform the Project in compliance with (a) HUD requirements, (b) this Contract and all Attachments thereto, (c) any Amendments to this Contract, and (d) any Technical Guidance Letters or Revisions that may be issued by the GLO.

1.04 REPORTING REQUIREMENTS

Developer shall timely submit all reports and documentation as may be required by the GLO to the Project Manager, Jeff Crozier (at jeff.crozier.glo@recovery.texas.gov), in a format agreed upon between the Parties.

II. TERM

2.01 DURATION

This Contract shall be effective as of the date when it is signed by the last Party (“Effective Date”) and shall terminate upon the date of completion of all Payment Benchmarks listed in **Attachment A** and required closeout procedures or on «**Original Expiration**», whichever date is earlier (“Contract Period”).

Upon receipt of a written request and acceptable justification from Developer, the GLO may amend this Contract to extend the Contract Period. **ANY REQUEST FOR EXTENSION MUST BE RECEIVED BY THE GLO AT LEAST SIXTY (60) DAYS**

BEFORE THE ORIGINAL TERMINATION DATE OF THIS CONTRACT, AND, IF APPROVED, SUCH EXTENSION SHALL BE BY WRITTEN AMENDMENT IN ACCORDANCE WITH SECTION 8.15 OF THIS CONTRACT.

2.02 EARLY TERMINATION

The GLO may terminate this Contract by giving written notice specifying a termination date at least thirty (30) days after the date of the notice. Upon receipt of any such notice, Developer shall immediately cease work, terminate any relevant subcontracts, and incur no further expense related to this Contract. Such early termination shall be subject to the equitable settlement of the Parties' respective interests accrued up to the date of termination.

2.03 ABANDONMENT OR DEFAULT

If Developer abandons work or defaults on the Contract, the GLO may terminate the Contract without notice. Following termination under this **Section 2.03**, Developer may be suspended or debarred from receiving future funding under the CDBG-DR Program. The GLO, in its sole discretion and in accordance with State and federal regulations, shall determine the period of suspension or debarment based upon the extent of the abandonment or default.

III. CONSIDERATION

3.01 CONTRACT LIMIT, FEES, AND EXPENSES

The GLO will grant CDBG-DR funding to Developer at a firm fixed price in the amount of \$«**ContractAmount**», in accordance with **Attachment A**.

To submit a draw request, Developer shall submit Request for Payment Form(s), along with all required supporting documentation regarding Payment Benchmarks in accordance with the terms outlined in **Attachment A**.

At a minimum, invoices must:

- (a) **be submitted to the GLO's system of record, the Texas Integrated Grant Reporting (TIGR) system, by Developer utilizing written instructions timely provided by the Project Manager;**
- (b) **prominently display "GLO Contract No. «ContractNo.»";**
- (c) list the current amount being billed;
- (d) list the cumulative amount billed previously;
- (e) list the balance remaining to be billed; and
- (f) include an itemized statement of services performed (including documentation such as invoices, receipts, statements, stubs, tickets, time sheets, and other information) that, in the judgment of the GLO, provides full substantiation of reimbursable costs incurred.

The Prompt Pay Act generally applies to payments to Developer. However, the Prompt Pay Act does not apply if Developer does not send invoices through TIGR. If Developer does not submit invoices in strict accordance with the instructions in this section, payment of invoices may be significantly delayed. Developer agrees that the GLO

shall not pay interest, fees, or other penalties for late payments resulting from Developer's failure to submit invoices in strict accordance with the instructions in this communication and any attached documents.

3.02 TRAVEL EXPENSES

- (a) The GLO will not reimburse Developer for travel expenses of any kind without prior written GLO approval. The GLO will only reimburse travel expenses directly attributable to Developer's performance of this Contract at the rates established or adopted by the Comptroller of the State of Texas, as outlined in the Travel Regulations.
- (b) Subject to the maximum Contract amount authorized herein and upon specific, prior, written approval by the GLO, lodging, travel, and other incidental direct¹ expenses may be reimbursed under this Contract for professional or technical personnel who are working away from the cities in which they are permanently assigned and conducting business specifically authorized in the scope of services in **Attachment A**.
- (c) The limits for reimbursements are the rates established or adopted by the Comptroller, as outlined in the Travel Regulations. **Developer understands and acknowledges that any travel-expense reimbursement by the GLO is not a per diem. The GLO will only reimburse actual, allowable expenses in accordance with the Travel Regulations. Developer must submit itemized receipts to support any request for travel-expense reimbursement.**

IV. DEVELOPER'S WARRANTY, AFFIRMATIONS, AND ASSURANCES

4.01 PERFORMANCE WARRANTY

- (a) Developer warrants that it will perform, or cause to be performed, all applicable Tasks under this Contract in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
- (b) Developer warrants that all applicable Payment Benchmarks and associated Tasks shall comply with the applicable building codes, as stated in **Attachment A**, and be fit for ordinary use, of good quality, and with no material defects.
- (c) If Developer fails to timely complete or cause the timely completion of Payment Benchmarks or fails to perform satisfactorily under this Contract, the GLO shall require Developer, at its sole expense, to take the necessary steps complete the Task, meet the Payment Benchmark, or perform satisfactorily.

4.02 GENERAL AFFIRMATIONS

Developer certifies that it has reviewed the General Affirmations in **Attachment C** and is in compliance with each of the requirements reflected therein to the extent that they apply.

¹ Upon specific written approval by the GLO, certain other incidental direct expenses (including, but not limited to, copying, telephone, data, and express mail services) may be reimbursed at rates determined by the GLO.

4.03 FEDERAL ASSURANCES AND CERTIFICATIONS

Developer certifies that it has reviewed the Federal Assurances and Certifications in **Attachment B** and is in compliance with all requirements contained therein to the extent that they apply. **Developer certifies it is in compliance with all other applicable federal laws, rules, or regulations pertaining to this Contract (including, but not limited to, those listed in Attachment D).**

4.04 DEBARMENT AND SUSPENSION

Developer certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in this Contract by any state or federal agency.

V. FEDERAL AND STATE FUNDING, RECAPTURE OF FUNDS, AND OVERPAYMENT

5.01 FEDERAL FUNDING

- (a) Funding for this Contract is appropriated by Congress under the acts listed in the table below and allocated to the State of Texas by HUD to address unmet disaster-recovery needs. Such needs shall be addressed through activities authorized under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in the areas most impacted and distressed due to a major declared disaster that occurred in 2017.

Congressional Act	Federal Award Identification Number (FAIN)
The Supplemental Appropriations for Disaster Relief Act, 2018, enacted on October 5, 2018.	
The Additional Supplemental Appropriations for Disaster Relief Act, 2019, enacted on June 6, 2019.	

The fulfillment of this Contract is based on those funds being made available under Catalog of Federal Domestic Assistance (CFDA) No. 14.228 to the GLO as the lead administrative State agency. All expenditures under this Contract must be made in accordance with this Contract, the rules and regulations promulgated under the CDBG-DR Program, and any other applicable laws. Further, Developer acknowledges that all funds are subject to recapture and repayment for noncompliance.

- (b) **All CDBG-DR Program participants must have a Data Universal Numbering System (DUNS) number and a Commercial and Government Entity (CAGE) code. Developer shall report its DUNS number and CAGE code to the GLO for use in various grant-reporting documents.** A DUNS number may be obtained by visiting the Dun & Bradstreet website: <https://www.dnb.com>. A CAGE code will be assigned when the obtained DUNS number is registered with the System for Award Management website at <https://www.sam.gov>. Assistance with the System for Award Management website may be obtained by calling 866-606-8220.

Each CDBG-DR Program participant is responsible for renewing its registration with the System for Award Management annually and maintaining an active registration status throughout the Contract Period.

5.02 STATE FUNDING

- (a) This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or the GLO in violation of Article III, Section 49, of the Texas Constitution. In compliance with Article VIII, Section 6, of the Texas Constitution, it is understood that all obligations of the GLO hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the GLO may terminate this Contract. In that event, the Parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests, accrued up to the date of termination.
- (b) Any breach-of-contract claim by Developer for damages under this Contract, except for damages that are a result of the gross negligence or willful misconduct of the GLO, may not exceed the amount of funds due and owing Developer or the amount appropriated for payment but not yet paid to Developer under the annual budget in effect at the time of the breach. **NOTHING IN THIS CONTRACT SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO.**
- (c) Developer has freely and without reservation agreed to the terms of this Contract. Developer understands that receipt of funding from the GLO, in the form of CDBG-DR funds, is an essential part of the consideration of this Contract. Developer agrees to comply with all obligations in any document governing the acceptance and usage of grant funds awarded to Developer under this Contract.

5.03 RECAPTURE OF FUNDS

The discretionary right of the GLO to terminate for convenience under **Section 2.02** notwithstanding, the GLO may terminate the Contract and recapture and be reimbursed for any payments, including any unapproved expenditures, that the GLO makes that (a) exceed the maximum allowable rates; (b) are not allowed under applicable laws, rules, or regulations; or (c) are otherwise inconsistent with this Contract.

5.04 OVERPAYMENT

Developer shall be liable to the GLO for any costs disallowed pursuant to financial and/or compliance audit(s) of funds received under this Contract. Developer shall reimburse the GLO for such disallowed costs from funds other than those Developer received under this Contract.

VI. OWNERSHIP

6.01 OWNERSHIP AND INTELLECTUAL PROPERTY

- (a) The GLO shall own, and Developer hereby irrevocably assigns to the GLO, all ownership rights, titles, and interests in and to all Intellectual Property acquired or developed by Developer pursuant to this Contract (including, without limitation, all Intellectual Property in and to reports, drafts of reports, data, drawings, computer programs and codes, and/or any other information or materials acquired or

developed by Developer under this Contract). The GLO shall have the right to obtain and hold in its name any and all patents, copyrights, trademarks, service marks, registrations, or such other protections, including extensions and renewals thereof, as may be appropriate to the subject matter.

- (b) Developer must give the GLO, the State of Texas, and any person designated by the GLO or the State of Texas all assistance and execute such documents as required to perfect the rights granted to the GLO herein, without any charge or expense beyond the stated amount payable to Developer for the services authorized under this Contract.

6.02 COPYRIGHT

- (a) Developer agrees and acknowledges that all expressive content subject to copyright protection (individually a “Work” and collectively the “Works”) will be made the exclusive property of the GLO. Such content includes, without limitation, all reports, drafts of reports, drawings, artwork, photographs, videos, computer programs and codes, and/or any other expressive content acquired or developed by Developer pursuant to this Contract. Developer acknowledges that each Work is a “work made for hire” under the United States Copyright Act of 1976. All rights in and to each Work, including the copyright to the Work, shall be and remain the sole and exclusive property of the GLO.
- (b) If, for any reason, any Work or any portion of a Work is not a work made for hire, Developer hereby irrevocably assigns to the GLO ownership of all rights, titles, and interests in and to the Works or such portion of any Work, including (without limitation) the entire and exclusive copyright in the Works and all rights associated with the copyright (including, but not limited to, reproduction rights, distribution rights, the right to prepare translations and other derivative works, and the right to display the Works in all formats and media now known or developed in the future).
- (c) Developer must give the GLO, the State of Texas, and any person designated by the GLO or the State of Texas all assistance required to perfect the rights granted to the GLO herein, without any charge or expense beyond the stated amount payable to Developer for the services authorized under this Contract.

6.03 THIRD-PARTY RELIANCE

To the extent allowed by law, the GLO shall not use, willingly allow, or cause Work to be used for any purpose other than performance of Developer’s obligations under this Contract without advising any receiving party that it relies upon or uses the Work entirely at its own risk and without liability to Developer.

VII. RECORDS, AUDIT, RETENTION, AND DISCLOSURE

7.01 BOOKS AND RECORDS

Developer shall keep and maintain, or cause to be kept and maintained, under GAAP or GASB (as applicable) full, true, and complete records necessary for fully disclosing to the GLO, the Texas State Auditor’s Office, the United States Government, and/or their authorized representatives sufficient information for determining Developer’s compliance with this Contract and all applicable laws, rules, and regulations.

7.02 INSPECTION AND AUDIT

- (a) All records related to this Contract (including records of Developer, its contractors, and its Subcontractors) shall be subject to all the Administrative and Audit Regulations.
- (b) The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. Acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. Under the direction of the Legislative Audit Committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. **The Office of the Comptroller General of the United States, the Government Accountability Office, the Office of Inspector General, or any authorized representative of the U.S. Government shall also have this right of inspection.** Developer shall ensure that this clause concerning the authority to audit funds received indirectly by contractors through Developer and Subcontractors through such contractors and the requirement to cooperate is included in any subcontract awarded in relation to this Contract.
- (c) State agencies authorized to audit and inspect Developer; its records, contractors, and contractors' records; and such contractors' Subcontractors and Subcontractors' records include the GLO, the GLO's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, the Texas Comptroller of Public Accounts, and their authorized designees. With regard to any federal funding, federal agencies authorized to audit and inspect Developer; its records, contractors, and contractors' records; and such contractors' Subcontractors and Subcontractors' records include the relevant federal agency(ies), the Office of the Comptroller General of the United States, the Government Accountability Office, the Office of Inspector General, and their authorized designees.

7.03 PERIOD OF RETENTION

In accordance with federal regulations, all records relevant to this Contract shall be retained for a period of three (3) years subsequent to the final closeout of any CDBG-DR Program for which a Contract is issued. **The GLO will notify all CDBG-DR Program participants of the date upon which local records may be destroyed, and Provider shall retain all records related to this Contract until the destruction date determined by the GLO.**

7.04 CONFIDENTIALITY

To the extent permitted by law, Developer and the GLO shall keep all information, in whatever form produced, prepared, observed, or received by Developer or the GLO, confidential to the extent that such information is: (a) confidential by law; (b) marked or designated "confidential" (or words to that effect) by Developer or the GLO; or (c) information that Developer or the GLO is otherwise required to keep confidential by this Contract. Developer must not advertise that it is doing business with the GLO, use this

Contract as a marketing or sales tool, or make any communications or announcements relating to this Contract through press releases, social media, or other public relations efforts without the prior written consent of the GLO.

7.05 PUBLIC RECORDS

The GLO shall post this Contract to the GLO's website. Developer understands that the GLO will comply with the Texas Public Information Act (Texas Government Code Chapter 552, the "PIA"), as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas (the "Attorney General"). Information, documentation, and other material in connection with this Contract may be subject to public disclosure pursuant to the PIA. Developer is required to make any information created or exchanged with the GLO or the State of Texas pursuant to the Contract, and not otherwise excepted from disclosure under the PIA, available to the GLO in portable document file (".pdf") format or any other format agreed upon between the Parties that is accessible by the public at no additional charge to the GLO or the State of Texas. By failing to mark any information that Developer believes to be excepted from disclosure as "confidential" or a "trade secret," Developer waives any and all claims it may make against the GLO for releasing such information without prior notice to Developer. The Attorney General will ultimately determine whether any information may be withheld from release under the PIA. Developer shall notify the GLO's Office of General Counsel within twenty-four (24) hours of receipt of any third-party written requests for information and forward a copy of said written requests to PIALegal@glo.texas.gov. If a request for information was not written, Developer shall forward the third party's contact information to the above-designated e-mail address.

VIII. MISCELLANEOUS PROVISIONS

8.01 INSURANCE AND BONDS

- (a) For the duration of the Project, Developer shall acquire (or guarantee the acquisition of) insurance in amounts sufficient to meet industry standards for insurance coverage with financially sound and reputable insurers authorized to operate in the State of Texas. Developer shall submit certificates of insurance that establish, to the GLO's satisfaction, the nature and extent of coverage granted by each policy. If requested to do so, Developer shall submit certificates of insurance and endorsements electronically, as directed by the GLO. If the GLO determines any insurance policy fails to comply with the terms of this Contract, Developer shall secure such additional policies or coverage that the GLO may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract (and upon request by the GLO), Developer shall submit renewed certificates of insurance and endorsements as evidence of insurance coverage throughout the term of this Contract. Developer may not perform any work under this Contract if Developer's insurance coverage does not meet the requirements of this Contract. The GLO may terminate this Contract if Developer fails to submit required insurance documents upon request. Developer shall ensure that any contract it or its contractors enter into related to the completion of the Project contains a provision requiring coverage sufficient to meet industry standards.

- (b) Developer, its contractors, and any of its contractor's Subcontractors shall acquire, for the duration of the Contract, payment and performance bonds in accordance with **Attachment E** of this Contract, **Required Bonds**, attached hereto and incorporated herein for all purposes.

8.02 TAXES, WORKER'S COMPENSATION, AND UNEMPLOYMENT INSURANCE

- (a) Developer, its contractors, and any of its contractors' Subcontractors shall be liable and responsible for payment of employment taxes of whatever kind arising from the execution or performance of the Project. Developer, its contractors, and any of its contractors' Subcontractors shall comply with all state and federal laws applicable to any such persons (including laws regarding wages, taxes, insurance, and workers' compensation). The GLO and the State of Texas shall not be liable to Developer or its contractors, contractors' Subcontractors, officers, agents, employees, representatives, assignees, designees, or others for the payment of taxes or the provision of unemployment insurance, workers' compensation, or any benefit available to a State employee or employee of another governmental entity.
- (b) Developer, its contractors, and any of its contractors' Subcontractors shall indemnify, defend, and hold harmless the State of Texas, the GLO, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all liability, actions, claims, demands, damages, proceedings, or suits, and all related costs, attorneys' fees, and expenses arising from, connected with, or resulting from tax liability, unemployment insurance, or workers' compensation in the execution or performance of the Contract. Developer and the GLO shall furnish timely written notice to each other of any such claim. Developer shall be liable to pay all costs of defense, including attorneys' fees.
- (c) Developer shall ensure that any and all contracts executed by and between Developer and any contractor and such contractor and any Subcontractor contain provisions capturing the requirements in paragraphs (a) and (b) of this **Section 8.02**.

8.03 LEGAL OBLIGATIONS

For the duration of this Contract, Developer shall ensure the procurement and maintenance of any license, authorization, insurance, waiver, permit, qualification, or certification that a federal, state, county, or city statute, ordinance, law, or regulation requires Developer, its contractors, and any of its contractors' Subcontractors to hold to provide the goods or services required by this Contract. Developer, its contractors, or contractors' Subcontractors shall pay all costs associated with all taxes, assessments, fees, premiums, permits, and licenses required by law. Developer shall pay any such government obligations not paid by its contractors or contractors' Subcontractors during performance of this Contract.

8.04 INDEMNITY

Developer shall indemnify, defend, and hold harmless the State of Texas, the GLO, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all liability, actions, claims, demands, damages, proceedings, or suits, and all related costs, attorneys' fees, and expenses (except those arising from the gross negligence or willful misconduct of such indemnified Parties) arising from,

connected with, or resulting from any acts or omissions of, or any contracts related to the completion of this Project by, Developer or its officers, agents, employees, representatives, suppliers, contractors, Subcontractors, assignees, designees, order fulfillers, or suppliers of contractors or Subcontractors in the execution or performance of the Contract. Developer and the GLO shall furnish timely written notice to each other of any such claim. Developer shall be liable to pay all costs of defense, including attorneys' fees. Developer shall coordinate its defense with the GLO and the Office of the Attorney General if the GLO or another Texas state agency is a named co-defendant with Developer in any suit. Developer may not agree to settle any such lawsuit or other claim without first obtaining the written consent of the GLO and, if applicable, the Office of the Attorney General.

Developer is solely responsible for the safety and well-being of its employees, customers, and invitees. The provisions of this Section 8.04 shall survive termination or expiration of this Contract.

8.05 INFRINGEMENT

- (a) Developer shall indemnify, defend, and hold harmless the State of Texas, the GLO, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all liability, actions, claims, demands, damages, proceedings, or suits, and all related costs, attorneys' fees, and expenses (except those arising from the gross negligence or willful misconduct of such indemnified Parties) arising from, connected with, or resulting from infringement of any United States patent, copyright, trademark, service mark, or any other intellectual or intangible property right that occurs in the execution or performance of the Contract. Developer and the GLO shall furnish timely written notice to each other of any such claim. Developer shall be liable to pay all costs of defense, including attorneys' fees. Developer shall coordinate its defense with the GLO and the Office of the Attorney General if the GLO or another Texas state agency is a named co-defendant with Developer in any suit. Developer may not agree to settle any such lawsuit or other claim without first obtaining the written consent of the GLO and, if applicable, the Office of the Attorney General.
- (b) Developer shall have no liability under this section if the alleged infringement is caused in whole or in part by (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Developer's written approval, (iii) any modifications made to the product by the Developer pursuant to the GLO's specific instructions, or (iv) any use of the product or service by the GLO that does not conform with the terms of any applicable license agreement.
- (c) If Developer becomes aware of an actual or potential claim or the GLO provides Developer with notice of an actual or potential claim, Developer shall, at Developer's sole expense, (i) procure for the GLO the right to continue to use the affected portion of the product or service or (ii) modify or replace the affected portion of the product or service with a functionally equivalent or superior product or service so that the GLO's use is non-infringing.

8.06 ASSIGNMENT AND SUBCONTRACTS

Developer shall not assign, transfer, or delegate any rights, obligations, or duties under this Contract without the prior written consent of the GLO. Notwithstanding this provision, it is mutually understood and agreed that Developer shall utilize contractors and contractors' Subcontractors for some or all of the services to be performed. Developer shall ensure that any and all contracts executed by and between Developer and any contractor or between such contractor and any Subcontractor contain provisions capturing the requirements in this **Section 8.06**. Developer shall ensure that any and all contracts executed by and between Developer and any contractor or between such contractor and any Subcontractor legally bind such contractor or Subcontractor to perform and make such contractor or Subcontractor subject to all the duties, requirements, and obligations of Developer as specified in this Contract. Nothing in this Contract shall be construed as relieving Developer of the responsibility for ensuring that the goods delivered and/or services rendered by Developer and/or any of its contractors or contractors' Subcontractors comply with all the terms and provisions of this Contract. Developer shall notify the GLO in writing of any such contractor or Subcontractor performing fifteen percent (15%) or more of the work under this Contract. Such notification shall include the name and Texas Identification Number of the contractor or Subcontractor, the Task(s) being performed, and the number of contractor or Subcontractor employees expected to work on the Task.

8.07 HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS) / MENTOR PROTÉGÉ PROGRAM

If required under the terms of Chapter 2161 of the Texas Government Code, Developer shall submit a HUB Subcontracting Plan ("HSP") to the GLO for approval. Once the GLO approves Developer's HSP, Developer shall supply the GLO with pertinent details of any HUB Subcontractor performing services in performance of the Project. The GLO encourages the parties it contracts with to partner with certified HUBs that participate in the Comptroller's Mentor Protégé Program. Developer will submit monthly compliance reports (Prime Contractor Progress Assessment Report) to HUB@glo.texas.gov, specifying the use of HUB Subcontractors (including expenditures to HUB Subcontractors) if applicable. Developer must submit any HSP modifications to the GLO for prior approval through an HSP Change Order. If Developer modifies its HSP without the GLO's prior approval, the GLO may initiate remedial action as provided in Chapter 2161 of the Texas Government Code.

8.08 RELATIONSHIP OF THE PARTIES

Developer is associated with the GLO only for the purposes and to the extent specified in this Contract. Developer, as a beneficiary of the CDBG-DR Program, is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract creates a partnership or joint venture, employer-employee or principal-agent relationship, or any liability whatsoever with respect to the indebtedness, liabilities, or obligations of Developer or any other party. Developer, its contractors, and contractors' Subcontractors shall be responsible for, and the GLO shall have no obligation with respect to, the withholding of income taxes, FICA, or any other taxes or fees; industrial or workers' compensation insurance coverage; participation in any group insurance plans available to employees of the State of Texas; participation or contributions by the State to the State Employees Retirement System;

accumulation of vacation leave or sick leave; or unemployment compensation coverage provided by the State.

8.09 COMPLIANCE WITH OTHER LAWS

In its performance of this Contract, Developer, its contractors, and contractors' Subcontractors shall comply with all applicable federal, state, county, and city laws, statutes, ordinances, and regulations. Developer is deemed to know of and understand all applicable laws and regulations (including, but not limited to, those attached hereto and incorporated herein for all purposes as **Attachment D**). Developer shall ensure that its contractors and contractors' Subcontractors are in compliance with this **Section 8.09**.

8.10 NOTICES

Notices required under this Contract shall be deemed delivered when deposited either in the United States mail (postage paid, certified, return receipt requested) or with a common carrier (overnight, signature required) to the appropriate address indicated below.

GLO

Texas General Land Office
1700 N. Congress Avenue, 7th Floor
Austin, Texas 78701
Attention: Contract Management Division

Developer

«EntityName»
«EntityStreet»
«EntityCity», «EntityState» «EntityZip»
Attention: «TableStart:Responsibilities»«Contract_People_External»
«Contract_People_External_1»«TableEnd:Responsibilities»

Notice given in any other manner shall be deemed effective only if and when it is received by the Party to be notified. Either Party may change its address for notice by written notice to the other Party as herein provided.

8.11 GOVERNING LAW AND VENUE

This Contract and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Developer irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of *forum non conveniens*, that it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **NOTHING IN THIS CONTRACT SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO.**

8.12 SEVERABILITY

If a court of competent jurisdiction determines any provision of this Contract is invalid, void, or unenforceable, this Contract shall be construed as if such provision did not exist, and the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

8.13 FORCE MAJEURE

Except with respect to the obligation of payments under this Contract, if either of the Parties (after a good faith effort) is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as a “Force Majeure”), then, while so prevented, the affected Party’s obligation to comply with such covenant shall be suspended, and the affected Party shall not be liable for damages for failure to comply with such covenant. In any such event, the Party claiming Force Majeure shall promptly notify the other Party of the Force Majeure event in writing, and, if possible, such notice shall set forth the extent and duration thereof. The Party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event when it is possible to do so and shall resume performance at the earliest possible date. However, if nonperformance continues for more than thirty (30) days, the GLO may terminate this Contract immediately upon written notification to Developer.

8.14 DISPUTE RESOLUTION

Except as otherwise provided by statute, rule or regulation, Developer shall use the dispute resolution process established in Chapter 2260 of the Texas Government Code and related rules to attempt to resolve any dispute under this Contract, including a claim for breach of contract by the GLO, that the Parties cannot resolve in the ordinary course of business. Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of such a claim constitutes grounds for Developer to suspend performance of this Contract. Notwithstanding this provision, the GLO reserves all legal and equitable rights and remedies available to it. **NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO.**

8.15 ENTIRE CONTRACT AND MODIFICATION

This Contract, its Attachment(s), any Amendment, and any Technical Guidance Letter or Revision issued in conjunction with this Contract or pursuant to its terms constitute the entire agreement of the Parties and are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in any Attachment, Amendment, Technical Guidance Letter, or Revision shall be harmonized with this Contract to the extent possible. Unless such Attachment, Amendment, Technical Guidance Letter, or Revision specifically displays a mutual intent to amend this Contract, general conflicts in language shall be construed consistently with the terms of this Contract. Except as provided herein, this Contract, its Attachments, and any Amendment may be amended only by a mutual, written agreement executed by authorized representatives of the Parties.

8.16 COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall together constitute one and the same Contract. If the Contract is not executed by the GLO within thirty (30) days of execution by the other Party, this Contract shall be null and void.

8.17 PROPER AUTHORITY

Each Party hereto represents and warrants that the person executing this Contract on its behalf has the authority to enter into this Contract. Developer acknowledges that this Contract is effective for the term specified in the Contract. Any services Developer performs or causes to be performed before this Contract's effective date or after its termination or expiration are performed at Developer's sole risk.

8.18 PREFERENCE FOR TEXAS PRODUCTS AND PROCUREMENT OF MATERIALS

In performing (or securing performance of) the Tasks under this Contract, Developer shall purchase or cause the purchase of products and materials produced in Texas when they are available at a price and time comparable to those of products and materials produced outside Texas.

- (a) To the extent applicable, the Developer shall make maximum use of products containing recovered or recycled materials that are EPA-designated items unless the product cannot be acquired in the following manner:
 - (i) competitively within a timeframe allowing compliance with the Contract's performance schedule;
 - (ii) in a way that meets the Contract's performance requirements; or
 - (iii) at a reasonable price.
- (b) To ensure maximum use of recovered/recycled materials pursuant to 2 C.F.R. § 200.322, information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guideline Program website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

8.19 SURVIVAL OF TERMS AND CONDITIONS

The terms and conditions of this Contract related to the following subjects shall survive the termination or expiration of this Contract: definitions; interpretive provisions; consideration; warranties; General Affirmations, Federal Assurances, and Federal Certifications; state funding, prohibition on creation of debts, recapture of state funds, and overpayment of state funds; limitation of amount of Developer claims for damages; ownership and Intellectual Property; copyright; books and records; third-party reliance; insurance; taxes; workers' compensation; records-retention methods and time requirements; inspection and audit; confidentiality; public records; indemnification and liability; infringement of Intellectual Property rights; independent contractor relationship; compliance with laws; notices; choice of law and venue; severability; assignment and subcontracting; invoice and fee verification; property rights; default; amendment; dispute resolution according to Texas Government Code, Chapter 2260; and merger and integration. Terms and conditions that, explicitly or by their nature, evidence the Parties' intent that they should survive the termination or expiration of this Contract shall so survive.

8.20 EQUAL OPPORTUNITY AND NONDISCRIMINATION

During the performance of this Contract, Developer (for the purposes of this section, the "contractor") agrees and shall verify that any Subcontractors agree as follows:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (c) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (d) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (e) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (f) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (g) In the event of the contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said, rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further federal government contracts for federal assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September

24, 1965, or by rule, regulation, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (h) The contractor will include the portion of the sentence immediately preceding subsection (a) and the provisions of subsections (a) through (h) of this Section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The contractor will take such action with respect to any Subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8.21 HUD ACT OF 1968 – SECTION THREE COMPLIANCE

To the extent section 3 of the Housing and Urban Development Act of 1968 applies to this Contract, Developer, its contractors, and its contractors' Subcontractors (all referred to as the "contractor" for the purposes of this section) and the GLO agree to comply with the following, as applicable:

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3

clause, upon a finding that the Subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any Subcontractor where the contractor has notice or knowledge that the Subcontractor has been found in violation of the regulations in 24 CFR part 135.

- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- (g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and sub contracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

8.22 INFORMATION AND DATA SECURITY STANDARDS

Developer, its contractors, and its contractors' Subcontractors shall comply with all terms specified in the **GLO Information Security Appendix**, incorporated herein for all purposes as **Attachment F**.

8.23 STATEMENTS OR ENTRIES

WARNING: ANY PERSON WHO KNOWINGLY MAKES A FALSE CLAIM OR STATEMENT TO HUD MAY BE SUBJECT TO CIVIL OR CRIMINAL PENALTIES UNDER 18 U.S.C. § 287, 18 U.S.C. § 1001, AND 31 U.S.C. § 3729.

Except as otherwise provided under federal law, any person who knowingly and willfully falsifies, conceals, or covers up a material fact by any trick, scheme, or device; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document despite knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry shall be prosecuted under 18 U.S.C. § 1001.

Under penalties of 18 U.S.C. § 287, 18 U.S.C. § 1001, and 31 U.S.C. § 3729, the undersigned Developer representative hereby declares that he/she has examined this Contract and its Attachments, and, to the best of his/her knowledge and belief, any statements, entries, or claims made by Developer are correct, accurate, and complete.

SIGNATURE PAGE FOLLOWS

**SIGNATURE PAGE FOR GLO CONTRACT NO. «CONTRACTNO.»
MULTI-FAMILY RESIDENTIAL CONSTRUCTION REPAIR SERVICES GRANT
AGREEMENT**

GENERAL LAND OFFICE

«COMPANYNAME»

Mark A. Havens, Chief Clerk /
Deputy Land Commissioner

Name: _____
Title: _____

Date of execution: _____

Date of execution: _____

OGC _____

PM _____

SDD _____

DGC _____

GC _____

ATTACHED TO THIS CONTRACT:

ATTACHMENT A – Performance Statement, Budget, Payment Benchmarks, and Underwriting Report

ATTACHMENT B – Federal Assurances and Certifications

ATTACHMENT C – General Affirmations

ATTACHMENT D – Nonexclusive List of Applicable Laws, Rules, and Regulations

ATTACHMENT E – Required Bonds

ATTACHMENT F – GLO Information Security Appendix

ATTACHMENT G – Land Use Restriction Agreement

INCORPORATED BY REFERENCE:

PROPERTY CONDITION ASSESSMENT

PROGRAM GUIDELINES

**MULTI-FAMILY AFFORDABLE RENTAL HOUSING
PERFORMANCE STATEMENT, BUDGET, PAYMENT BENCHMARKS, AND UNDERWRITING REPORT**

A. Performance Statement

At a firm fixed price of **AMOUNT (\$DOLLARS)** in CDBG-DR funding, Developer will rehabilitate, reconstruct, or newly construct—in accordance with the terms of the Contract and all attachments, applicable laws, regulations, and guidance—<<NUMBER OF UNITS>> multi-family housing units, with <<NUMBER OF LMI UNIT>> units being leased to eligible low- and moderate-income (LMI) applicants. Developer shall ensure that the amount of funds to be expended for each Task does not exceed the amount specified for such Task in the Project Budget. Units will be interspersed to ensure that there is no grouping of units for a particular income type. LMI units shall be scattered amongst and between market-rate units throughout the development.

The affordability of each multi-family housing unit will be protected with a << (15-year) or (20-year)>> Land Use Restriction Agreement (LURA) approved by the GLO. Developer, as a condition to use of funds, agrees to comply with certain occupancy, rent, and other restrictions under Title 1 of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) and with the CDBG regulations during the term of the LURA. The LURA shall be recorded, at Developer's expense, in the Real Property Records of the <<COUNTY>> County Clerk's Office.

REHABILITATION

Developer will ensure that all Rehabilitation activities meet all applicable local codes, Rehabilitation standards, and ordinances. Compliance extends to, but is not limited to, zoning ordinances, building codes, local health and safety codes and standards, and Minimum Property Standards (MPS) at project completion.

Developer will ensure that all rehabilitated portions of the units meet all applicable local codes; Rehabilitation standards; ordinances, including zoning ordinances; and building codes. Developer will ensure that the entire rehabilitated project complies with local health and safety codes, standards, Minimum Property Standards (MPS), and Green Building Standards at project completion. Developer must ensure that, for all new housing construction, compliance with ONE of the following Green Standards is met: (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); or (iv) ICC-700 National Green Building Standard.

NEW CONSTRUCTION OR RECONSTRUCTION

Newly constructed or reconstructed housing units must meet the Model Energy Code; the compliance-monitoring requirements of the Texas Administrative Code, Title 10, Chapter 10, Subchapter (F); Uniform Multifamily Rules; and the accessibility requirements noted in 24 C.F.R. Part 8, which implements Section 504 of the Rehabilitation Act of 1973.

All multi-family dwellings, as defined at 24 C.F.R. § 100.201, and common-use facilities in developments must meet the universal visitability standards at 24 C.F.R. § 100.205, which implement the Fair Housing Act (42 U.S.C. §§ 3601–4619). All reconstructed and newly constructed housing units must comply with the universal visitability standards as established by the Texas Government Code, § 2306.514.

Newly constructed and reconstructed housing units must meet the Model Energy Code (MEC); the compliance-monitoring requirements of the Texas Administrative Code (TAC), Title 10, Chapter 10, Subchapter (F); and the accessibility requirements noted in 24 C.F.R. Part 8, which implements Section 504 of the Rehabilitation Act of 1973. Covered multi-family dwellings, as defined at 24 C.F.R. § 100.201, and common-use facilities in developments must meet the universal visitability standards at 24 C.F.R. § 100.205, which implement the Fair Housing Act (42 U.S.C. §§ 3601–4619), and the ADA 2010 Standards with HUD exceptions. All reconstructed and newly constructed housing units must comply with the Construction Requirements for Single Family Affordable Housing as established by the Texas Government Code, § 2306.514.

B. Budget

PAYMENT BENCHMARKS

All Project activities shall be completed within eighteen (18) months of the effective date of the Contract.

Phase 1 (Up to 35% of the Budget): Phase 1 of the development should be completed within six (6) months following the Contract's effective date. Developer shall satisfactorily (in the GLO's sole determination) complete, at a minimum, the following Tasks:

- a. Demolition;
- b. Site work;
- c. Foundations;
- d. Framing; and
- e. Any inspection required during Phase 1.

Phase 2 (Up to 60% of the Budget): Phase 2 of the development should be completed within twelve (12) months following the Contract's effective date. Developer shall satisfactorily (in the GLO's sole determination) complete, at a minimum, all the Tasks in Phase 1 plus the following Tasks:

- a. Interior finish, including interior walls, ceilings, doors, and windows;
- b. Major system rough-in, including all plumbing, electrical, and HVAC systems; and
- c. Any inspection required during Phase 2.

Phase 3 (Up to 80% of the Budget): Phase 3 of the development should be completed within sixteen (16) months following the Contract's effective date. Developer shall satisfactorily (in the GLO's sole determination) complete, at a minimum, all the Tasks in Phases 1 and 2 plus the following Tasks:

- a. Insulation;
- b. Paint;
- c. Drywall;
- d. Interior trim and doors;
- e. Lighting;
- f. Cabinetry;
- g. Appliances and plumbing fixtures;
- h. Filing for and receiving a certificate of occupancy; and
- i. Filing the LURA with the county clerk's office.

Phase 4 (Up to 90% of the Budget): Phase 4 of the development should be completed within eighteen (18) months following the Contract’s effective date. Developer shall satisfactorily (in the GLO’s sole determination) complete, at a minimum, all the Tasks in Phases 1, 2, and 3 plus the following Tasks:

- a. Landscaping;
- b. Outdoor structures;
- c. Driveways;
- d. General clean-up;
- e. Any inspection required during Phase 4; and
- f. Repair or resolution of any punch-list items.

Phase 5 (Final 10% of the Budget): After receipt of a certificate of occupancy and prior to release of the final 10% of the Project Budget, Developer shall complete, at a minimum, the following Task:

- a. Any and all closeout documents required by the GLO.

For each Phase, Developer may invoice on no more than a monthly basis until the percentage of funds associated with that Phase is fully disbursed. Invoicing for a Phase may be submitted independent of or concurrent with invoicing for other Phases, as necessary. Upon exhaustion of funds related to each Phase, the GLO may conduct a full review to determine the legitimacy of those draws before permitting disbursement of funds related to any other Phase.

The GLO reserves the right to conduct inspections at any time to ensure general compliance with the foregoing Payment Benchmark schedule before issuing the approval of a reimbursement request. The GLO may allow Payment Benchmark extensions for good cause, at the GLO’s sole discretion, upon written request from the Developer.

INSPECTIONS

Developer shall be responsible for ensuring all required inspections are conducted and satisfactorily passed. Developer shall maintain physical proof that municipal codes and/or third-party inspections have been passed and accepted by any inspecting authority with jurisdiction over the Project site—which may include local or county governments, the State of Texas, HUD, or the GLO. Developer shall maintain all Project documentation in good order and mark it to record all changes made during performance of the work. Developer shall give the GLO or its representatives and agents access to all Project documentation, regardless of medium or format, at all times and shall submit copies of any Project documentation at the request of the GLO.

BUDGET

HUD Activity Type	Grant Award	Other Funds	Total
Affordable Rental Program	\$AMOUNT	\$0.00	\$AMOUNT

ASSURANCES - CONSTRUCTION PROGRAMS

OMB Approval No. 4040-0009
Expiration Date: 02/28/2022

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other non-discrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
20. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION «CompanyName»	DATE SUBMITTED

**CERTIFICATION REGARDING LOBBYING
COMPLIANT WITH APPENDIX A TO 24 C.F.R. PART 871**

Certification for Contracts, Grants, Loans, and Cooperative Agreements:

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned 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.

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 a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. 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.

Statement for Loan Guarantees and Loan Insurance:

The undersigned states, to the best of his or her knowledge and belief, that: If any 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 commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification.

NAME OF APPLICANT

AWARD NUMBER AND/OR PROJECT NAME

1. «CompanyName»

«ContractNo.»

2. «CompanyName»

«ParentContractNo.»

PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE

DATE

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

OMB Number: 4040-0013
Expiration Date: 02/28/2022

1. *Type of Federal Action: a. contract _____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. *Status of Federal Action: a. bid/offer/application _____ b. initial award c. post-award	3. *Report Type: a. initial filing _____ b. material change
4. Name and Address of Reporting Entity: _____ Prime _____ Subawardee Name: _____ Street 1: _____ Street 2: _____ City: _____ State: _____ Zip: _____ Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 4040-0013. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (4040-0013), Washington, DC 20503.

General Affirmations

To the extent they apply, Provider affirms and agrees to the following, without exception:

1. Provider represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Provider nor the firm, corporation, partnership, or institution represented by Provider, or anyone acting for such a firm, corporation, partnership, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Contract or any solicitation response upon which this Contract is based to any competitor or any other person engaged in the same line of business as Provider.
2. If the Contract is for services, Provider shall comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.
3. Under Section 231.006 of the Family Code, the vendor or applicant [Provider] certifies that the individual or business entity named in this Contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
4. A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application. Provider certifies it has submitted this information to the GLO.
5. If the Contract is for the purchase or lease of computer equipment, as defined by Texas Health and Safety Code Section 361.952(2), Provider certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code, related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in Title 30 Texas Administrative Code Chapter 328.
6. Pursuant to Section 2155.003 of the Texas Government Code, Provider represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.
7. Payments due under the Contract shall be directly applied towards eliminating any debt or delinquency Provider owes to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support, regardless of when the debt or delinquency arises.

8. Upon request of the GLO, Provider shall provide copies of its most recent business continuity and disaster recovery plans.
9. If the Contract is not for architecture, engineering, or construction services, except as otherwise provided by statute, rule, or regulation, Provider must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve any dispute arising under the Contract. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO.
10. If Chapter 2271 of the Texas Government Code applies to this Contract, Provider verifies that it does not boycott Israel and will not boycott Israel during the term of the Contract.
11. This Contract is contingent upon the continued availability of lawful appropriations by the Texas Legislature. Provider understands that all obligations of the GLO under this Contract are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the GLO may terminate the Contract. The Contract shall not be construed as creating a debt on behalf of the GLO in violation of Article III, Section 49a of the Texas Constitution.
12. Provider certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
13. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Provider certifies that it is not (1) the executive head of the GLO, (2) a person who at any time during the four years before the effective date of the Contract was the executive head of the GLO, or (3) a person who employs a current or former executive head of the GLO.
14. Provider represents and warrants that all statements and information prepared and submitted in connection with this Contract are current, complete, true, and accurate. Submitting a false statement or making a material misrepresentation during the performance of this Contract is a material breach of contract and may void the Contract or be grounds for its termination.
15. Pursuant to Section 2155.004(a) of the Texas Government Code, Provider certifies that neither Provider nor any person or entity represented by Provider has received compensation from the GLO to participate in the preparation of the specifications or solicitation on which this Contract is based. Under Section 2155.004(b) of the Texas Government Code, Provider certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate. This Section does not prohibit Provider from providing free technical assistance.

16. Provider represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
17. The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the GLO.
18. PROVIDER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE GLO, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF PROVIDER OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY PROVIDER WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND PROVIDER MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. PROVIDER AND THE GLO SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.
19. PROVIDER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE GLO AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF PROVIDER PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) THE GLO'S AND/OR PROVIDER'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO THE GLO BY PROVIDER OR OTHERWISE TO WHICH THE GLO HAS ACCESS AS A RESULT OF PROVIDER'S PERFORMANCE UNDER THE CONTRACT. PROVIDER AND THE GLO SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. PROVIDER SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY PROVIDER WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND

PROVIDER MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, PROVIDER WILL REIMBURSE THE GLO AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF THE GLO DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF PROVIDER OR IF THE GLO IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, THE GLO WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND PROVIDER WILL PAY ALL REASONABLE COSTS OF THE GLO'S COUNSEL.

20. Provider has disclosed in writing to the GLO all existing or potential conflicts of interest relative to the performance of the Contract.
21. Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit state agencies from accepting a solicitation response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Provider certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
22. Provider understands that the GLO will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material related to this Contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Provider shall make any information created or exchanged with the State/GLO pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State or the GLO.
23. The person executing this Contract certifies that he/she is duly authorized to execute this Contract on his/her own behalf or on behalf of Provider and legally empowered to contractually bind Provider to the terms and conditions of the Contract and related documents.
24. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation

in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Provider shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the Contract and the requirement to cooperate is included in any subcontract it awards. The GLO may unilaterally amend the Contract to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

25. Provider certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Contract by any state or federal agency.
26. Provider expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Provider represents and warrants to the GLO that any technology provided to the GLO for purchase pursuant to this Contract is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: providing equivalent access for effective use by both visual and non-visual means; presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this Section, the phrase “equivalent access” means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.
27. If the Contract is for the purchase or lease of covered television equipment, as defined by Section 361.971(3) of the Texas Health and Safety Code, Provider certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.
28. In accordance with Texas Government Code Chapter 2252, Subchapter F, any iron or steel product Provider uses in its performance of the Contract that is produced through a manufacturing process, as defined in Section 2252.201(2) of the Texas Government Code, must be produced in the United States.
29. The GLO does not tolerate any type of fraud. GLO policy promotes consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to

enforce controls. Any violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Provider shall report any possible fraud, waste, or abuse that occurs in connection with the Contract to the GLO's Fraud Reporting hotline at (877) 888-0002.

30. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and Provider agrees that the Contract can be terminated if Provider knowingly or intentionally fails to comply with a requirement of that subchapter.
31. If Provider, in its performance of the Contract, has access to a state computer system or database, Provider must complete a cybersecurity training program certified under Texas Government Code Section 2054.519, as selected by the GLO. Provider must complete the cybersecurity training program during the initial term of the Contract and during any renewal period. Provider must verify in writing to the GLO its completion of the cybersecurity training program.
32. Under Section 2155.0061, Texas Government Code, Provider certifies that the entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

NONEXCLUSIVE LIST OF APPLICABLE LAWS, RULES, AND REGULATIONS

If applicable to the Project, Provider must be in compliance with the following laws, rules, and regulations; and any other state, federal, or local laws, rules, and regulations as may become applicable throughout the term of the Contract, and Provider acknowledges that this list may not include all such applicable laws, rules, and regulations.

Provider is deemed to have read and understands the requirements of each of the following, if applicable to the Project under this Contract:

GENERALLY

The Acts and Regulations specified in this Contract;

Supplemental Appropriations for Disaster Relief Act, 2018 (Public Law 115-254);

Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Public Law 116-20);

The Housing and Community Development Act of 1974 (12 U.S.C. § 5301 *et seq.*);

The United States Housing Act of 1937, as amended, 42 U.S.C. § 1437f(o)(13) (2016) and related provisions governing Public Housing Authority project-based assistance, and implementing regulations at 24 C.F.R. Part 983 (2016);

Cash Management Improvement Act regulations (31 C.F.R. Part 205);

Community Development Block Grants (24 C.F.R. Part 570);

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Disaster Recovery Implementation Manual; and

State of Texas Plan for Disaster Recovery: Hurricane Harvey – Round 1, dated April 6, 2018, as amended.

CIVIL RIGHTS

Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d *et seq.*); 24 C.F.R. Part 1, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, *et seq.*);

Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. § 3601, *et seq.*), as amended;

Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"; The failure or refusal of Provider to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;

The Age Discrimination Act of 1975 (42 U.S.C. § 6101, *et seq.*); and

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of

Housing and Urban Development", 24 C.F.R. Part 8. By signing this Contract, Provider understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, *et seq.*), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

LABOR STANDARDS

The Davis-Bacon Act, as amended (originally, 40 U.S.C. §§ 276a-276a-5 and re-codified at 40 U.S.C. §§ 3141-3148); 29 C.F.R. Part 5;

The Copeland "Anti-Kickback" Act (originally, 18 U.S.C. § 874 and re-codified at 40 U.S.C. § 3145); 29 C.F.R. Part 3;

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (originally, 40 U.S.C. §§ 327A and 330 and re-codified at 40 U.S.C. §§ 3701-3708);

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act) (29 C.F.R. Part 5); and

Federal Executive Order 11246, as amended.

EMPLOYMENT OPPORTUNITIES

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u); 24 C.F.R. §§ 135.3(a)(2) and (a)(3);

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. § 4212);

Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1688); and

Federal Executive Order 11246, as amended.

GRANT AND AUDIT STANDARDS

Single Audit Act Amendments of 1996, 31 U.S.C. § 7501;

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Uniform Grant and Contract Management Act (Texas Government Code Chapter 783) and the Uniform Grant Management Standards, issued by Governor's Office of Budget and Planning; and

Title 1 Texas Administrative Code § 5.167(c).

LEAD-BASED PAINT

Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831(b)).

HISTORIC PROPERTIES

The National Historic Preservation Act of 1966 as amended (16 U.S.C. § 470, *et seq.*), particularly sections 106 and 110 (16 U.S.C. §§ 470 and 470h-2), except as provided in §58.17 for Section 17 projects;

Executive Order 11593, Protection and Enhancement of the Cultural Environment, May

13, 1971 (36 FR 8921), 3 C.F.R., 1971-1975 Comp., p. 559, particularly section 2(c);
Federal historic preservation regulations as follows: 36 C.F.R. Part 800 with respect to HUD programs; and

The Reservoir Salvage Act of 1960, as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. § 469, *et seq.*), particularly section 3 (16 U.S.C. § 469a-1).

ENVIRONMENTAL LAW AND AUTHORITIES

Environmental Review Procedures for Recipients assuming HUD Environmental Responsibilities (24 C.F.R. Part 58, as amended);

National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321-4347); and
Council for Environmental Quality Regulations for Implementing NEPA (40 C.F.R. Parts 1500-1508).

FLOODPLAIN MANAGEMENT AND WETLAND PROTECTION

Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 C.F.R., 1977 Comp., p. 117, as interpreted in HUD regulations at 24 C.F.R. Part 55, particularly Section 2(a) of the Order (For an explanation of the relationship between the decision-making process in 24 C.F.R. Part 55 and this part, see § 55.10.); and

Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 C.F.R., 1977 Comp., p. 121 particularly Sections 2 and 5.

COASTAL ZONE MANAGEMENT

The Coastal Zone Management Act of 1972 (16 U.S.C. § 1451, *et seq.*), as amended, particularly sections 307(c) and (d) (16 U.S.C. § 1456(c) and (d)).

SOLE SOURCE AQUIFERS

The Safe Drinking Water Act of 1974 (42 U.S.C. §§ 201, 300(f), *et seq.*, and 21 U.S.C. § 349) as amended; particularly section 1424(e)(42 U.S.C. § 300h-3(e)); and

Sole Source Aquifers (Environmental Protection Agency-40 C.F.R. part 149.).

ENDANGERED SPECIES

The Endangered Species Act of 1973 (16 U.S.C. § 1531, *et seq.*) as amended, particularly section 7 (16 U.S.C. § 1536).

WILD AND SCENIC RIVERS

The Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271, *et seq.*) as amended, particularly sections 7(b) and (c) (16 U.S.C. § 1278(b) and (c)).

AIR QUALITY

The Clean Air Act (42 U.S.C. § 7401, *et seq.*) as amended, particularly sections 176(c) and (d) (42 U.S.C. § 7506(c) and (d)).

Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-40 C.F.R. Parts 6, 51, and 93).

FARMLAND PROTECTION

Farmland Protection Policy Act of 1981 (7 U.S.C. § 4201, *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. §§ 4201(b) and 4202); and

Farmland Protection Policy (Department of Agriculture-7 C.F.R. part 658).

HUD ENVIRONMENTAL STANDARDS

Applicable criteria and standards specified in HUD environmental regulations (24 C.F.R. Part 51)(other than the runway clear zone and clear zone notification requirement in 24 C.F.R. § 51.303(a)(3); and

HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979.

ENVIRONMENTAL JUSTICE

Executive Order 12898 of February 11, 1994—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (59 FR 7629), 3 C.F.R., 1994 Comp. p. 859.

SUSPENSION AND DEBARMENT

Use of debarred, suspended, or ineligible contractors or subrecipients (24 C.F.R. § 570.609);

General HUD Program Requirements; Waivers (24 C.F.R. Part 5); and

Nonprocurement Suspension and Debarment (2 C.F.R. Part 2424).

OTHER REQUIREMENTS

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58).

ACQUISITION / RELOCATION

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601, *et seq.*), 24 C.F.R. Part 42, and 24 C.F.R. § 570.606.

FAITH-BASED ACTIVITIES

Executive Order 13279 of December 12, 2002 - Equal Protection of the Laws for Faith-Based and Community Organizations, (67 FR 77141).

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PERFORMANCE BOND

STATE OF TEXAS
COUNTY OF _____

LET IT BE KNOWN BY THIS INSTRUMENT:

That we, _____ as principal

and we _____ a corporation
duly authorized to do business in this State, as Surety(s), are this date held and firmly
bound unto the State of Texas in the amount of _____

_____ Dollars \$ _____

for payment of which indemnity the said Principal and Surety, by this declaration, do firmly bind themselves, their heirs, executors, administrators, successors and assigns, jointly and individually.

Since a Contract, which by reference is made a part hereof, exists between Principal and the State of Texas, acting by and through the Texas General Land Office/Veterans Land Board, and dated _____ for the _____

The conditions of this obligation are, therefore, such that it shall remain in full force and effect unless and until the Principal shall faithfully perform the Contract in accordance with the Contract Documents.

In the event of Principal's failure, as defined by the Contract Documents, to faithfully perform the Contract, Surety(s) will within fifteen (15) days of determination of default, assume full responsibility for completion of said Contract and become entitled to payment of the balance of the Contract amount.

The liabilities, rights, limitations, and remedies concerning this Bond shall be determined in accordance with the provisions of Chapter 2253 of the Texas Government Code, as amended, pursuant to which Bond is executed.

IN WITNESS TO THIS DECLARATION, the said Principal and Surety(s) have signed and sealed this instrument

this _____ day of _____

PRINCIPAL

SURETY

By _____

By _____

Bond Identification No. _____

Address of Attorney-In-Fact _____

Telephone No. of Attorney-In-Fact _____

PAYMENT BOND

STATE OF TEXAS
COUNTY OF _____

LET IT BE KNOWN BY THIS INSTRUMENT:

That we, _____ as principal

and we _____ a corporation
duly authorized to do business in this State, as Surety(s), are this date held and firmly
bound unto the State of Texas in the amount of _____

_____ Dollars \$ _____

for payment of which indemnity the said Principal and Surety, by this declaration, do firmly bind themselves, their heirs, executors, administrators, successors and assigns, jointly and individually.

Since a Contract, which by reference is made a part hereof, exists between Principal and the State of Texas, acting by and through the Texas General Land Office/Veterans Land Board, and dated _____ for the _____

The conditions of this obligation are, therefore, such that it shall remain in full force and effect unless and until the Principal shall faithfully perform the Contract in accordance with the Contract Documents.

The liabilities, rights, limitations, and remedies concerning this Bond shall be determined in accordance with the provisions of Chapter 2253 of the Texas Government Code, as amended, pursuant to which Bond is executed.

IN WITNESS TO THIS DECLARATION, the said Principal and Surety(s) have signed and sealed this instrument

this _____ day of _____

PRINCIPAL

SURETY

By _____

By _____

Bond Identification No. _____

Address of Attorney-In-Fact

Telephone No. of Attorney-In-Fact

GLO Information Security Appendix for Vendors

1. Definitions

“[Breach of Security](#)” or “[Breach](#)” means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of Sensitive Personal Information including data that is encrypted if the person accessing the data has the key required to decrypt the data.

“[GLO Data](#)” means any data or information, which includes PII and/or SPI as defined below, collected, maintained, and created by the GLO, for the purpose of providing disaster assistance to individuals, that Provider obtains, accesses (via records, systems, or otherwise), receives (from the GLO or on behalf of the GLO), or uses in the performance of the Contract or any documents related thereto. GLO data does not include other information that is lawfully made available to the Provider through other sources.

“[Personal Identifying Information](#)” or “[PII](#)” means information that alone, or in conjunction with other information, identifies, links, relates, or is unique to, or describes an individual, as defined at Tex. Bus. & Com. Code § 521.002(a)(1).

“[Sensitive Personal Information](#)” or “[SPI](#)” includes information that is not available elsewhere or may harm an individual by being made available as categorized in Tex. Bus. & Com. Code § 521.002(a)(2). SPI does not include publicly available information that is lawfully made available to the public from the federal government or a state or local government.

All defined terms found in the Contract shall have the same force and effect, regardless of capitalization.

2. Security and Privacy Compliance

- 2.1. Provider shall keep all GLO Data received under the Contract and any documents related thereto strictly confidential.
- 2.2. Provider shall comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations and directives.
- 2.3. Provider shall implement administrative, physical, and technical safeguards to protect GLO Data that are no less rigorous than accepted industry practices including, without limitation, the guidelines in the National Institute of Standards and Technology (“NIST”) Cybersecurity Framework Version 1.1. All such safeguards shall comply with applicable data protection and privacy laws.
- 2.4. Provider will legally bind any Subcontractors to the same requirements stated herein and obligations stipulated in the Contract and documents related thereto. Provider shall ensure that the requirements stated herein are imposed on any Subcontractor of Provider’s Subcontractor(s).

- 2.5. Provider will not share PII or SPI Data with any third parties, except as necessary for Provider's performance under the Contract.
- 2.6. Provider will ensure that initial privacy and security training, and annual training thereafter, is completed by its employees or Subcontractors that have access to GLO Data or who create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise personally handle PII and/or SPI on behalf of the agency. Provider agrees to maintain and, upon request, provide documentation of training completion.
- 2.7. Any GLO Data maintained or stored by Provider or any Subcontractor must be stored on servers or other hardware located within the physical borders of the United States and shall not be accessed outside of the United States.

3. Data Ownership and Return of Data

- 3.1. The GLO shall retain full ownership of all GLO data, which includes PII and/or SPI, disclosed to Provider or to which the Provider otherwise gains access by operation of the Contract or any agreement related thereto.
- 3.2. If, at any time during the term of the Contract or upon termination of the Contract, whichever occurs first, any part of the GLO data, in any form, provided to Provider ceases to be necessary for Provider's performance under the Contract, Provider shall within fourteen (14) days thereafter securely return such GLO data to the GLO, or, at the GLO's written request, destroy, uninstall, and/or remove all copies of data in Provider's possession or control and certify to the GLO that such tasks have been completed. If such return is infeasible, as mutually determined by the GLO and Provider, the obligations set forth in this Attachment, with respect to GLO Data, shall survive termination of the Contract and Provider shall limit any further use and disclosure of GLO Data.

4. Data Mining

- 4.1. Provider agrees not to use GLO Data for unrelated commercial purposes, advertising or advertising-related services, or for any other purpose not explicitly authorized by the GLO in this Contract or any document related thereto.
- 4.2. Provider agrees to take all reasonably feasible physical, technical, administrative, and procedural measures to ensure that no unauthorized use of GLO Data occurs.

5. Breach of Security

- 5.1. Provider agrees to provide the GLO with the name and contact information for an employee of the Provider which shall serve as the GLO's primary security contact.
- 5.2. Upon discovery of a Breach of Security or suspected Breach of Security by the Provider, the Provider agrees to notify the GLO as soon as possible upon discovery of the Breach of Security or suspected Breach of Security, but in no event shall notification occur later

than 24 hours after discovery. Within 72 hours, the Provider agrees to provide, at minimum, a written preliminary report regarding the Breach or suspected Breach to the GLO with root cause analysis including a log detailing the data affected.

- 5.3. The initial notification and preliminary report shall be submitted to the GLO Information Security Officer at informationsecurity@glo.texas.gov.
- 5.4. Provider agrees to take all reasonable steps to immediately remedy a Breach of Security and prevent any further Breach of Security.
- 5.5. Provider agrees that it shall not inform any third party of any Breach of Security or suspected Breach of Security without obtaining GLO's prior written consent.
- 5.6. If the Breach of Security includes SPI, including Social Security Numbers, payment card information, or health information, the Provider agrees to provide affected individuals complimentary access for one (1) year of credit monitoring services.

6. Right to Audit

- 6.1. Upon the GLO's request and to confirm Provider's compliance with this Attachment, Provider grants the GLO, or a GLO-contracted vendor, permission to perform an assessment, audit, examination, investigation, or review of all controls in the Provider's, or Provider's Subcontractor's, physical and/or technical environment in relation to GLO Data. Provider agrees to fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, and application software that stores, processes, or transports GLO Data. In lieu of a GLO-conducted assessment, audit, examination, investigation, or review, Provider may supply, upon GLO approval, the following reports: SSAE16, ISO/ICE 27001 Certification, FedRAMP Certification, and PCI Compliance Report. Provider shall ensure that this clause concerning the GLO's authority to assess, audit, examine, investigate, or review is included in any subcontract it awards.
- 6.2. At the GLO's request, Provider agrees to promptly and accurately complete a written information security questionnaire provided by the GLO regarding Provider's business practices and information technology environment in relation to GLO Data.

TEXAS GENERAL LAND OFFICE

2018 SOUTH TEXAS FLOODS AFFORDABLE RENTAL HOUSING PROGRAM

Community Development Block Grant – Disaster Recovery (CDBG-DR) funds were appropriated under the Supplemental Appropriations for Disaster Relief Act, 2018 Pub. L. 115-254 and the Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2019 (Pub. L. 116-20).

LAND USE RESTRICTION AGREEMENT FOR THE 2018 SOUTH TEXAS FLOODS AFFORDABLE RENTAL HOUSING PROGRAM

THE STATE OF TEXAS §
 §
COUNTY OF COUNTY §

The **TEXAS GENERAL LAND OFFICE** (“GLO”) and «COMPANYNAME» (“Developer”), each a “Party” and collectively the “Parties,” enter into this Land Use Restriction Agreement (“Agreement,” or “LURA”) dated this DAY of MONTH, YEAR (the “Effective Date”).

I. RECITALS

WHEREAS, by and through the Hurricane Harvey Affordable Rental Program, Developer is the owner of the DEVELOPMENT NAME situated on real property (“Project”; more particularly described in **Exhibit A – Legal Description**, attached hereto and incorporated herein by reference) located in the City of CITY, County of COUNTY, State of Texas; and

WHEREAS, Texas Governor Rick Perry designated the GLO on June 17, 2011, as the state agency responsible for the administration of the Community Development Block Grant – Disaster Recovery Program; and

WHEREAS, the GLO entered into GLO Contract No. ContractNo (“Contract”) with Developer to provide Developer with certain funds (“Grant”) as made available to the GLO under the Federal Act (hereinafter defined); and

WHEREAS, GLO and Developer desire to confer rights and benefits upon the GLO as described herein; and

WHEREAS, in accordance with the Contract executed by and between the GLO and Developer, the Grant funds shall be used by Developer for the rehabilitation or reconstruction of the Project; and

WHEREAS, Developer—pursuant to Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et. seq.*)(“the Federal Act”), applicable State law, and CDBG-DR Regulations and as condition to the use of Funds—must agree to comply with certain occupancy, rent, and other restrictions under the Federal Act; with the CDBG-DR Regulations (hereinafter defined); and with certain occupancy, rent, and other restrictions (described hereunder) during the Term, and the Parties have entered into this Agreement to evidence Developer’s agreement to comply with such restrictions during the Term;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties hereby agree as follows.

II. DEFINITIONS

2.01 GENERAL

Unless the context clearly requires otherwise, capitalized terms used in this Agreement shall have the meanings specified in Article II. Certain additional terms may be defined elsewhere in this Agreement.

“[Agreement](#),” or “[LURA](#),” means this Land Use Restriction Agreement, as it may from time to time be amended, for PROJECT NAME AND DESCRIPTION. This Land Use Restriction Agreement is executed by and between the GLO and Developer and sets forth certain occupancy and rental restrictions, as contained herein, for the Project.

“[Annual Income](#)” means “annual income” as defined in 24 C.F.R. §92.203, as amended.

“[Area Median Income](#)” means the median income (as such median income is adjusted for family size and established by HUD at least annually in accordance with the Federal Act or otherwise established by the GLO) for the area where the Property is located.

“[CDBG-DR Program](#)” means the federal disaster-relief emergency-funding housing program funded by Community Development Block Grants for disaster recovery as authorized and established under the Supplemental Appropriations for Disaster Relief Act, 2018 (Public Law 115-254) and the Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2019 (Public Law 116-20). These acts were enacted on October 5, 2018 and June 6, 2019, respectively, for the purpose of assisting recovery activities related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster in 2018 or 2019. Such activities are outlined in the *State of Texas CDBG-DR Action Plan: 2018 South Texas Floods* dated July 29, 2020, and approved by HUD on October 15, 2020, as amended from time to time.

“[CDBG Multifamily Rental Housing Guidelines](#)” means the State of Texas’s CDBG implementation manual and guidelines (as amended or superseded from time to time), which serve as a comprehensive guidebook to entities that have been provided funds through the GLO pursuant to the CDBG-DR Program, together with any and all other manuals and guidelines developed by the GLO in connection with implementation and operation of the CDBG-DR Program.

“[CDBG-DR Regulations](#)” means the regulations set forth in 24 C.F.R. Part 570, as amended from time to time, that are promulgated by HUD or any respective successor pursuant to the Federal Act and that govern all Community Development Block Grant programs, including the CDBG-DR Program.

“[C.F.R.](#)” means the Code of Federal Regulations, the codification of the general and permanent rules and regulations (sometimes called administrative law) published in the Federal Register by the executive departments and agencies of the federal government of the United States.

“[Compliance-Monitoring Procedures](#)” means procedures and requirements adopted or imposed by the GLO or HUD for the purpose of monitoring and auditing the Property and the books and records of the Developer for compliance with this Agreement; the Federal Act; Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d-1) and its implementing regulations found at 24 C.F.R. Part 1; the Age Discrimination Act of 1975 (42 U.S.C. § 6101, *et seq.*); the Fair Housing Act (42 U.S.C. § 3601, *et seq.*); General HUD Program Requirements (24 C.F.R. Part 5, *et seq.*);

the Equal Employment Opportunity Act of 1972; Executive Order 11246 and its implementing regulations found at 41 C.F.R. Part 60; Section 504 of the Rehabilitation Act of 1973 and its implementing regulations found at 45 C.F.R. Part 84; the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, *et seq.*); the CDBG Regulations (24 C.F.R. Part 570); the CDBG Multifamily Rental Housing Guidelines; and any and all other Governmental Requirements (as defined below), as may be amended from time to time.

“Displaced Persons” means families, individuals, businesses, nonprofit organizations, and farms that permanently move from the Project or permanently move property from the Project as a direct result of acquisition, reconstruction, rehabilitation, or demolition of the Project or as otherwise provided in Sections 570.488 and 570.606 of the CDBG Regulations, except as such sections are waived by HUD.

“Extremely Low-Income Household” means families and individuals whose Annual Incomes do not exceed thirty percent (30%) of the Area Median Income for the area in which the Property is located.

“Federal Act” means Title 1 of the Housing and Community Development Act of 1974 as set forth in Public Law 93-383 (42 U.S.C. § 5301, *et seq.*) or any corresponding provision or provisions of succeeding law as it or they may be amended from time to time.

“Governmental Authority” means the United States of America; the State of Texas; the County of County, Texas; the City of City, Texas; any political subdivision of any of the foregoing; and any other political subdivision, agency, or instrumentality exercising jurisdiction over Developer or the Property.

“Governmental Requirements” means all federal, state, and local laws, statutes, ordinances, rules, regulations, orders, and decrees of any court, administrative body, or tribunal related to the activities and performances under this Agreement.

“Hazardous Material,” means any substance defined as a hazardous substance, a hazardous material, hazardous waste, a toxic substance, or toxic waste in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (42 U.S.C. § 9601, *et seq.*); the Hazardous Materials Transportation Act, as amended, (41 U.S.C. § 5101, *et seq.*); the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. § 6901, *et seq.*); any similar applicable federal, state, or local law; or any regulation adopted or publication promulgated pursuant to said law, either existing or promulgated from time to time.

“HUD” means the United States Department of Housing and Urban Development and its successor.

“Improvements” means certain improvements known as the DEVELOPMENT NAME, situated on the real Property of the Project.

“Low- to Moderate-Income Household” means families and individuals whose Annual Incomes do not exceed eighty percent (80%) of the median family income or such other income limits as determined by HUD. This definition includes Very Low-, Low-, and Moderate-Income households.

“Project” means the #-Unit multi-family rental housing project (including Developer’s activities concerning the acquisition, ownership, rehabilitation or reconstruction, and operation of the

Property) to be located at Address, more particularly described in **Attachment A**. Such Project shall have 51% of the total Units on the Property designated for use as affordable rental housing for Low- to Moderate-Income Households.

“Project Documents” means all tenant lists, applications (whether accepted or rejected), leases, lease addenda, tenant and Developer certifications, advertising records, waiting lists, rental calculations and rent records, Utility Allowance documentation, income examinations and re-examinations relating to the Project, and any other documents otherwise required under the law or by the GLO.

“Property” means the Improvements and the Project land on which they are contained.

“Qualifying Unit” means a residential accommodation that constitutes a part of the Property and contains separate and complete living facilities that are occupied by or designated to be occupied by a Low- to Moderate-Income Household or an Extremely Low-Income Household in accordance with the Contract.

“Term” means the fifteen-year (15-year) period that commences on the date of substantial construction completion on the rehabilitated or reconstructed multi-family rental Project.

“Unit” means a residential accommodation constituting a part of the Property and containing separate and complete living facilities.

“Utility Allowance” means a monthly allowance, as provided by the local public housing authority or as otherwise allowed by HUD rules and the GLO rules, for utilities and services (excluding telephone services) to be paid by the tenant.

Contextual Note: Unless the context clearly indicates otherwise, an above definition for a singular term shall also apply (where appropriate) to the plural form of such term and vice versa to the extent necessary for giving the proper meanings to the terms defined in this Article II and/or terms otherwise used in this Agreement.

III. RESTRICTIVE COVENANT – USE AND OCCUPANCY OF PROPERTY

3.01 USE OF PROPERTY

During the Term, Developer will maintain the Property as affordable rental housing and will rent or hold available each Qualifying Unit for rental on a continuous basis to meet the occupancy requirements of this Agreement.

3.02 COMMON AREAS

During the Term, Developer agrees that all common areas (if any), including (without limitation) any laundry or community facilities, on the Property shall be for the exclusive use of the tenants and their guests and shall not be available for general public use.

3.03 OCCUPANCY REQUIREMENTS

(a) Long-Term Occupancy Requirements

Notwithstanding anything herein to the contrary, Developer must use, at a minimum, 51% of the total number of Units for affordable rental housing for Low- to Moderate-Income

Households at the later of the time of occupancy of the Property or the time when funds are invested pursuant to the CDBG-DR Program in connection with the Property. Developer shall designate, at a minimum, five (5) (51%) of the ten (10) total Units as Qualifying Units to be occupied by Low- to Moderate-Income Households.

(b) Accessibility

At least two (2) Units or five percent (5%) of all Units, whichever is greater, shall be designed to be made accessible for an individual with disabilities who has mobility impairments exceeding the limit in the accessibility requirements under Section 504 of the Rehabilitation Act of 1973 by an additional ten percent (10%). At least one (1) Unit(s) or two percent (2%) of all Units, whichever is greater, shall be designed and built to be accessible for persons with hearing or vision impairments in accordance with the accessibility requirements under Section 504 of the Rehabilitation Act of 1973.

(c) New Construction of Single-Family Units

If the Project includes the new construction of single-family Units (one [1] to three [3] Units per building), the Developer shall construct every Unit to meet or exceed the accessibility requirements of Section 2306.514 of the Texas Government Code, as amended from time to time.

3.04 NEEDS ASSESSMENT

The determination of whether the Annual Income of a family or individual occupying or seeking to occupy a Qualifying Unit complies with the requirements for Extremely Low-Income Households or Low- to Moderate-Income Households shall be made by the applicable housing authority in the CDBG-DR Program area prior to admission of such family or individual to occupancy of a Qualifying Unit.

IV. RESTRICTIVE COVENANT – RENT

4.01 RENT LIMITATIONS

The maximum monthly rent (which includes the tenant-paid portion of the rent, the Utility Allowance, and rental assistance payment) charged by Developer for the thirty-six (36) Qualifying Units, as specified in **Section 3.03(a)**, occupied by Low- to Moderate-Income Households, other than Extremely Low-Income Households, must be set at levels that are affordable to Low- to Moderate-Income Households. Such maximum monthly rent shall not exceed the higher of (a) High Home Investment Partnership (“HOME”) Rents (as defined under 24 C.F.R. 92.252 *et seq.*), as amended; as determined by HUD; and as published on an annual basis with adjustment for family size) or (b) exception rents allowed by HUD on project-based Section 8 properties pursuant to 24 C.F.R. Part 252(b)(2), as amended.

4.02 GROSS-RENT PROVISIONS – EXTREMELY LOW-INCOME HOUSEHOLDS

The maximum monthly rent (which includes the tenant-paid portion of the rent, the Utility Allowance, and rental assistance payment) charged by Developer for the zero (0) Qualifying Units occupied by Extremely Low-Income Households must be set at levels that are affordable to

Extremely Low-Income Households and shall not exceed the thirty percent (30%) maximum-rent limits determined by HUD and published on an annual basis with adjustment for family size.

V. ADMINISTRATION

5.01 CERTIFICATION BY DEVELOPER

During the Term, Developer shall, at least annually or as the GLO may otherwise approve, submit to the GLO (in a form prescribed by the GLO) a certificate of continuing compliance with all occupancy standards, terms, and provisions of this Agreement. The certification will also include statistical data relating to special-needs individuals' race, ethnicity, income, fair housing opportunities, and other information requested by the GLO.

5.02 MAINTENANCE OF DOCUMENTS

All Project Documents and any other report of records that Developer is required to prepare and/or provide to the GLO pursuant to this Agreement and any other applicable regulations must be retained for the periods set out in the CDBG-DR Regulations. If no specific period is set out, such document and records must be retained for three (3) years after the end of the Term or as otherwise specified by law or required by the GLO. All Project Documents shall at all times be kept separate and identifiable from any other business of Developer that is unrelated to the Property. All Project Documents shall be maintained in compliance with the CDBG-DR Regulations and any other requirements of the State of Texas. All Project Documents shall be kept in a reasonable condition for proper audit and shall be subject to examination and photocopying during business hours by representatives of the GLO, HUD, or the United States Comptroller General.

Developer agrees and acknowledges that any and all Project Documents are confidential in nature. Except as otherwise expressly required in this Agreement, the CDBG-DR Regulations, or the CDBG Multifamily Rental Housing Guidelines, Developer agrees not to disclose the Project Documents; any of the terms, provisions, or conditions thereof; or any information that relates to tenants' or applicants' income, social security numbers, employment statuses, disabilities, or other related matters and is deemed confidential under federal law or state law to any party outside Developer's organization, except a professional management agent for the Project or auditors as required by third-party financing. Developer further agrees that, within its organization, the Project Documents and their confidential information will be disclosed and exhibited to only those persons within Developer's organization whose position and responsibilities make such disclosure necessary.

5.03 COMPLIANCE REVIEW

During the Term, Developer agrees to permit the GLO, HUD, and/or a designated representative of the GLO or HUD to access the Property for the purpose of performing Compliance-Monitoring Procedures. In accordance with GLO Compliance-Monitoring Procedures, the GLO or HUD will periodically monitor and audit Developer's compliance with the requirements of this Agreement, the CDBG-DR Regulations, the CDBG Multifamily Rental Housing Guidelines, and any and all other Governmental Requirements during the Term. In conducting any compliance reviews, the GLO or HUD will rely primarily on information obtained from Developer's records and reports,

on-site monitoring, and audit reports. The GLO or HUD may also consider other relevant information gained from other sources, including litigation and citizen complaints.

5.04 HAZARDOUS MATERIALS: INDEMNIFICATION

- (a) Developer agrees to the following.
- (i) Developer shall not receive, store, dispose, or release any Hazardous Materials on or to the Property; transport any Hazardous Materials to or from the Property; or permit the existence of any Hazardous Material contamination on the Property.
 - (ii) Developer shall give written notice to the GLO immediately when Developer acquires knowledge of the presence of any Hazardous Material on the Property; the transport of any Hazardous Materials to or from the Property; or the existence of any Hazardous Material contamination on the Property, with a full description thereof.
 - (iii) Developer will promptly, at Developer's sole cost and expense, comply with any Governmental Requirements regarding the removal, treatment, or disposal of such Hazardous Materials or Hazardous Material contamination and provide the GLO with satisfactory evidence of such compliance.
 - (iv) Developer shall provide the GLO, within thirty (30) days of demand by the GLO, financial assurance evidencing to the GLO that the necessary funds are available to pay for the cost of removing, treating, and disposing of such Hazardous Materials or Hazardous Material contamination and discharging any assessments that may be established on the Property as a result thereof.
 - (v) Developer shall insure that all leases, licenses, and agreements of any kind (whether written or oral) now or hereafter executed that permit any party to occupy, possess, or use in any way the Property or any part thereof include an express prohibition on the disposal or discharge of any Hazardous Materials at the Property and a provision stating that failure to comply with such prohibition shall expressly constitute a default under any such agreement.
 - (vi) Developer shall not cause or suffer any liens (including any so-called state, federal, or local "Superfund" lien relating to the following matters) to be recorded against the Property as a consequence of, or in any way related to, the presence, remediation, or disposal of Hazardous Materials in or about the Property.
- (b) **DEVELOPER SHALL, AT ALL TIMES, RETAIN ANY AND ALL LIABILITIES ARISING FROM THE PRESENCE, HANDLING, TREATMENT, STORAGE, TRANSPORTATION, REMOVAL, OR DISPOSAL OF HAZARDOUS MATERIALS ON THE PROPERTY. REGARDLESS OF WHETHER ANY EVENT OF DEFAULT OCCURS OR CONTINUES, WHETHER THE GLO EXERCISES ANY REMEDIES IN RESPECT TO THE PROPERTY, OR SUCH SITUATION RELATED TO HAZARDOUS MATERIALS WAS CAUSED BY OR WITHIN THE CONTROL OF DEVELOPER OR THE GLO, DEVELOPER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE GLO AND ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL LIABILITIES, SUITS, ACTIONS, CLAIMS, DEMANDS, PENALTIES, DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, CONSEQUENTIAL DAMAGES, INTEREST, PENALTIES, FINES,**

- AND MONETARY SANCTIONS), LOSSES, COSTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS) THAT MAY:**
- (i) NOW OR IN THE FUTURE (WHETHER BEFORE OR AFTER THE CULMINATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT) BE INCURRED OR SUFFERED BY THE GLO BY REASON OF, RESULTING FROM, IN CONNECTION WITH, OR ARISING IN ANY MANNER WHATSOEVER FROM THE BREACH OF ANY WARRANTY OR COVENANT IN THIS SECTION OR THE INACCURACY OF ANY REPRESENTATION OF DEVELOPER IN RELATION TO THIS AGREEMENT;**
 - (ii) BE ASSERTED AS A DIRECT OR INDIRECT RESULT OF THE PRESENCE OF ANY HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIAL CONTAMINATION ON OR UNDER THE PROPERTY OR THE ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, DISCHARGE, EMISSION, OR RELEASE OF ANY HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIAL CONTAMINATION FROM THE PROPERTY; OR**
 - (iii) ARISE OR RESULT FROM THE ENVIRONMENTAL CONDITION OF THE PROPERTY OR THE APPLICABILITY OF ANY GOVERNMENTAL REQUIREMENTS RELATING TO HAZARDOUS MATERIALS.**
- (c) SUCH LIABILITIES SHALL INCLUDE, WITHOUT LIMITATION, THE FOLLOWING:**
- (i) INJURY OR DEATH TO ANY PERSON;**
 - (ii) DAMAGE TO OR LOSS OF THE USE OF ANY PROPERTY;**
 - (iii) THE COSTS OF ANY DEMOLITION, REBUILDING, REPAIR, OR REMEDIATION OF ANY IMPROVEMENTS NOW OR HEREAFTER SITUATED ON THE PROPERTY OR ELSEWHERE, AND THE COST OF REPAIR OR REMEDIATION OF ANY SUCH IMPROVEMENTS;**
 - (iv) THE COST OF ANY ACTIVITY REQUIRED BY ANY GOVERNMENTAL AUTHORITY;**
 - (v) ANY LAWSUIT BROUGHT OR THREATENED, GOOD-FAITH SETTLEMENT REACHED, OR GOVERNMENTAL ORDER RELATING TO THE PRESENCE, DISPOSAL, RELEASE, OR THREATENED RELEASE OF ANY HAZARDOUS MATERIAL ON, FROM, OR UNDER THE PROPERTY; AND**
 - (vi) THE IMPOSITION OF ANY LIENS ON THE PROPERTY ARISING FROM THE ACTIVITY OF THE DEVELOPER OR DEVELOPER'S PREDECESSORS IN INTEREST ON THE PROPERTY OR FROM THE EXISTENCE OF HAZARDOUS MATERIALS OR HAZARDOUS MATERIAL CONTAMINATION ON THE PROPERTY.**
- (d) NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE FOREGOING INDEMNITY SHALL NOT APPLY TO MATTERS RESULTING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF DEVELOPER OR ANY EMPLOYEE, AGENT, OR INVITEE OF THE GLO THAT WAS ENGAGED IN AFTER THE GLO OR ANY THIRD PARTY HAS TAKEN TITLE TO, OR EXCLUSIVE POSSESSION OF, THE MORTGAGED PROPERTY.**
- (e) The covenants and agreements contained in this section shall survive the consummation of the transactions contemplated by this Agreement.**

5.05 AFFIRMATIVE MARKETING

Developer shall maintain and abide by an affirmative marketing plan that shall be designed to attract tenants from all racial, ethnic/national origin, sex, religious, familial status, and special-needs groups and shall require all press releases and written materials, advertising, or promoting of the Project to include, when feasible, the equal housing opportunity logo or slogan. Developer further agrees to maintain documents and records evidencing its compliance with said plan and the affirmative marketing requirements imposed by 24 C.F.R. Part 570.

5.06 FEDERAL AND STATE REQUIREMENTS

Developer shall comply with all CDBG-DR Regulations (excepting requirements waived by HUD, CDBG Multifamily Rental Housing Guidelines, and each Governmental Requirement as the same may be amended).

5.07 ACCESS AND INSPECTION

Developer will permit the GLO; its agents, employees, and representatives; HUD; the Inspector General; the General Accounting Office; the State Auditor's Office; and any other interested Governmental Authority to enter and inspect (at any and all reasonable times during business hours) the Project and all materials to be used in the rehabilitation thereof. Developer will allow the examination and copying of all of Developer's books, records, contracts, and bills pertaining to the Project. Developer will also cooperate and cause all contractors to cooperate with the GLO and its agents, employees, and representatives during such inspections. Nothing herein shall be deemed to impose upon the GLO any duty or obligation to undertake such inspections or any liability for the failure to detect or failure to act with respect to any defect that was or might have been disclosed by such inspections.

5.08 PROPERTY STANDARDS

Developer agrees that each Unit shall be rehabilitated or constructed, as applicable, and maintained in accordance with the requirements set forth in the CDBG-DR Regulations, Texas Minimum Construction Standards, Uniform Physical Condition Standards, and the CDBG Multifamily Rental Housing Guidelines.

5.09 REPORTS

Developer shall deliver, to the satisfaction of the GLO, the following:

- (a) A Unit status report on a quarterly basis or when otherwise requested by the GLO;
- (b) As the GLO may reasonably request during the Term or as necessary to assist the GLO in meeting its record-keeping and reporting requirements under the CDBG-DR Regulations during the Term, such data, certificates, reports, statements, documents, or further information (regarding the assets or the business, liabilities, financial position, projections, results of operations, or business prospects of Developer or such other matters concerning Developer's compliance with the CDBG-DR Regulations, the terms of this Agreement, and the CDBG Multifamily Rental Housing Guidelines)—including, without limitation, the following:

- (i) Records that demonstrate that the Project meets the property standards set out herein;
- (ii) Records required under Title 24, Section 570.490, of the Code of Federal Regulations for the Term; and
- (iii) Other federally required records including, without limitation, the following:
 - (1) Equal opportunity and fair housing records containing:
 - (A) Data on racial, ethnic, and gender characteristics of persons who have applied for, participated in, or benefited from any program or activity funded in whole or in part with CDBG-DR funds;
 - (B) Documentation of actions undertaken to meet the requirements of Section 3 of the Housing Development Act of 1968, as amended, (12 U.S.C. § 1701u) and its implementing regulations found at 24 C.F.R. §92.350;
 - (C) Documentation and data on the steps taken to continuously market to currently homeless persons and persons who have previously been homeless or are at risk of being homeless; and
 - (D) Documentation of the actions the Developer has taken to affirmatively further fair housing as required under 24 C.F.R. Part 570;
 - (2) Records indicating compliance with the affirmative marketing procedures and requirements under 24 C.F.R. Part 570;
 - (3) Records that demonstrate compliance with environmental review requirements in 24 C.F.R. Part 58 and the National Environmental Policy Act of 1969 (42 U.S.C. § 4321, *et seq.*);
 - (4) Records that demonstrate compliance with the requirements, as applicable, in 24 C.F.R. §570.606 and 24 C.F.R. Part 42 regarding displacement, relocation, and real property acquisition;
 - (5) Records demonstrating compliance with the labor requirements (including those regarding contract provisions and payroll records, as applicable) in 24 C.F.R. Part 570;
 - (6) Records concerning lead-based paint under 24 C.F.R. §570.487(c) in accordance with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4801, *et seq.*), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. § 4851, *et seq.*), and their implementing regulations found at 24 C.F.R. Part 58;
 - (7) Records of certifications concerning debarment and suspension under 24 C.F.R. §570.609;
 - (8) Records demonstrating compliance with the flood insurance requirements under 24 C.F.R. §570.605; and

- (9) Records demonstrating HUD's review and audits under 24 C.F.R. §570.493.

5.10 INFORMATION AND REPORTS REGARDING THE PROJECT

Developer shall deliver to the GLO, at any time within thirty (30) days after notice and demand by the GLO but not more frequently than once per quarter, the following:

- (a) a statement, certified by the Developer and in such reasonable detail as the GLO may request, of the leases relating to the Project and
- (b) a statement, certified by a certified public accountant or (at the option of the GLO) the Developer and in such reasonable detail as the GLO may request, of the income from and expenses of any one or more of the following:
 - (i) the conduct of any business on the Project;
 - (ii) the operation of the Project; or
 - (iii) the leasing of the Project, or any part thereof, for the last twelve-month (12-month) calendar period prior to the giving of such notice.

On demand and for the audit and verification of any such statement, Developer shall furnish to the GLO the executed counterparts of any such tenant leases and any other contracts and agreements that pertain to facilities located on the Property or that otherwise generate ancillary income for the Project.

5.11 OTHER INFORMATION

Developer shall deliver to the GLO, at any time within thirty (30) days after notice and demand by the GLO, any information or reports required by the laws of the State of Texas or as otherwise reasonably required by the GLO or HUD.

5.12 DISPLACED PERSONS

In the event there are any Displaced Persons as a result of any of the Units being acquired, rehabilitated, or reconstructed with CDBG-DR funds, Developer shall comply with the requirements and provisions of a valid relocation plan under the law.

VI. REPRESENTATIONS AND WARRANTIES OF DEVELOPER

6.01 REPRESENTATIONS AND WARRANTIES

Developer represents and warrants to the GLO the following.

- (a) Valid Execution. Developer has validly executed this Agreement, which constitutes the binding obligation of Developer. Developer has full power, authority, and capacity to (i) enter into this Agreement, (ii) carry out Developer's obligations as described in this Agreement, and (iii) assume responsibility for compliance with all applicable Governmental Regulations (including, without limitation, those in the CDBG-DR Regulations and the CDBG Multifamily Rental Housing Guidelines).

- (b) No Conflict or Contractual Violation. To the best of Developer's knowledge, the making of this Agreement and Developer's obligations hereunder:
- (i) will not violate any contractual covenants or restrictions (1) between Developer or any third party or (2) affecting the Property;
 - (ii) will not conflict with any of the instruments that create or establish Developer's authority if Developer is not an individual;
 - (iii) will not conflict with any applicable public or private restrictions;
 - (iv) do not require any consent or approval of any public or private authority that has not already been obtained; and
 - (v) are not threatened with invalidity or unenforceability by any action, proceeding, or investigation, pending or threatened, by or against (1) Developer, without regard to capacity; (2) any person with whom Developer may be jointly or severally liable; or (3) the Property or any part thereof.
- (c) No Litigation. No action, litigation, investigation, or proceeding that, if adversely determined, could individually or in the aggregate have an adverse effect on title to or the use, enjoyment, or value of the Property or any portion thereof or that could in any way interfere with the consummation or enforceability of this Agreement is now pending or, to the best of the Developer's knowledge, threatened against Developer.
- (d) No Bankruptcy. No case, proceeding, or other action in bankruptcy, whether voluntary or otherwise; reorganization; arrangement; composition; readjustment; liquidation; dissolution; or similar relief for Developer under any federal, state, or other statute, law, or regulation relating to bankruptcy, insolvency, or relief for debtors is pending or, to the Developer's best knowledge, threatened against Developer.
- (e) Prior Warranties, Representations, and Certifications. All warranties, representations, and certifications made, and all information and materials submitted or caused to be submitted, to the GLO in connection with the Project are true and correct, and there have been no material changes or conditions affecting any of such warranties, representations, certifications, materials, or other information prior to the effective date thereof.
- (f) Conflicting Agreements. Developer has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions herein. In any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.
- (g) Consideration. Developer has freely and without reservation placed itself under the obligations of this Agreement. The receipt of funding from the GLO in the form of CDBG-DR funds is an essential part of the consideration for this Agreement.
- (h) Conflicts of Interest. Neither any member, employee, officer, agent, consultant, or official of the Developer nor any member of their immediate families, during their tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or any proceeds or benefits arising therefrom—except as allowed by 24 C.F.R. §570.611.

- (i) Debarment and Suspension. Neither Developer nor any of its principals is presently debarred, suspended, proposed for debarment or suspension, or declared ineligible by any federal department or agency or voluntarily excluded from participation in this transaction of the CDBG-DR Program.
- (j) Flood Insurance. In the event that any of the Property is located in an area identified by the Federal Emergency Management Agency (“FEMA”) as having special flood hazards, Developer warrants and represents to the GLO the following:
 - (i) Either such area is participating in the National Flood Insurance Program or less than one (1) year has passed since the FEMA notification regarding such hazards and
 - (ii) In accordance with GLO or HUD guidelines, Developer will obtain flood insurance in an amount and duration prescribed by The Federal Emergency Management Agency’s Flood Insurance Program and maintain said flood insurance for the Term of the Agreement.

6.02 STATEMENT OF ENTRIES

WARNING: ANY PERSON WHO KNOWINGLY MAKES A FALSE CLAIM OR STATEMENT TO HUD MAY BE SUBJECT TO CIVIL OR CRIMINAL PENALTIES UNDER 18 U.S.C. § 287, 18 U.S.C. § 1001, AND 31 U.S.C. § 3729.

Except as otherwise provided under federal law, any person who knowingly and willfully falsifies, conceals, or covers up a material fact by any trick, scheme, or device; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document despite knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry shall be prosecuted under 18 U.S.C. § 1001.

Under penalties of 18 U.S.C. § 287, 18 U.S.C. § 1001, and 31 U.S.C. § 3729, the undersigned Developer representative hereby declares that he/she has examined this Agreement and its Exhibits, and, to the best of his/her knowledge and belief, any statements, entries, or claims made by Developer are correct, accurate, and complete.

6.03 INDEMNIFICATION

Developer shall indemnify, defend, and hold harmless the State of Texas, the GLO, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all liability, actions, claims, demands, damages, proceedings, or suits, and all related costs, attorneys’ fees, and expenses (except those arising from the gross negligence or willful misconduct of such indemnified Parties) arising from, connected with, or resulting from any acts or omissions of, or any contracts related to the completion of this Project by, Developer or its officers, agents, employees, representatives, suppliers, contractors, Subcontractors, assignees, designees, order fulfillers, or suppliers of contractors or Subcontractors in the execution or performance of the Contract. Developer and the GLO shall furnish timely written notice to each other of any such claim. Developer shall be liable to pay all costs of defense, including attorneys’ fees. Developer shall coordinate its defense with the GLO and the Office of the Attorney General if the GLO or another Texas state agency is a named co-defendant with Developer in any suit.

Developer may not agree to settle any such lawsuit or other claim without first obtaining the written consent of the GLO and, if applicable, the Office of the Attorney General.

VII. DEFAULT, ENFORCEMENT, AND REMEDIES

7.01 EVENTS OF DEFAULT

Occurrence of one (1) or more of the following events will, at the discretion of the GLO, constitute an event of default under this Agreement:

- (a) Developer defaults in the performance of any of its obligations under this Agreement or breaches any covenant, agreement, restriction, representation, or warranty set forth herein, and such default or breach remains uncured for a period of thirty (30) days after the GLO gives notice thereof (or for an extended period approved by the GLO if the default or breach stated in such notice can be corrected but not within such thirty-day [30-day] period, unless Developer does not commence such correction or commences such correction within such thirty-day [30-day] period but thereafter does not diligently pursue the same to completion within such extended period);
- (b) Developer is adjudged bankrupt or insolvent; a petition or proceeding for bankruptcy or for reorganization is filed against it and it admits the material allegations thereof; an order, judgement, or decree is entered and approves such petition; such order, judgement, or decree is not vacated or stayed within sixty (60) days of its entry; or a receiver or trustee is appointed for the Developer or the Property, land, or any part thereof and remains in possession thereof for at least thirty (30) days;
- (c) Developer sells or otherwise transfers the Property, in whole or in part, (except leases to Low- to Moderate-Income Households) without the prior written consent of the GLO.

7.02 ENFORCEMENT OF REMEDIES BY THE GLO

Upon an occurrence of an event of default, the GLO or HUD may (a) apply to any court having jurisdiction of the subject matter for specific performance of this Agreement, for an injunction against any violation of this Agreement, or for the appointment of a receiver to take over and operate the Property in accordance with the terms of this Agreement or (b) take any and all action at law, in equity, or otherwise for such relief as may be appropriate, including recapturing federal funds expended for the Project. The amount to be recaptured shall be decreased by one-fifteenth (1/15) of the total amount expended for the Project for each year that Developer complies with this Agreement. It is acknowledged that the beneficiaries of Developer's obligations cannot be adequately compensated by monetary damages in the event of Developer default. The GLO shall be entitled to its reasonable attorneys' fees in any judicial action in which the GLO prevails. The GLO or HUD shall also be compensated for fees associated with additional compliance monitoring during corrective periods for noncompliance upon a default by Developer hereunder.

7.03 CUMULATIVE AND CONCURRENT REMEDIES

All rights, powers, and remedies of the GLO provided for in this Agreement or currently or hereafter existing at law, in equity, or by statute or otherwise shall be cumulative and concurrent. The exercise by the GLO of any of the right, power, or remedy provided for in this Agreement or currently or hereafter existing at law, in equity, or by statute or otherwise shall not preclude the simultaneous or later exercise by the GLO of any or all of such other rights, powers, or remedies as permitted by law.

7.04 ENFORCEMENT AND REMEDIES OF PARTIES OTHER THAN THE GLO

The occupancy and maximum-rent requirements set forth herein shall inure to the benefit of Low-to Moderate-Income Households or Extremely Low-Income Households, and such requirements may be judicially enforced against Developer. Any of the persons or entities described above shall be entitled to judicially enforce this Agreement in the same manner in which the GLO may seek judicial enforcement and shall be entitled to reasonable attorneys' fees. Further, any deed, lease, conveyance, or contract made in violation of this Agreement shall be void and may be set aside on petition of one (1) or more of the Parties to the Agreement. All successors in interest, heirs, executors, administrators, or assigns shall be deemed Parties to this Agreement to the same effect as the original signer. When any such conveyance or other instrument is set aside by decree of a court of competent jurisdiction, all costs and expenses of such proceedings shall be taxed against the offending Party or Parties and shall be declared by the court to constitute a lien against the wrongfully deeded, sold, leased, or conveyed real estate until paid. Such lien may be enforced in such a manner as the court may order.

7.05 SOVEREIGN IMMUNITY

THE GLO IS AN AGENCY OF A SOVEREIGN STATE. ALL PARTIES TO THIS AGREEMENT ACKNOWLEDGE THAT THE GLO CANNOT WAIVE SOVEREIGN IMMUNITY AND THAT NO INTENT TO DO SO IS EXPRESSED OR IMPLIED IN THIS AGREEMENT OR ANY ANCILLARY AGREEMENT.

VIII. COVENANTS

8.01 COVENANTS RUNNING WITH THE LAND

During the Term, this Agreement and the covenants, reservations, and restrictions contained herein shall be deemed covenants running with the land for the benefit of the Developer and its successors, the GLO and its successors, and/or HUD and its successors and shall pass to and be binding on Developer's heirs, assigns, and successors in title to the Property. If the Property does not include title to land but includes a leasehold interest in such land, this Agreement and the covenants, reservations, and restrictions contained herein shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, assigns, and successors to such interests. Upon expiration of the Term and in accordance with the terms hereof, said covenants, reservations, and restrictions shall expire. During the Term, each contract, deed, or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to be executed, delivered, and accepted subject to such covenants, reservations, and restrictions—regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed, or other instrument. If a portion of the Property is conveyed

during the Term, all such covenants, reservations, or restrictions shall run to each portion of the Property. Developer, at its own cost and expense, shall cause this Agreement to be duly recorded, filed, re-recorded, or re-filed in the Real Property Records of the county in which the Property is located. Developer shall pay, or cause to be paid, all recording, filing, or other taxes, fees, and charges. Developer shall comply with all such statutes and regulations as may be required by law in order to establish, preserve, and protect the ability of the GLO or HUD to enforce this Agreement.

IX. MISCELLANEOUS

9.01 AMENDMENTS

This Agreement may not be amended or modified except by written instrument signed by the Developer and GLO (or, with the consent of the GLO, their respective heirs, successors, or assigns) and shall not be effective until it is recorded in the Real Property Records of the county in which the Property is located. Amendments processed in accordance with this section must adhere to the notice requirements presented in Section 9.02 below.

9.02 NOTICES

All notices required or permitted to be given under this Agreement must be in writing. Notices will be deemed effective upon deposit in the United States mail (postage paid, certified, return receipt requested) or with a common carrier (overnight, signature required) to the appropriate address indicated below.

Developer:

Developer Name
Street Address
City, ST Zip
Attention: Representative Name

GLO:

Jeff Crozier
Multi-Family Housing Manager
1700 N. Congress Ave.
Austin, TX 78701

With a Copy to the GLO:

Texas General Land Office
1700 N. Congress Avenue, 7th Floor
Austin, TX 78701
Attention: Contract Management Division

Notice given in any other manner shall be deemed effective only if and when it is received by the Party to be notified. Either Party may change its address for notice by written notice to the other Party as herein provided.

9.03 ENTIRE AGREEMENT

This Agreement contains the entire understanding between the Parties hereto with respect to the subject matter thereof. There are no representations, oral or otherwise, other than those expressly set forth herein. Time is of the essence of this Agreement.

9.04 COOPERATION

Should any claims, demands, suits, or other legal proceedings arise from any matter relating to this Agreement and be made or instituted by any person against the GLO; officers, agents, or employees of the GLO; the State of Texas; or officers, agents, or employees of the State of Texas, Developer shall fully cooperate by providing all pertinent information and reasonable assistance in the defense or other disposition thereof. Developer may not agree to settle any such lawsuit or other claim without first obtaining the written consent of the GLO and, if applicable, the Office of the Attorney General.

9.05 CHOICE OF LAW

In the event the enforceability or validity of any provision of this Agreement is challenged or questioned, such provision shall be governed by, and shall be construed in accordance with, the laws of the State of Texas or federal laws, whichever may be applicable.

9.06 SEVERABILITY

This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules, and regulations. If a court of competent jurisdiction determines any provision of this Agreement is invalid, void, or unenforceable, this Agreement shall be construed as if such provision did not exist, and the remaining terms, provisions, covenants, and conditions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

9.07 COUNTERPARTS

This Agreement and any amendments hereto may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall constitute one and the same Agreement binding all Parties hereto, notwithstanding that all the Parties shall not sign the same counterpart.

9.08 SECTION TITLE

Section titles are for descriptive purposes only and shall not control or limit the meaning of this Agreement as set forth in the text.

9.09 CHANGE IN NEIGHBORHOOD

A substantial or radical change in the character of the neighborhood surrounding the Property will not extinguish the restrictive covenants of this Agreement. The restrictive covenants shall survive any and all changed circumstances, including (but not limited to) the following: housing-pattern changes, zoning amendments, the issuance of variances affecting the immediate or surrounding area of the Property, increased traffic or road conditions around the Property, enhancement of the

value of the land or Property, growing industrial activity near the Property, encroachment of business areas near the Property, development of natural resources near the Property, financial downturn of the Developer, or commercialization of the neighborhood in question.

9.10 VENUE

This Agreement and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Agreement shall be in a court of competent jurisdiction in Travis County, Texas. Developer irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of *forum non conveniens*, that it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction with respect to this Agreement or any document related hereto.

NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO.

SIGNATURE PAGES FOLLOW

**SIGNATURE PAGE FOR ATTACHMENT G TO GLO CONTRACT NO. CONTRACT NO.
LAND USE RESTRICTION AGREEMENT
2018 SOUTH TEXAS FLOODS AFFORDABLE RENTAL HOUSING PROGRAM**

GENERAL LAND OFFICE

COMPANY NAME

Mark A. Havens, Chief Clerk /

Deputy Land Commissioner

Date of execution: _____

Print Name: _____

Title: _____

Date of execution: _____

OGC _____

PM _____

SDD _____

DGC _____

GC _____

EXHIBITS TO THIS LAND USE RESTRICTION AGREEMENT:

EXHIBIT A – Legal Description of Property

EXHIBIT A - LEGAL DESCRIPTION

LEGAL DESCRIPTION

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II. DEFINITIONS

2.01 GENERAL

Unless the context clearly requires otherwise, capitalized terms used in this Agreement shall have the meanings specified in Article II. Certain additional terms may be defined elsewhere in this Agreement.

“[Agreement](#),” or “[LURA](#),” means this Land Use Restriction Agreement, as it may from time to time be amended, for PROJECT NAME AND DESCRIPTION. This Land Use Restriction Agreement is executed by and between the GLO and Developer and sets forth certain occupancy and rental restrictions, as contained herein, for the Project.

“[Annual Income](#)” means “annual income” as defined in 24 C.F.R. §92.203, as amended.

“[Area Median Income](#)” means the median income (as such median income is adjusted for family size and established by HUD at least annually in accordance with the Federal Act or otherwise established by the GLO) for the area where the Property is located.

“[CDBG-DR Program](#)” means the federal disaster-relief emergency-funding housing program funded by Community Development Block Grants for disaster recovery as authorized and established under the Supplemental Appropriations for Disaster Relief Act, 2018 (Public Law 115-254) and the Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2019 (Public Law 116-20). These acts were enacted on October 5, 2018 and June 6, 2019, respectively, for the purpose of assisting recovery activities related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster in 2018 or 2019. Such activities are outlined in the *State of Texas CDBG-DR Action Plan: 2018 South Texas Floods* dated July 29, 2020, and approved by HUD on October 15, 2020, as amended from time to time.

“[CDBG Multifamily Rental Housing Guidelines](#)” means the State of Texas’s CDBG implementation manual and guidelines (as amended or superseded from time to time), which serve as a comprehensive guidebook to entities that have been provided funds through the GLO pursuant to the CDBG-DR Program, together with any and all other manuals and guidelines developed by the GLO in connection with implementation and operation of the CDBG-DR Program.

“[CDBG-DR Regulations](#)” means the regulations set forth in 24 C.F.R. Part 570, as amended from time to time, that are promulgated by HUD or any respective successor pursuant to the Federal Act and that govern all Community Development Block Grant programs, including the CDBG-DR Program.

“[C.F.R.](#)” means the Code of Federal Regulations, the codification of the general and permanent rules and regulations (sometimes called administrative law) published in the Federal Register by the executive departments and agencies of the federal government of the United States.

“[Compliance-Monitoring Procedures](#)” means procedures and requirements adopted or imposed by the GLO or HUD for the purpose of monitoring and auditing the Property and the books and records of the Developer for compliance with this Agreement; the Federal Act; Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d-1) and its implementing regulations found at 24 C.F.R. Part 1; the Age Discrimination Act of 1975 (42 U.S.C. § 6101, *et seq.*); the Fair Housing Act (42 U.S.C. § 3601, *et seq.*); General HUD Program Requirements (24 C.F.R. Part 5, *et seq.*);

the Equal Employment Opportunity Act of 1972; Executive Order 11246 and its implementing regulations found at 41 C.F.R. Part 60; Section 504 of the Rehabilitation Act of 1973 and its implementing regulations founds at 45 C.F.R. Part 84; the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, *et seq.*); the CDBG Regulations (24 C.F.R. Part 570); the CDBG Multifamily Rental Housing Guidelines; and any and all other Governmental Requirements (as defined below), as may be amended from time to time.

“Displaced Persons” means families, individuals, businesses, nonprofit organizations, and farms that permanently move from the Project or permanently move property from the Project as a direct result of acquisition, reconstruction, rehabilitation, or demolition of the Project or as otherwise provided in Sections 570.488 and 570.606 of the CDBG Regulations, except as such sections are waived by HUD.

“Extremely Low-Income Household” means families and individuals whose Annual Incomes do not exceed thirty percent (30%) of the Area Median Income for the area in which the Property is located.

“Federal Act” means Title 1 of the Housing and Community Development Act of 1974 as set forth in Public Law 93-383 (42 U.S.C. § 5301, *et seq.*) or any corresponding provision or provisions of succeeding law as it or they may be amended from time to time.

“Governmental Authority” means the United States of America; the State of Texas; the County of County, Texas; the City of City, Texas; any political subdivision of any of the foregoing; and any other political subdivision, agency, or instrumentality exercising jurisdiction over Developer or the Property.

“Governmental Requirements” means all federal, state, and local laws, statutes, ordinances, rules, regulations, orders, and decrees of any court, administrative body, or tribunal related to the activities and performances under this Agreement.

“Hazardous Material,” means any substance defined as a hazardous substance, a hazardous material, hazardous waste, a toxic substance, or toxic waste in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (42 U.S.C. § 9601, *et seq.*); the Hazardous Materials Transportation Act, as amended, (49 U.S.C. § 5101, *et seq.*); the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. § 6901, *et seq.*); any similar applicable federal, state, or local law; or any regulation adopted or publication promulgated pursuant to said law, either existing or promulgated from time to time.

“HUD” means the United States Department of Housing and Urban Development and its successor.

“Improvements” means certain improvements known as the DEVELOPMENT NAME, situated on the real Property of the Project.

“Low- to Moderate-Income Household” means families and individuals whose Annual Incomes do not exceed eighty percent (80%) of the median family income or such other income limits as determined by HUD. This definition includes Very Low-, Low-, and Moderate-Income households.

“Project” means the #-Unit multi-family rental housing project (including Developer’s activities concerning the acquisition, ownership, rehabilitation or reconstruction, and operation of the

Property) to be located at Address, more particularly described in **Attachment A**. Such Project shall have 51% of the total Units on the Property designated for use as affordable rental housing for Low- to Moderate-Income Households.

“Project Documents” means all tenant lists, applications (whether accepted or rejected), leases, lease addenda, tenant and Developer certifications, advertising records, waiting lists, rental calculations and rent records, Utility Allowance documentation, income examinations and re-examinations relating to the Project, and any other documents otherwise required under the law or by the GLO.

“Property” means the Improvements and the Project land on which they are contained.

“Qualifying Unit” means a residential accommodation that constitutes a part of the Property and contains separate and complete living facilities that are occupied by, or designated to be occupied by, a Low- to Moderate-Income Household or an Extremely Low-Income Household in accordance with the Contract.

“Term” means the twenty-year (20-year) period, as applicable, that commences on the date of substantial construction completion on the newly constructed multi-family rental Project.

“Unit” means a residential accommodation constituting a part of the Property and containing separate and complete living facilities.

“Utility Allowance” means a monthly allowance, as provided by the local public housing authority or as otherwise allowed by HUD rules and the GLO rules, for utilities and services (excluding telephone services) to be paid by the tenant.

Contextual Note: Unless the context clearly indicates otherwise, an above definition for a singular term shall also apply (where appropriate) to the plural form of such term and vice versa to the extent necessary for giving the proper meanings to the terms defined in this Article II and/or terms otherwise used in this Agreement.

III. RESTRICTIVE COVENANT – USE AND OCCUPANCY OF PROPERTY

3.01 USE OF PROPERTY

During the Term, Developer will maintain the Property as affordable rental housing and will rent or hold available each Qualifying Unit for rental on a continuous basis to meet the occupancy requirements of this Agreement.

3.02 COMMON AREAS

During the Term, Developer agrees that all common areas (if any), including (without limitation) any laundry or community facilities, on the Property shall be for the exclusive use of the tenants and their guests and shall not be available for general public use.

3.03 OCCUPANCY REQUIREMENTS

(a) Long-Term Occupancy Requirements

Notwithstanding anything herein to the contrary, Developer must use, at a minimum, 51% of the total number of Units for affordable rental housing for Low- to Moderate-Income

Households at the later of the time of occupancy of the Property or the time when funds are invested pursuant to the CDBG-DR Program in connection with the Property. Developer shall designate, at a minimum, five (5) (51%) of the ten (10) total Units as Qualifying Units to be occupied by Low- to Moderate-Income Households.

(b) Accessibility

At least two (2) Units or five percent (5%) of all Units, whichever is greater, shall be designed to be made accessible for an individual with disabilities who has mobility impairments exceeding the limit in the accessibility requirements under Section 504 of the Rehabilitation Act of 1973 by an additional ten percent (10%). At least one (1) Unit(s) or two percent (2%) of all Units, whichever is greater, shall be designed and built to be accessible for persons with hearing or vision impairments in accordance with the accessibility requirements under Section 504 of the Rehabilitation Act of 1973.

(c) New Construction of Single-Family Units

If the Project includes the new construction of single-family Units (one [1] to three [3] Units per building), the Developer shall construct every Unit to meet or exceed the accessibility requirements of Section 2306.514 of the Texas Government Code, as amended from time to time.

3.04 NEEDS ASSESSMENT

The determination of whether the Annual Income of a family or individual occupying or seeking to occupy a Qualifying Unit complies with the requirements for Extremely Low-Income Households or Low- to Moderate-Income Households shall be made by the applicable housing authority in the CDBG-DR Program area prior to admission of such family or individual to occupancy of a Qualifying Unit.

IV. RESTRICTIVE COVENANT – RENT

4.01 RENT LIMITATIONS

The maximum monthly rent (which includes the tenant-paid portion of the rent, the Utility Allowance, and rental assistance payment) charged by Developer for the thirty-six (36) Qualifying Units, as specified in **Section 3.03(a)**, occupied by Low- to Moderate-Income Households, other than Extremely Low-Income Households, must be set at levels that are affordable to Low- to Moderate-Income Households. Such maximum monthly rent shall not exceed the higher of (a) High Home Investment Partnership (“HOME”) Rents (as defined under 24 C.F.R. 92.252 *et seq.*), as amended; as determined by HUD; and as published on an annual basis with adjustment for family size) or (b) exception rents allowed by HUD on project-based Section 8 properties pursuant to 24 C.F.R. Part 252(b)(2), as amended.

4.02 GROSS-RENT PROVISIONS – EXTREMELY LOW-INCOME HOUSEHOLDS

The maximum monthly rent (which includes the tenant-paid portion of the rent, the Utility Allowance, and rental assistance payment) charged by Developer for the zero (0) Qualifying Units occupied by Extremely Low-Income Households must be set at levels that are affordable to

Extremely Low-Income Households and shall not exceed the thirty percent (30%) maximum-rent limits determined by HUD and published on an annual basis with adjustment for family size.

V. ADMINISTRATION

5.01 CERTIFICATION BY DEVELOPER

During the Term, Developer shall, at least annually or as the GLO may otherwise approve, submit to the GLO (in a form prescribed by the GLO) a certificate of continuing compliance with all occupancy standards, terms, and provisions of this Agreement. The certification will also include statistical data relating to special-needs individuals' race, ethnicity, income, fair housing opportunities, and other information requested by the GLO.

5.02 MAINTENANCE OF DOCUMENTS

All Project Documents and any other report of records that Developer is required to prepare and/or provide to the GLO pursuant to this Agreement and any other applicable regulations must be retained for the periods set out in the CDBG-DR Regulations. If no specific period is set out, such document and records must be retained for three (3) years after the end of the Term or as otherwise specified by law or required by the GLO. All Project Documents shall at all times be kept separate and identifiable from any other business of Developer that is unrelated to the Property. All Project Documents shall be maintained in compliance with the CDBG-DR Regulations and any other requirements of the State of Texas. All Project Documents shall be kept in a reasonable condition for proper audit and shall be subject to examination and photocopying during business hours by representatives of the GLO, HUD, or the United States Comptroller General.

Developer agrees and acknowledges that any and all Project Documents are confidential in nature. Except as otherwise expressly required in this Agreement, the CDBG-DR Regulations, or the CDBG Multifamily Rental Housing Guidelines, Developer agrees not to disclose the Project Documents; any of the terms, provisions, or conditions thereof; or any information that relates to tenants' or applicants' income, social security numbers, employment statuses, disabilities, or other related matters and is deemed confidential under federal law or state law to any party outside Developer's organization, except a professional management agent for the Project or auditors as required by third-party financing. Developer further agrees that, within its organization, the Project Documents and their confidential information will be disclosed and exhibited to only those persons within Developer's organization whose position and responsibilities make such disclosure necessary.

5.03 COMPLIANCE REVIEW

During the Term, Developer agrees to permit the GLO, HUD, and/or a designated representative of the GLO or HUD to access the Property for the purpose of performing Compliance-Monitoring Procedures. In accordance with GLO Compliance-Monitoring Procedures, the GLO or HUD will periodically monitor and audit Developer's compliance with the requirements of this Agreement, the CDBG-DR Regulations, the CDBG Multifamily Rental Housing Guidelines, and any and all other Governmental Requirements during the Term. In conducting any compliance reviews, the GLO or HUD will rely primarily on information obtained from Developer's records and reports,

on-site monitoring, and audit reports. The GLO or HUD may also consider other relevant information gained from other sources, including litigation and citizen complaints.

5.04 HAZARDOUS MATERIALS: INDEMNIFICATION

- (a) Developer agrees to the following.
- (i) Developer shall not receive, store, dispose, or release any Hazardous Materials on or to the Property; transport any Hazardous Materials to or from the Property; or permit the existence of any Hazardous Material contamination on the Property.
 - (ii) Developer shall give written notice to the GLO immediately when Developer acquires knowledge of the presence of any Hazardous Material on the Property; the transport of any Hazardous Materials to or from the Property; or the existence of any Hazardous Material contamination on the Property, with a full description thereof.
 - (iii) Developer will promptly, at Developer's sole cost and expense, comply with any Governmental Requirements regarding the removal, treatment, or disposal of such Hazardous Materials or Hazardous Material contamination and provide the GLO with satisfactory evidence of such compliance.
 - (iv) Developer shall provide the GLO, within thirty (30) days of demand by the GLO, financial assurance evidencing to the GLO that the necessary funds are available to pay for the cost of removing, treating, and disposing of such Hazardous Materials or Hazardous Material contamination and discharging any assessments that may be established on the Property as a result thereof.
 - (v) Developer shall insure that all leases, licenses, and agreements of any kind (whether written or oral) now or hereafter executed that permit any party to occupy, possess, or use in any way the Property or any part thereof include an express prohibition on the disposal or discharge of any Hazardous Materials at the Property and a provision stating that failure to comply with such prohibition shall expressly constitute a default under any such agreement.
 - (vi) Developer shall not cause or suffer any liens (including any so-called state, federal, or local "Superfund" lien relating to such matters) to be recorded against the Property as a consequence of, or in any way related to, the presence, remediation, or disposal of Hazardous Materials in or about the Property.
- (b) **DEVELOPER SHALL, AT ALL TIMES, RETAIN ANY AND ALL LIABILITIES ARISING FROM THE PRESENCE, HANDLING, TREATMENT, STORAGE, TRANSPORTATION, REMOVAL, OR DISPOSAL OF HAZARDOUS MATERIALS ON THE PROPERTY. REGARDLESS OF WHETHER ANY EVENT OF DEFAULT OCCURS OR CONTINUES, WHETHER THE GLO EXERCISES ANY REMEDIES IN RESPECT TO THE PROPERTY, OR SUCH SITUATION RELATED TO HAZARDOUS MATERIALS WAS CAUSED BY OR WITHIN THE CONTROL OF DEVELOPER OR THE GLO, DEVELOPER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE GLO AND ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL LIABILITIES, SUITS, ACTIONS, CLAIMS, DEMANDS, PENALTIES, DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, CONSEQUENTIAL DAMAGES, INTEREST, PENALTIES, FINES,**

- AND MONETARY SANCTIONS), LOSSES, COSTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS) THAT MAY:**
- (i) NOW OR IN THE FUTURE (WHETHER BEFORE OR AFTER THE CULMINATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT) BE INCURRED OR SUFFERED BY THE GLO BY REASON OF, RESULTING FROM, IN CONNECTION WITH, OR ARISING IN ANY MANNER WHATSOEVER FROM THE BREACH OF ANY WARRANTY OR COVENANT IN THIS SECTION OR THE INACCURACY OF ANY REPRESENTATION OF DEVELOPER IN RELATION TO THIS AGREEMENT;**
 - (ii) BE ASSERTED AS A DIRECT OR INDIRECT RESULT OF THE PRESENCE OF ANY HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIAL CONTAMINATION ON OR UNDER THE PROPERTY OR THE ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, DISCHARGE, EMISSION, OR RELEASE OF ANY HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIAL CONTAMINATION FROM THE PROPERTY; OR**
 - (iii) ARISE OR RESULT FROM THE ENVIRONMENTAL CONDITION OF THE PROPERTY OR THE APPLICABILITY OF ANY GOVERNMENTAL REQUIREMENTS RELATING TO HAZARDOUS MATERIALS.**
- (c) SUCH LIABILITIES SHALL INCLUDE, WITHOUT LIMITATION, THE FOLLOWING:**
- (i) INJURY OR DEATH TO ANY PERSON;**
 - (ii) DAMAGE TO OR LOSS OF THE USE OF ANY PROPERTY;**
 - (iii) THE COSTS OF ANY DEMOLITION, REBUILDING, REPAIR, OR REMEDIATION OF ANY IMPROVEMENTS NOW OR HEREAFTER SITUATED ON THE PROPERTY OR ELSEWHERE, AND THE COST OF REPAIR OR REMEDIATION OF ANY SUCH IMPROVEMENTS;**
 - (iv) THE COST OF ANY ACTIVITY REQUIRED BY ANY GOVERNMENTAL AUTHORITY;**
 - (v) ANY LAWSUIT BROUGHT OR THREATENED, GOOD-FAITH SETTLEMENT REACHED, OR GOVERNMENTAL ORDER RELATING TO THE PRESENCE, DISPOSAL, RELEASE, OR THREATENED RELEASE OF ANY HAZARDOUS MATERIAL ON, FROM, OR UNDER THE PROPERTY; AND**
 - (vi) THE IMPOSITION OF ANY LIENS ON THE PROPERTY ARISING FROM THE ACTIVITY OF THE DEVELOPER OR DEVELOPER'S PREDECESSORS IN INTEREST ON THE PROPERTY OR FROM THE EXISTENCE OF HAZARDOUS MATERIALS OR HAZARDOUS MATERIAL CONTAMINATION ON THE PROPERTY.**
- (d) NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE FOREGOING INDEMNITY SHALL NOT APPLY TO MATTERS RESULTING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF DEVELOPER OR ANY EMPLOYEE, AGENT, OR INVITEE OF THE GLO THAT WAS ENGAGED IN AFTER THE GLO OR ANY THIRD PARTY HAS TAKEN TITLE TO, OR EXCLUSIVE POSSESSION OF, THE MORTGAGED PROPERTY.**
- (e) The covenants and agreements contained in this section shall survive the consummation of the transactions contemplated by this Agreement.**

5.05 AFFIRMATIVE MARKETING

Developer shall maintain and abide by an affirmative marketing plan that shall be designed to attract tenants from all racial, ethnic/national origin, sex, religious, familial status, and special-needs groups and shall require all press releases and written materials, advertising, or promoting of the Project to include, when feasible, the equal housing opportunity logo or slogan. Developer further agrees to maintain documents and records evidencing its compliance with said plan and the affirmative marketing requirements imposed by 24 C.F.R. Part 570.

5.06 FEDERAL AND STATE REQUIREMENTS

Developer shall comply with all CDBG-DR Regulations (excepting requirements waived by HUD, CDBG Multifamily Rental Housing Guidelines, and each Governmental Requirement as the same may be amended).

5.07 ACCESS AND INSPECTION

Developer will permit the GLO; its agents, employees, and representatives; HUD; the Inspector General; the General Accounting Office; the State Auditor's Office; and any other interested Governmental Authority to enter and inspect (at any and all reasonable times during business hours) the Project and all materials to be used in the rehabilitation thereof. Developer will allow the examination and copying of all of Developer's books, records, contracts, and bills pertaining to the Project. Developer will also cooperate and cause all contractors to cooperate with the GLO and its agents, employees, and representatives during such inspections. Nothing herein shall be deemed to impose upon the GLO any duty or obligation to undertake such inspections or any liability for the failure to detect or failure to act with respect to any defect that was or might have been disclosed by such inspections.

5.08 PROPERTY STANDARDS

Developer agrees that each Unit shall be constructed and maintained in accordance with the requirements set forth in the CDBG Regulations, Texas Minimum Construction Standards, Uniform Physical Condition Standards, and the CDBG Multifamily Rental Housing Guidelines.

5.09 REPORTS

Developer shall deliver, to the satisfaction of the GLO, the following:

- (a) A Unit status report on a quarterly basis or when otherwise requested by the GLO;
- (b) As the GLO may reasonably request during the Term or as necessary to assist the GLO in meeting its record-keeping and reporting requirements under the CDBG-DR Regulations during the Term, such data, certificates, reports, statements, documents, or further information (regarding the assets or the business, liabilities, financial position, projections, results of operations, or business prospects of Developer or such other matters concerning Developer's compliance with the CDBG-DR Regulations, the terms of this Agreement, and the CDBG Multifamily Rental Housing Guidelines)—including, without limitation, the following:

- (i) Records that demonstrate that the Project meets the property standards set out herein;
- (ii) Records required under Title 24, Section 570.490, of the Code of Federal Regulations for the Term; and
- (iii) Other federally required records including, without limitation, the following:
 - (1) Equal opportunity and fair housing records containing:
 - (A) Data on racial, ethnic, and gender characteristics of persons who have applied for, participated in, or benefited from any program or activity funded in whole or in part with CDBG-DR funds;
 - (B) Documentation of actions undertaken to meet the requirements of Section 3 of the Housing Development Act of 1968, as amended, (12 U.S.C. § 1701u) and its implementing regulations found at 24 C.F.R. §92.350;
 - (C) Documentation and data on the steps taken to continuously market to currently homeless persons and persons who have previously been homeless or are at risk of being homeless; and
 - (D) Documentation of the actions the Developer has taken to affirmatively further fair housing as required under 24 C.F.R. Part 570;
 - (2) Records indicating compliance with the affirmative marketing procedures and requirements under 24 C.F.R. Part 570;
 - (3) Records that demonstrate compliance with environmental review requirements in 24 C.F.R. Part 58 and the National Environmental Policy Act of 1969 (42 U.S.C. § 4321, *et seq.*);
 - (4) Records that demonstrate compliance with the requirements, as applicable, in 24 C.F.R. §570.606 and 24 C.F.R. Part 42 regarding displacement, relocation, and real property acquisition;
 - (5) Records demonstrating compliance with the labor requirements (including those regarding contract provisions and payroll records, as applicable) in 24 C.F.R. Part 570;
 - (6) Records concerning lead-based paint under 24 C.F.R. §570.487(c) in accordance with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4801, *et seq.*), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. § 4851, *et seq.*), and their implementing regulations found at 24 C.F.R. Part 58;
 - (7) Records of certifications concerning debarment and suspension under 24 C.F.R. §570.609;
 - (8) Records demonstrating compliance with the flood insurance requirements under 24 C.F.R. §570.605; and

- (9) Records demonstrating HUD's review and audits under 24 C.F.R. §570.493.

5.10 INFORMATION AND REPORTS REGARDING THE PROJECT

Developer shall deliver to the GLO, at any time within thirty (30) days after notice and demand by the GLO but not more frequently than once per quarter, the following:

- (a) a statement, certified by the Developer and in such reasonable detail as the GLO may request, of the leases relating to the Project and
- (b) a statement, certified by a certified public accountant or (at the option of the GLO) the Developer and in such reasonable detail as the GLO may request, of the income from and expenses of any one or more of the following:
 - (i) the conduct of any business on the Project;
 - (ii) the operation of the Project; or
 - (iii) the leasing of the Project, or any part thereof, for the last twelve-month (12-month) calendar period prior to the giving of such notice.

On demand and for the audit and verification of any such statement, Developer shall furnish to the GLO the executed counterparts of any such tenant leases and any other contracts and agreements that pertain to facilities located on the Property or that otherwise generate ancillary income for the Project.

5.11 OTHER INFORMATION

Developer shall deliver to the GLO, at any time within thirty (30) days after notice and demand by the GLO, any information or reports required by the laws of the State of Texas or as otherwise reasonably required by the GLO or HUD.

5.12 DISPLACED PERSONS

In the event there are any Displaced Persons as a result of any of the Units being acquired or constructed with CDBG-DR funds, Developer shall comply with the requirements and provisions of a valid relocation plan under the law.

VI. REPRESENTATIONS AND WARRANTIES OF DEVELOPER

6.01 REPRESENTATIONS AND WARRANTIES

Developer represents and warrants to the GLO the following.

- (a) Valid Execution. Developer has validly executed this Agreement, which constitutes the binding obligation of Developer. Developer has full power, authority, and capacity to (i) enter into this Agreement, (ii) carry out Developer's obligations as described in this Agreement, and (iii) assume responsibility for compliance with all applicable

- Governmental Regulations (including, without limitation, those in the CDBG-DR Regulations and the CDBG Multifamily Rental Housing Guidelines).
- (b) No Conflict or Contractual Violation. To the best of Developer's knowledge, the making of this Agreement and Developer's obligations hereunder:
- (i) will not violate any contractual covenants or restrictions (1) between Developer or any third party or (2) affecting the Property;
 - (ii) will not conflict with any of the instruments that create or establish Developer's authority if Developer is not an individual;
 - (iii) will not conflict with any applicable public or private restrictions;
 - (iv) do not require any consent or approval of any public or private authority that has not already been obtained; and
 - (v) are not threatened with invalidity or unenforceability by any action, proceeding, or investigation, pending or threatened, by or against (1) Developer, without regard to capacity; (2) any person with whom Developer may be jointly or severally liable; or (3) the Property or any part thereof.
- (c) No Litigation. No action, litigation, investigation, or proceeding that, if adversely determined, could individually or in the aggregate have an adverse effect on title to or the use, enjoyment, or value of the Property or any portion thereof or that could in any way interfere with the consummation or enforceability of this Agreement is now pending or, to the best of the Developer's knowledge, threatened against Developer.
- (d) No Bankruptcy. No case, proceeding, or other action in bankruptcy, whether voluntary or otherwise; reorganization; arrangement; composition; readjustment; liquidation; dissolution; or similar relief for Developer under any federal, state, or other statute, law, or regulation relating to bankruptcy, insolvency, or relief for debtors is pending or, to the Developer's best knowledge, threatened against Developer.
- (e) Prior Warranties, Representations, and Certifications. All warranties, representations, and certifications made, and all information and materials submitted or caused to be submitted, to the GLO in connection with the Project are true and correct, and there have been no material changes or conditions affecting any of such warranties, representations, certifications, materials, or other information prior to the effective date thereof.
- (f) Conflicting Agreements. Developer has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions herein. In any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.
- (g) Consideration. Developer has freely and without reservation placed itself under the obligations of this Agreement. The receipt of funding from the GLO in the form of CDBG-DR funds is an essential part of the consideration for this Agreement.
- (h) Conflicts of Interest. Neither any member, employee, officer, agent, consultant, or official of the Developer nor any member of their immediate families, during their tenure or for

- one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or any proceeds or benefits arising therefrom—except as allowed by 24 C.F.R. §570.611.
- (i) Debarment and Suspension. Neither Developer nor any of its principals is presently debarred, suspended, proposed for debarment or suspension, or declared ineligible by any federal department or agency or voluntarily excluded from participation in this transaction of the CDBG-DR Program.
 - (j) Flood Insurance. In the event that any of the Property is located in an area identified by the Federal Emergency Management Agency (“FEMA”) as having special flood hazards, Developer warrants and represents to the GLO the following:
 - (i) Either such area is participating in the National Flood Insurance Program or less than one (1) year has passed since the FEMA notification regarding such hazards and
 - (ii) In accordance with GLO or HUD guidelines, Developer will obtain flood insurance in an amount and duration prescribed by The Federal Emergency Management Agency’s Flood Insurance Program and maintain said flood insurance for the Term of the Agreement.

6.02 STATEMENT OF ENTRIES

Except as otherwise provided under federal law, any person who knowingly and willfully falsifies, conceals, or covers up a material fact by any trick, scheme, or device; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document despite knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry shall be prosecuted under 18 U.S.C. § 1001.

Under penalties of 18 U.S.C. § 287, 18 U.S.C. § 1001, and 31 U.S.C. § 3729, the undersigned Developer representative hereby declares that he/she has examined this Agreement and its Exhibit(s), and, to the best of his/her knowledge and belief, any statements, entries, or claims made by Developer are correct, accurate, and complete.

6.03 INDEMNIFICATION

Developer shall indemnify, defend, and hold harmless the State of Texas, the GLO, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all liability, actions, claims, demands, damages, proceedings, or suits, and all related costs, attorneys’ fees, and expenses (except those arising from the gross negligence or willful misconduct of such indemnified Parties) arising from, connected with, or resulting from any acts or omissions of, or any contracts related to the completion of this Project by, Developer or its officers, agents, employees, representatives, suppliers, contractors, Subcontractors, assignees, designees, order fulfillers, or suppliers of contractors or Subcontractors in the execution or performance of the Contract. Developer and the GLO shall furnish timely written notice to each other of any such claim. Developer shall be liable to pay all costs of defense, including attorneys’ fees. Developer shall coordinate its defense with the GLO and the Office of the Attorney General if the GLO or another Texas state agency is a named co-defendant with Developer in any suit. Developer may not agree to settle any such lawsuit or other claim without first obtaining the written consent of the GLO and, if applicable, the Office of the Attorney General.

VII. DEFAULT, ENFORCEMENT, AND REMEDIES

7.01 EVENTS OF DEFAULT

Occurrence of one (1) or more of the following events will, at the discretion of the GLO, constitute an event of default under this Agreement:

- (a) Developer defaults in the performance of any of its obligations under this Agreement or breaches any covenant, agreement, restriction, representation, or warranty set forth herein, and such default or breach remains uncured for a period of thirty (30) days after the GLO gives notice thereof (or for an extended period approved by the GLO if the default or breach stated in such notice can be corrected but not within such thirty-day [30-day] period, unless Developer does not commence such correction or commences such correction within such thirty-day [30-day] period but thereafter does not diligently pursue the same to completion within such extended period);
- (b) Developer is adjudged bankrupt or insolvent; a petition or proceeding for bankruptcy or for reorganization is filed against it and it admits the material allegations thereof; an order, judgement, or decree is entered and approves such petition; such order, judgement, or decree is not vacated or stayed within sixty (60) days of its entry; or a receiver or trustee is appointed for the Developer or the Property, land, or any part thereof and remains in possession thereof for at least thirty (30) days;
- (c) Developer sells or otherwise transfers the Property, in whole or in part, (except leases to Low- to Moderate-Income Households) without the prior written consent of the GLO.

7.02 ENFORCEMENT OF REMEDIES BY THE GLO

Upon an occurrence of an event of default, the GLO or HUD may (a) apply to any court having jurisdiction of the subject matter for specific performance of this Agreement, for an injunction against any violation of this Agreement, or for the appointment of a receiver to take over and operate the Property in accordance with the terms of this Agreement or (b) take any and all action at law, in equity, or otherwise for such relief as may be appropriate, including recapturing federal funds expended for the Project. The amount to be recaptured shall be decreased by one-twentieth (1/20) of the total amount expended for the Project for each year that Developer complies with this Agreement. It is acknowledged that the beneficiaries of Developer's obligations cannot be adequately compensated by monetary damages in the event of Developer default. The GLO shall be entitled to its reasonable attorneys' fees in any judicial action in which the GLO prevails. The GLO or HUD shall also be compensated for fees associated with additional compliance monitoring during corrective periods for noncompliance upon a default by Developer hereunder.

7.03 CUMULATIVE AND CONCURRENT REMEDIES

All rights, powers, and remedies of the GLO provided for in this Agreement or currently or hereafter existing at law, in equity, or by statute or otherwise shall be cumulative and concurrent. The exercise by the GLO of any of the right, power, or remedy provided for in this Agreement or

currently or hereafter existing at law, in equity, or by statute or otherwise shall not preclude the simultaneous or later exercise by the GLO of any or all of such other rights, powers, or remedies as permitted by law.

7.04 ENFORCEMENT AND REMEDIES OF PARTIES OTHER THAN THE GLO

The occupancy and maximum-rent requirements set forth herein shall inure to the benefit of Low-to Moderate-Income Households or Extremely Low-Income Households, and such requirements may be judicially enforced against Developer. Any of the persons or entities described above shall be entitled to judicially enforce this Agreement in the same manner in which the GLO may seek judicial enforcement and shall be entitled to reasonable attorneys' fees. Further, any deed, lease, conveyance, or contract made in violation of this Agreement shall be void and may be set aside on petition of one (1) or more of the Parties to the Agreement. All successors in interest, heirs, executors, administrators, or assigns shall be deemed Parties to this Agreement to the same effect as the original signer. When any such conveyance or other instrument is set aside by decree of a court of competent jurisdiction, all costs and expenses of such proceedings shall be taxed against the offending Party or Parties and shall be declared by the court to constitute a lien against the wrongfully deeded, sold, leased, or conveyed real estate until paid. Such lien may be enforced in such a manner as the court may order.

7.05 SOVEREIGN IMMUNITY

THE GLO IS AN AGENCY OF A SOVEREIGN STATE. ALL PARTIES TO THIS AGREEMENT ACKNOWLEDGE THAT THE GLO CANNOT WAIVE SOVEREIGN IMMUNITY AND THAT NO INTENT TO DO SO IS EXPRESSED OR IMPLIED IN THIS AGREEMENT OR ANY ANCILLARY AGREEMENT.

VIII. COVENANTS

8.01 COVENANTS RUNNING WITH THE LAND

During the Term, this Agreement and the covenants, reservations, and restrictions contained herein shall be deemed covenants running with the land for the benefit of the Developer and its successors, the GLO and its successors, and/or HUD and its successors and shall pass to and be binding on Developer's heirs, assigns, and successors in title to the Property. If the Property does not include title to land but includes a leasehold interest in such land, this Agreement and the covenants, reservations, and restrictions contained herein shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, assigns, and successors to such interests. Upon expiration of the Term and in accordance with the terms hereof, said covenants, reservations, and restrictions shall expire. During the Term, each contract, deed, or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to be executed, delivered, and accepted subject to such covenants, reservations, and restrictions—regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed, or other instrument. If a portion of the Property is conveyed during the Term, all such covenants, reservations, or restrictions shall run to each portion of the Property. Developer, at its own cost and expense, shall cause this Agreement to be duly recorded, filed, re-recorded, or re-filed in the Real Property Records of the county in which the Property is located. Developer shall pay, or cause to be paid, all recording, filing, or other taxes, fees, and charges. Developer shall comply with all such statutes and regulations as may be required by law

in order to establish, preserve, and protect the ability of the GLO or HUD to enforce this Agreement.

IX. MISCELLANEOUS

9.01 AMENDMENTS

This Agreement may not be amended or modified except by written instrument signed by the Developer and GLO (or, with the consent of the GLO, their respective heirs, successors, or assigns) and shall not be effective until it is recorded in the Real Property Records of the county in which the Property is located. Amendments processed in accordance with this section must adhere to the notice requirements presented in Section 9.02 below.

9.02 NOTICES

All notices required or permitted to be given under this Agreement must be in writing. Notices will be deemed effective upon deposit in the United States mail (postage paid, certified, return receipt requested) or with a common carrier (overnight, signature required) to the appropriate address indicated below.

Developer:

Developer Name
Street Address
City, ST Zip
Attention: Representative Name

GLO:

Jeff Crozier
Multi-Family Housing Manager
1700 N. Congress Ave.
Austin, TX 78701

With a Copy to the GLO:

Texas General Land Office
1700 N. Congress Avenue, 7th Floor
Austin, TX 78701
Attention: Contract Management Division

Notice given in any other manner shall be deemed effective only if and when it is received by the Party to be notified. Either Party may change its address for notice by written notice to the other Parties as herein provided.

9.03 ENTIRE AGREEMENT

This Agreement contains the entire understanding between the Parties hereto with respect to the subject matter thereof. There are no representations, oral or otherwise, other than those expressly set forth herein. Time is of the essence of this Agreement.

9.04 COOPERATION

Should any claims, demands, suits, or other legal proceedings arise from any matter relating to this Agreement and be made or instituted by any person against the GLO; officers, agents, or employees of the GLO; the State of Texas; or officers, agents, or employees of the State of Texas, Developer shall fully cooperate by providing all pertinent information and reasonable assistance in the defense or other disposition thereof. Developer may not agree to settle any such lawsuit or other claim without first obtaining the written consent of the GLO and, if applicable, the Office of the Attorney General.

9.05 CHOICE OF LAW

In the event the enforceability or validity of any provision of this Agreement is challenged or questioned, such provision shall be governed by, and shall be construed in accordance with, the laws of the State of Texas or federal laws, whichever may be applicable.

9.06 SEVERABILITY

This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules, and regulations. If a court of competent jurisdiction determines any provision of this Agreement is invalid, void, or unenforceable, this Agreement shall be construed as if such provision did not exist, and the remaining terms, provisions, covenants, and conditions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

9.07 COUNTERPARTS

This Agreement and any amendments hereto may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall constitute one and the same Agreement binding all Parties hereto, notwithstanding that all the Parties shall not sign the same counterpart.

9.08 SECTION TITLE

Section titles are for descriptive purposes only and shall not control or limit the meaning of this Agreement as set forth in the text.

9.09 CHANGE IN NEIGHBORHOOD

A substantial or radical change in the character of the neighborhood surrounding the Property will not extinguish the restrictive covenants of this Agreement. The restrictive covenants shall survive any and all changed circumstances, including (but not limited to) the following: housing-pattern changes, zoning amendments, the issuance of variances affecting the immediate or surrounding area of the Property, increased traffic or road conditions around the Property, enhancement of the value of the land or Property, growing industrial activity near the Property, encroachment of business areas near the Property, development of natural resources near the Property, financial downturn of the Developer, or commercialization of the neighborhood in question.

9.10 VENUE

This Agreement and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Agreement shall be in a court of competent jurisdiction in Travis County, Texas. Developer irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of *forum non conveniens*, that it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction with respect to this Agreement or any document related hereto.

NOTHING IN THIS SECTION SHALL BE CONSTRUED AS WAIVER OF SOVEREIGN IMMUNITY BY THE GLO.

SIGNATURE PAGES FOLLOW

DRAFT

**SIGNATURE PAGE FOR ATTACHMENT G TO GLO CONTRACT NO. CONTRACT NO.
LAND USE RESTRICTION AGREEMENT
2018 SOUTH TEXAS FLOODS AFFORDABLE RENTAL HOUSING PROGRAM**

GENERAL LAND OFFICE

COMPANY NAME

Mark A. Havens, Chief Clerk /

Deputy Land Commissioner

Date of execution: _____

Print Name: _____

Title: _____

Date of execution: _____

OGC _____

PM _____

SDD _____

DGC _____

GC _____

EXHIBITS TO THIS LAND USE RESTRICTION AGREEMENT:

EXHIBIT A – Legal Description of Property

EXECUTED

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME—the undersigned, a Notary Public in and for the State of Texas—on this day personally appeared _____, known to me to be the _____ of _____ and to be the person whose name is subscribed to the foregoing instrument. Such person acknowledged to me that the subscription of such name and execution of such instrument were the acts of said company for the purposes and consideration therein expressed and in the capacity herein stated.

GIVEN UNDER MY HAND AND SEAL OF THIS OFFICE this _____ day of _____, _____.

Notary Public, State of Texas

NOTE TO COUNTY CLERK: SECTION 12.006 OF THE TEXAS PROPERTY CODE, COMBINED WITH SECTION 2051.001 OF THE TEXAS GOVERNMENT CODE, AUTHORIZES THE RECORDATION OF THIS INSTRUMENT WITHOUT ACKNOWLEDGMENT OR FURTHER PROOF OF THE SIGNATURE OF THE COMMISSIONER OF THE TEXAS GENERAL LAND OFFICE.

EXHIBIT A - LEGAL DESCRIPTION

LEGAL DESCRIPTION

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EXHIBIT D: AFFECTED REGIONS MAP

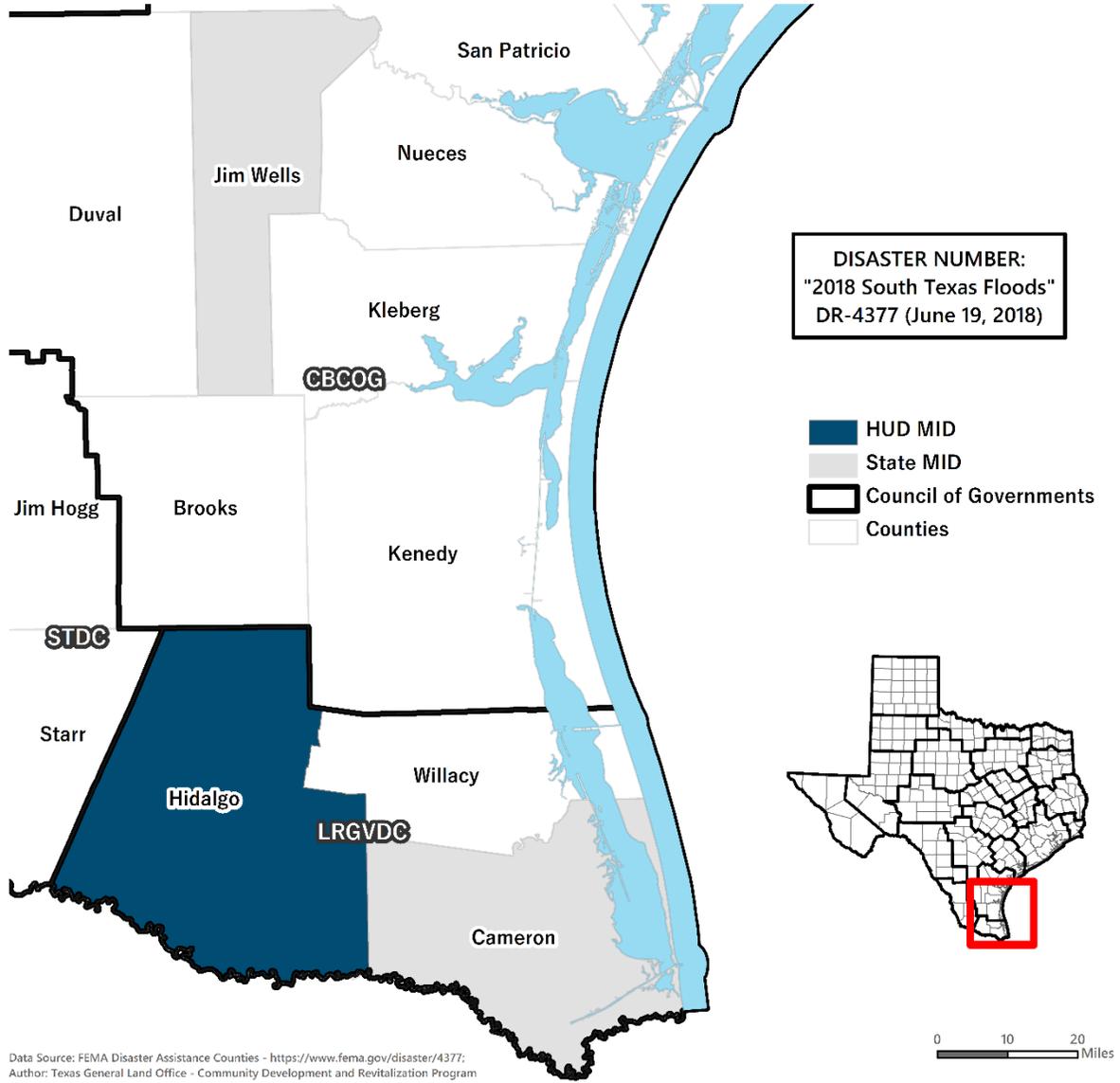


EXHIBIT E. MULTIFAMILY UNIFORM APPLICATION