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## **CDBG-DR Multifamily Housing Development Agreement**

AMONG

The Missouri Department of Economic Development

AND

Elevate Branson

AND

the City of Branson, Missouri

FOR THE

Elevate Branson Community Village Phase 2 in Branson, Missouri

THIS AGREEMENT for a Community Development Block Grant Disaster Recovery (“CDBG-DR”) Multifamily Housing Program Grant (the “Agreement”) is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2024, by and among the Department of Economic Development (“DED” or the “Applicant”), an executive branch agency of the State of Missouri (the “State”), the City of Branson, Missouri (the “City” or “Sub Applicant”), and Elevate Branson (the “Developer”) (each a “Party” and all together the “Parties”). The Agreement includes the DED CDBG Funding Approval Form.

WHEREAS, DED administers the State’s CDBG-DR program (the “Program”), which consists of funds allocated by the U.S. Department of Housing and Urban Development (“HUD”) to the State for unmet housing, infrastructure, and economic needs resulting from the national disasters of 2017; and

WHEREAS, in order to provide needed housing, the State’s Action Plan for Disaster Recovery (DR-4317) as approved by HUD contemplates using State CDBG-DR funds to construct new affordable multifamily rental housing; and

WHEREAS, Developer has applied for a CDBG-DR award for the Elevate Branson Community Village Phase 2 Multifamily Housing Project in Branson, Missouri (the “Project”), as defined in the Project Plan, attached (**Exhibit C**), and in accordance with applicable notices, regulations, and guidance from HUD, and has included Sub Applicant as part of its development team for the Project; and

WHEREAS, DED wishes to engage the Developer to assist DED in using a portion of the CDBG-DR award in accordance with applicable notices, regulations, and guidance from HUD; and

WHEREAS, this agreement is fully contingent upon a successful grant award. Should the project not be selected for funding by the CDBG DR Program, all herein shall be considered null and void; and

WHEREAS, this Agreement must be renegotiated within ten days of notification by DED if the amount of funding by the CDBG-DR Program is reduced to reflect the difference.

NOW, THEREFORE, it is agreed among the Parties as follows:

## I. SCOPE OF SERVICES

Sub Applicant and Developer will be responsible for carrying out CDBG-DR activities in a manner satisfactory to DED and consistent with all standards required as a condition of providing these funds. Program activities will include the following uses and corresponding activities eligible under CDBG-DR and as outlined in the Project Plan (**Exhibit C**) and incorporated herein by this reference:

### A. Sub Applicant and Developer Responsibilities

1. Sub Applicant and Developer will carry out this Project in accordance with HUD policies, procedures, guidance, and other provisions provided to the Sub Applicant and Developer by Applicant, and incorporated herein by reference. Sub Applicant and Developer each hereby agree to accept and follow any written amendments to the Project by Applicant that are made as a direct result of additional guidance or regulations provided by HUD, as well as any written amendments that are mutually agreed upon by the Parties.
2. Sub Applicant and Developer are responsible for providing the deliverables that are outlined in the Project Development Costs and Pro Forma (**Exhibit D**) and the Project Master Schedule (**Exhibit E**), incorporated herein by this reference, within the time periods and for the approximate budget amounts described therein. The total use of CDBG-DR funds provided under this Agreement may not exceed the total amount of CDBG-DR funds indicated in Section III.A.
3. Sub Applicant's and Developer's expenditures for Project delivery will be limited as follows, unless changes to the limits are agreed to in writing by the Applicant and Developer for the Project:
  - a. Minimum number of units to be developed and operated under the program: 20
  - b. Minimum number of units to be occupied by low-income tenants: 11
4. Sub Applicant and Developer each agree to adhere and comply to all CDBG-DR project compliance requirements, including but not limited to the following:
  - a. Maintain proper financial and program administration records related to the management of the Project as identified by Applicant and outlined in the Quarterly Progress Report Template (**Exhibit A**) attached and incorporated herein by this reference.
  - b. Complete the construction of the Project without exceeding the approved

Project Budget and Schedule, as outlined in the Project Development Costs and Pro Forma (**Exhibit D**) and Project Master Schedule (**Exhibit E**).

- c. The Project property shall be used solely as an affordable housing complex and shall contain 5 or more affordable housing units at any time prior to the expiration of the minimum 20-year period following the completion date (the "Affordability Period"). Sub Applicant and Developer shall, at all times during the Affordability Period, maintain compliance with the requirements described in the **Terms and Conditions (Exhibit B) at Section II**.
- d. Ensure that the Project meets regulations set forth by the applicable county and municipal codes and ordinances in order to obtain a building permit or certificate of occupancy.
- e. Ensure that no Project contractors or subcontractors are debarred federally on SAM.gov or by the State Office of Administration (as of the Agreement date, available by accessing "Suspended/Debarred Vendors" at: <https://oa.mo.gov/purchasing#mini-panel-purchasing-tabs3>).
- f. Maintain all records and files related to the Project and submit them to DED as required.
- g. Review all Project invoices completeness prior to submitting to DED for review and reimbursement.
- h. Sub Applicant and Developer shall timely file the Declaration of Deed Restriction and Covenant ("Deed Restriction") and shall adhere to it throughout the Affordability Period.
  - i. The Deed Restriction shall be recorded by the Developer along with the Project property deed and shall include for the term of the Affordability Period both a covenant to use the Project property for low-income housing and a restriction against a sale or other conveyance of the Project property for any non-low-income housing use.
  - ii. If the Deed Restriction is violated with regard to a property sale or other conveyance during the Affordability Period, DED shall have the right to recapture from Sub Applicant and Developer a pro rata portion of the CDBG-DR funds provided for the Project and may exercise any other remedies available to it.
  - iii. A certified copy of the filed-stamped Deed Restriction shall be provided to DED within 30 days of the real estate closing of the Project property, or of the execution date of this Agreement, whichever is later.

- i. Rental units will follow decent, safe, and sanitary housing quality standard requirements. Unless a higher percentage of units are specified in **Section I.A.3** above, at least 51 percent of rental units will be “Low-Income Units,” rented to households with an adjusted gross income of 80 percent or less of the area median income. Rents will be restricted on Low-Income Units so that the gross rent to be charged for a Low-Income Unit will not exceed 30 percent of the income limitation applicable to such unit, adjusted for unit size. Developer will adhere to income limits as published by HUD on an annual basis.
  - j. Throughout the Affordability Period, the rental for each unit in the Project must not exceed the Fair Market Rents (“Fair Market Rents”), as determined by HUD, and required by 42 U.S.C. § 1437f to be posted at least 30 days before they are effective and to be effective at the start of the federal fiscal year, which is generally October 1 (currently available at <https://www.huduser.gov/portal/datasets/fmr.html>).
5. Additional developer responsibilities include the following:
- 1) The Developer shall purchase and maintain performance bonds as prescribed in the amount of 100% of the amount in Exhibit D, table on page 1, titled Private Financing/Match, should Private Financing or Match become necessary for the completion of this project. In lieu of performance bonds, the Developer may provide an irrevocable letter of credit in a form and amount reasonably acceptable to Sub Applicant. This bond or irrevocable letter of credit is due within 10 days of award of grant.
  - 2) The Developer shall contract directly with its contractor, incorporating all applicable local, DED, and Federal requirements. The Developer shall also ensure that the contractor enters into written agreements with each subcontractor who does work for the project. These subcontracts must incorporate all Developer requirements, and shall be subject to review, upon request, by DED.
  - 3) The Developer must actively manage the construction process including scheduled inspections, approval of draws, approval of change orders prior to execution, and close out.
  - 4) The Developer must ensure cost verification is conducted. Cost verification is required and shall include profit, overhead, and general conditions. Change orders must also be accompanied by cost verification. Cost verifications are typically provided by 3rd party architects or cost estimators.
  - 5) The Developer shall ensure quality construction and cost reasonableness.
  - 6) The Developer shall ensure that prior to executing contracts with

contractors and subcontractors, no project contractors or subcontractors are debarred federally on SAM.gov or by the State Office of Administration. Screenshots with a date verification will need to be included in the project file or can be included as part of a signed contract.

- 7) The Developer shall issue the formal Notice to Proceed to the Contractor at the appropriate time.
- 8) Each individual contract will specify a construction schedule with progress inspections included. The contractor will notify the developer when they have reached the scheduled milestones. The developer will provide a projection of expenditures and milestones to DED. DED compliance specialists will compare expenditures and milestones against the Request For Funds (RFF) and will request updates if any differences arise.
- 9) The Developer shall schedule all inspections, including interim and post-construction inspections, and invite DED to attend.
- 10) DED may conduct monthly project site visits as part of compliance and Request for Funds (RFF)/payment draw process.
- 11) The Developer must complete and submit a comprehensive Section 3 Plan, signed by the Developer and the Contractor, to the Section 3 Administrator and Compliance Specialist for review and approval. The Section 3 Plan will include the Section 3 goals of the Developer and the Contractor.
- 12) The Developer must ensure the appropriate Wage Determination is used, when applicable.
- 13) For contracts resulting from sealed bidding, the effective date for Davis-Bacon Act (DBA) Wage Determination Modifications is no less than 10 days prior to bid opening. In addition, if a contract to which a general wage determination has been applied is not awarded within 90 days after bid opening, any modification published prior to contract award is effective unless an extension is obtained from DED. Modifications published less than 10 days before bid opening are not applicable if there is not sufficient time to notify bidders. Project Wage Determinations are locked-in on the date the contract is executed.
- 14) All contracts and agreements must contain language regarding cross-cutting issues which include, but are not limited to, equal opportunity, civil rights, fair housing, disability rights, Section 3, wage requirements, and general conditions. In addition, contracts should include a certificate of owner's attorney, required levels of insurance, architects/engineers' authority, period of service, scope of service, and completion time.

- a. All services and activities paid for with CDBG funds require the execution of a formal contract. All contracts at minimum must detail: scope of work, total cost, duration of the contract, compliance requirements, and reporting responsibilities.

## 6. Contractor Responsibilities

- a. Developers do not need to procure their contractors; however, developers must still demonstrate that costs are reasonable and that developer staff and/or their subcontractors are employing cost reasonableness principles.
- b. Contractor responsibilities include, but are not limited to:
  - i. The Contractor selected for the project will obtain all local and state permits in order to execute the project.
  - ii. The Contractor will ensure that all construction complies with local building and occupancy codes as applicable, the provisions of CDBG's Chapter 20 of the Administrative Manual, and any other appropriate federal, state, or local code requirements.
  - iii. The Contractor shall ensure compliance with all state and federal Labor Standards, prevailing wage laws, and assure that all employees and "self-employed" (1099 workers) are paid prevailing wages. Please refer to Section 20.6.12 on Prevailing Wages for Davis-Bacon Act (DBA) requirements and state prevailing wage requirements.
  - iv. The Contractor will post all notices in a public area. Public notices include Notice of Commencement, Notice of Public Work, Notice of Prevailing Wages, Notice of Completion, Preliminary Notices, Notice of Intent to Lien, Fund-Trapping Notices, Notice to Proceed, Request for Information Notice, Change Order Notice, Claim Notices, Stop Work Notice, Notice of Termination, and Retention Notice.
  - v. The General Contractor will purchase and maintain appropriate insurance policies and present bid, performance, and payment bonds as prescribed. For all contracts exceeding \$100,000 a bid bond of 5% of the contract award and performance and payment bonds in the amount of 100% of the contract award are required. In lieu of performance and payment bonds, a contractor may provide an irrevocable letter of credit in a form and amount reasonably acceptable to DED and Sub Applicant. Subcontractors will not be required to furnish bonds.
  - vi. The Contractor will adhere to the following Wage Requirements: 1) Wage Amounts: All developments of buildings that are four or fewer stories will be required to comply with the "Residential" wage class determinations. All developments that have buildings with five or more stories must comply with the "Building" wage class determinations. 2) Wage Classifications: Each labor classification (laborers and mechanics) has a wage determination list that contains a basic hourly wage rate and fringe benefit rates that have been determined to be prevailing for the same type of construction activities within the county covered by said wage determination. The classification is

determined based on the type of work being performed by the laborer during the pay period.

- vii. The Contractor will adhere to the provisions of CDBG’s Chapter 20 of the Administrative Manual to follow the appropriate procedures for Change Orders and Emergency Change Orders.

7. Levels of Accomplishment – Performance Goals and Timelines

- a. Sub Applicant and Developer shall complete the activities required under this Agreement in accordance with the following performance goals and time frames associated with each activity:

<u>Activity</u>	<u>Performance Goal</u>	<u>Performance Goal Completion Time Frame</u>
Project Budget	Develop and follow Project Budget	Incorporated into the Project Development Costs and Pro Forma <b>(Exhibit D)</b>
Project Schedule	Develop and follow Project Schedule to ensure timely completion	Incorporated into the Project Master Schedule <b>(Exhibit E)</b>
Affordability Period	Unit rent prices must not exceed Fair Market Rents during the Affordability Period	Minimum of 20 years from construction completion

**B. Applicant Responsibilities**

1. Applicant will monitor all Program activities of Sub Applicant and Developer to assure compliance with the terms of this Agreement, including all CDBG-DR requirements.
2. Applicant will process requests for disbursements of CDBG-DR funds, including necessary construction inspections, in a timely manner.
  - a. Applicant will clearly and promptly describe any deficiencies identified by Applicant that prevent a disbursement or portion of a disbursement from being approved.
  - b. Upon the written request of Sub Applicant or Developer, Applicant must promptly itemize and describe such deficiencies in writing.

3. Applicant shall ensure that information required by the Recovery Act (Public Law 115-123) is reported in the Disaster Recovery Grant Reporting, or DRGR, system or on [www.FederalReporting.gov](http://www.FederalReporting.gov) in a timely manner. Applicant must comply with the CDBG-DR performance reporting requirements and with any additional reporting requirements announced by HUD at any time during the duration of this agreement.

### **C. Income Eligibility Requirements**

In accordance with 24 CFR Part 570.208(a), Sub Applicant and Developer will use CDBG-DR funds to construct affordable housing units for rental to individuals whose incomes do not exceed 80 percent of area median income, unless otherwise required by Applicant. Sub Applicant and Developer must verify such incomes in the manner provided in this Agreement.

### **D. Sub Applicant and Developer Staffing**

The names and roles of Sub Applicant's key personnel executing the project are as follows:

Chief of Staff: Alexander Girard  
Director of Planning and  
Development: Amanda Ross  
Finance Director: Cherri Phifer  
Executive Assistant to the City  
Administrator: Cheyenne Stull  
City Attorney: Holly Dodge

The names and roles of Developer's key personnel executing the project are as follows:

President and Executive Director:  
Bryan Stallings  
Accounting Coordinator:  
Miranda Taylor

Any changes in the key personnel for Sub Applicant or Developer in this **Section I.D** assigned to the Project, or in their general responsibilities for the Project, are subject to the prior approval of Applicant.

### **E. Performance Monitoring**

1. Applicant will monitor Sub Applicant's and Developer's performance based on goals and performance standards as stated in the chart in **Section I.A.7.a** along

with all other applicable federal, state, and local laws, regulations, guidance, and policies governing the CDBG-DR funds provided under this Agreement.

2. Substandard performance as determined by Applicant will constitute noncompliance with this Agreement. If corrective action is not taken by the substandard- performing Party within a reasonable period of time after being notified by Applicant, contract suspension, recapture, or termination procedures will be initiated. Sub Applicant and Developer each agree to provide HUD, the HUD Office of Inspector General, the General Accounting Office, the State Auditor's Office, Applicant, and the Applicant's internal auditor(s) access to all records related to performance of activities in this Agreement.

#### **F. Progress Reports and Other Reports**

1. Sub Applicant and Developer shall provide quarterly progress reports in a timely manner in the Quarterly Progress Report Template (**Exhibit A**) provided by Applicant.
2. Sub Applicant and Developer will be required to complete progress reports during the construction phase. These reports will be required on a quarterly basis through construction closeout.
3. Sub Applicant and Developer will be required to complete annually a separate progress report for affordability and unit occupancy for each year throughout the Affordability Period. These annual reports must include income verification documents as required by **Section I.C**, with information from all individuals benefiting from this grant, including tenants and residents of the Project. Developer must verify income utilizing the 24 CFR Part 5 definition according to HUD's standards. This will require the collection of source documentation which could include, but is not limited to, the most recent IRS 1040 tax form from each source of income for the household.

## **II. TIME OF PERFORMANCE**

### **A. Start and Completion Dates**

1. Developer construction services shall start after completion of a NEPA Environmental Review and end not later than three years after the contingent grant award date, with all CDBG-DR funds allocated having been expended, unless Applicant in its sole discretion approves a later completion date, and is approved to extend in writing by Sub Applicant.
2. The term of this Agreement and its provisions shall be extended to cover any additional time period during which Developer is responsible for CDBG-DR reporting or compliance measures or remains in control of CDBG-DR funds or other

CDBG-DR assets, including Program Income, as defined in the attached **Terms and Conditions (Section II.E)**.

**B. CDBG-DR Funds Expenditure Deadline**

1. Sub Applicant and Developer must obligate the total amount of CDBG-DR funding in **Section III.A** within three years of the contingent grant award date.
2. If applicable to the Project, funds for property acquisition will be reimbursed by entering into a valid and CDBG-DR-compliant purchase agreement.
3. Funds for construction will be reimbursed based on actual construction costs.
4. Sub Applicant and Developer must submit requests for reimbursement on a monthly basis and shall be limited to one request per month between them.

**III. BUDGET**

**A. Program Budget**

The total amount of CDBG-DR funding allocated to Sub Applicant and Developer is not to exceed \$2,500,000 for the construction budget per awarded project, which amount represents an allocation of Applicant's total CDBG-DR funding contingent upon Sub Applicant and Developer's performance. Other professional services such as, Administration, Engineering Design, Architectural Design, Construction Inspection, Attorney Fees, etc. can be stacked on top of the application maximum of \$2.5 million. Professional services, including those listed above, can exceed the listed grant maximum amounts and still be included in the total grant award. The current funding category has a maximum of \$2.5 million, which will first be dedicated to construction of affordable housing. The professional services will still be included in the grant budget and can be awarded on top of the \$2.5 million construction cap, as necessary. See Exhibit D: Project Development Costs and Pro Forma.

**B. Additional Budget Details**

The Project Development Costs and Pro Forma (**Exhibit D**) includes detailed Project Budget and cash flow projections. Sub Applicant and Developer shall provide such supplementary budget information in a timely fashion in the form and content prescribed by Applicant. Sub Applicant and Developer shall escrow net operating cash flow of the Project to cover any anticipated negative variances.

**IV. PAYMENT**

**A. Maximum Reimbursement**

The Parties expressly agree and understand that the total amount of CDBG-DR funds to be reimbursed by Applicant under this Agreement shall not exceed the amount described in **Section III.A** and shall be associated with the budget line items in the Project Development Costs and Pro Forma (**Exhibit D**) and in accordance with performance. Developer shall submit a no-cost change order (an increase in one line item offset with a decrease in the same amount or cost in another item, reflected by general contractor's bids and objective criteria) reflecting any contemplated change in the line items. Applicant shall have seven (7) business days to disapprove, if Applicant fails to respond within the seven (7) business days the no-cost change order shall be deemed approved.

**B. Reimbursement Retainage**

Such reimbursement will be made in progress reimbursements (less DED's five percent retainage), as established by DED, subject to receipt of a requisition for reimbursement and a statement of work provided by Sub Applicant or Developer and agreement among DED, Sub Applicant, and Developer that Sub Applicant and Developer collectively have fully performed the work to be paid for in such progress payments in conformance with this Agreement.

**V. NOTICES**

**A. Addresses, Effectiveness, and Delivery Methods**

1. All instructions, notices, consents, demands, and any other communications required or contemplated by this Agreement shall be in writing, shall be effective on the date of receipt, and shall be sent by the U.S. Postal Service, postage prepaid, or electronic mail, as addressed to the respective Party as follows:

CDBG-DR Multifamily Housing Developer Program  
Re: Elevate Branson Community Village Phase 2  
PO Box 118  
Jefferson City, MO 65102-0118  
MoCDBG-DR@ded.mo.gov

Sub Applicant Name: City of Branson, Missouri  
Re: Elevate Branson Community Village Phase 2  
110 W Maddux St, Branson, MO 65616  
Sub Applicant Email: cphifer@bransonmo.gov

Developer Name: Elevate Branson  
Re: Elevate Branson Community Village Phase 2  
310 Gretna Rd, Branson, MO 65616  
bryan.stallings@elevatebranson.org

2. An email sent pursuant to this **Section V.A** shall not be deemed received absent either confirmation in writing from the receiving Party or confirmation from an electronic read receipt for such email. The Parties agree that such confirmation or receipt shall not be unreasonably withheld or denied.

#### **B. Changes of Address**

Notwithstanding any other provision of this Agreement concerning amendments, a Party may modify its information set forth in **Section V.A** upon written notice of such modification pursuant to that section to each other Party.

#### **VI. AUTHORIZED SIGNATORIES**

Each Party to this Agreement represents and warrants that the person executing the Agreement on its behalf has full power and authority to enter into this Agreement.

#### **VII. TERMS AND CONDITIONS**

The Parties shall be bound by the Terms and Conditions to this Agreement (**Exhibit B**), attached hereto and incorporated herein by this reference, and its attachments.

Capitalized words and phrases in the Terms and Conditions (**Exhibit B**), attached, have the same meaning as in this mainbody of this Agreement. Capitalized words and phrases in this main body of this Agreement have the same meaning as in the Terms and Conditions (**Exhibit B**), attached.

#### **VIII. ENTIRE AGREEMENT**

This Agreement, including its attachments, supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written among the Parties, or between DED and Sub Applicant or Developer, with respect to this Agreement and the Project. By way of signing this Agreement, the Parties each are bound to perform in accordance with this Agreement, including any amendments.

*[Signature pages follow.]*

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement as of the day and year indicated in the first paragraph of the Agreement.

**SUB APPLICANT:  
City of Branson, Missouri**

\_\_\_\_\_  
Larry D. Milton,  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Hillary Briand,  
City Clerk

\_\_\_\_\_  
Date

**Approved as to form by:**

\_\_\_\_\_  
Holly Dodge,  
City Attorney

\_\_\_\_\_  
Date

**DEVELOPER:  
Elevate Branson**

\_\_\_\_\_  
Bryan Stallings,  
President and Executive Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name,  
Title

\_\_\_\_\_  
Date

# Exhibits

Exhibit A: Quarterly Progress Report Template

Exhibit B: Terms and Conditions

Exhibit 1: Developer's Affidavit Pursuant to § 285.530 RSMo

Exhibit 1-A: Developer's Memorandum of Understanding

Exhibit 2: Sub Applicant's Affidavit Pursuant to § 285.530 RSMo

Exhibit 2-A: Sub Applicant's E-Verify Memorandum of Understanding

Exhibit C: Project Plan

Exhibit D: Project Development Costs and Pro Forma

Exhibit E: Project Master Schedule

Exhibit F: Consent and Release for Nonpublic Personal Information

## Exhibit A: Quarterly Progress Report Form

### Quarterly Performance Report

#### Performance Report - Activity

<b>Grant Number:</b>	<b>Project Number:</b>	<b>QPR End Date:</b>
<b>Sub Applicant/Developer Name:</b>	<b>DRGR Sub Applicant/Developer ActivityNumber:</b>	<b>DRGR Activity Type:</b>

	For the Quarter	Activity-to-Date
	(activity)	(activity)
Total Activity Budgeted, Disaster Recovery Grant:		
Total Activity Funds Drawn		
Total Activity Funds Expended		

Accomplishment Performance Measure	Proposed	Actual

	Beneficiary Performance Measure	Proposed	Actual	Income Level	
				Low (<50%)	Mod (<80%)
<b>Quarter</b>					
<b>Project-To-Date</b>					

	Current Quarter		Project-To-Date	
	Beneficiary	Hispanic	Beneficiary	Hispanic
<b>ETHNICITY &amp; RACIAL DATA CHART</b>				
White:				
Black/African American:				
Asian:				
American Indian/Alaskan Native:				
Native Hawaiian/Other Pacific Islander:				
American Indian/Alaskan Native & White:				
Asian & White:				
Black/African American & White:				
Am. Indian/Alaskan Native & Black/African Am.:				
Other:				
Unknown:				
Totals (must match # of participants benefitting above)				

**Activity Progress Narrative**

## Instructions

This form is to be used to report Quarterly Progress per Activity. If you have more than one Activity to report, each activity will require its own form. Submission is due on or before the 7<sup>th</sup> day of the month following the quarter end.

### Header Information:

Grant number – will be filled out by DED

Project number – This is the project number located on the Funding approval form in Box 2

QPR End Date – this is the end date for the quarter. Quarter end Dates – March 30, June 30, Sept 30, and Dec 30.

Sub Applicant/Developer name – This is the Sub Applicant/Developer name located on the funding approval form in Box 1

DRGR subrecipient Activity Number – This is the activity number located on the funding approval form.

DRGR Activity Type – fill in the type of activity that is being performed (ex: planning, administration ect.)

### Budget Information:

Total Activity Budgeted, Disaster Recovery Grant: the amount on the Funding Approval for the specific activity for the quarter and cumulative, not total grant award.

Total Activity Funds Drawn – enter funds drawn for the quarter and cumulative funds drawn for the Activity

Total Activity Funds Expended – Enter total funds expended by the responsible entity (this would also include costs that have already been paid and not yet reimbursed) for the quarter and cumulative.

### Performance Measures Information:

Accomplishments Performance Measures:

DED will fill in the white areas, Sub Applicant/developer will fill in the yellow areas

Number of Linear feet will only apply to Infrastructure activities.

Beneficiary Performance Measure:

DED will fill in the white areas, Sub Applicant/developer will fill in the yellow areas

### Activity Progress Narrative

The Activity Narrative section should highlight the status of the activity (e.g. has not been started, complete, in progress) as well as any special accomplishments or other unique information not reflected elsewhere in the QPR. If an activity did not have progress, obligations, or expenditures during a quarter, Sub Applicant/developer can use the space to communicate why the Activity has not progressed. Sub Applicant/developer should also use this space to explain anything out of the ordinary that would not make sense to auditors or the public when viewing the QPR. For example, it should include notes for adjustments to financial data such as receipt or draw revisions or prior period adjustments to performance data. Do not use same narrative each quarter, it should be updated for each quarter.

## **Exhibit B:**

### **Terms and Conditions**

Capitalized words and phrases in these Terms and Conditions have the same meaning as in the main body of the Agreement to which it is attached. Capitalized words and phrases in the main body of the Agreement have the same meaning as in these Terms and Conditions.

#### **I. GENERAL CONDITIONS**

##### **A. General Compliance**

1. Sub Applicant and Developer each acknowledge their responsibility for adherence to all applicable terms and conditions of this Agreement by Sub Applicant and Developer entities and contractors.
2. All statements and representations by Sub Applicant and Developer in the application process for CDBG-DR funds, this Agreement, or in any other writing delivered in connection with the performance of this Agreement, shall survive the execution and delivery thereof and shall be continuing representations unless and until revised by the Party making such statement or representation in a writing delivered to DED.
3. All participants in the CDBG-DR Program must have a data universal numbering system number (“DUNS Number”).
4. The DUNS Number must be reported to the Program for use in various grant reporting documents, and may be obtained by visiting the HUD website (at the time of this Agreement, DUNS information is available at: [https://www.hud.gov/program\\_offices/administration/grants/duns](https://www.hud.gov/program_offices/administration/grants/duns)).
5. Sub Applicant and Developer shall use funds available under this Agreement to supplement rather than supplant funds otherwise available.
6. Missouri law requires a grant recipient to identify its parent company.
  - a. Sub Applicant does not have a parent company.
  - b. Developer does not have a parent company.

##### **B. Prevailing Wage Rates**

DED will monitor the Project to ensure that Sub Applicant and Developer each meet the compliance obligation with the Davis-Bacon Act (40 U.S.C. §§ 276a, *et seq.*) and Related Acts and pay prevailing wage to any person performing construction labor on the Project site. Certified payrolls must be submitted weekly to DED, using form WH-347 or its equivalent with supporting documentation, from the time construction commences until Project completion.

### **C. Independent Contractor**

Nothing in this Agreement is intended to create or establish, or shall be construed in any manner as creating or establishing, the relationship of employer/employee between or among the Parties. Sub Applicant and Developer each shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. DED shall be exempt from payment of all unemployment compensation, FICA, retirement, life and medical insurance, and workers' compensation insurance, as Sub Applicant and Developer are independent contractors.

### **D. Workers' Compensation**

Sub Applicant and Developer each shall provide workers' compensation insurance coverage for all of their respective employees involved in the performance of this Agreement to the extent required by law, and their employees shall not be covered by the workers' compensation program established by the State for its employees.

### **E. Insurance and Bonding**

1. Without limiting any of the other obligations or liabilities of Developer, Developer will secure and maintain at its own cost and expense, throughout the duration of this Agreement and until the work is completed and accepted by DED, insurance of such types and in such amounts as may be necessary to protect Developer and the interests of DED and Sub Applicant against all hazards or risks of loss as specified in this Agreement or which may arise out of the performance of the Agreement, including Sub Applicant's performance.
2. The form and limits of such insurance, together with the underwriter thereof in each policy or endorsement, are subject to DED approval prior to start of Project construction. Regardless of such approval, it is the responsibility of Developer to maintain adequate insurance coverage at all times during the term of the Agreement. Failure of Developer to insure, or Developer's under-insurance, shall not relieve it of any contractual responsibility or obligation or liability in general or under the Agreement.
3. Developer's required certificates of insurance, including evidence of the required endorsements or the policies, shall be received by DED and Sub Applicant prior to the Developer's start of work on the Project site.
4. Such insurance policies shall name DED and Sub Applicant as an additional insured, with limits of liability not less than the sovereign immunity limits for Missouri public entities calculated by the Missouri Department of Commerce and Insurance, as of January 1 each calendar year and published annually in the Missouri Register pursuant to

§ 537.610 RSMo (see, <http://insurance.mo.gov/industry/sovimmunity.php>).

5. All such insurance policies shall require that the insurer provide 30 days' written notice prior to modification or cancellation of such insurance and that, in the event Developer fails to pay any premium on such policy when due, the insurance company will notify DED of such past-due payment status.
6. In addition to the other requirements in this **Section I.E**, Developer shall purchase and maintain such insurance as will protect it from all of the following claims which may arise out of, or result from, Developer's execution of the work for the Project, whether such work be by Developer, a subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable:
  - a. Claims under workers' compensation, disability benefit, and other similar employee benefit acts;
  - b. Claims for damages because of bodily injury, occupational sickness or disease, or death of an employee;
  - c. Claims for damages because of bodily injury, sickness or disease, or death of any person other than employees;
  - d. Claims for damages insured by usual personal injury liability coverage which are sustained by any person as a result of an offense directly or indirectly related to the employment of such person by the Developer or a subcontractor, or by any other person; and
  - e. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.
7. Developer may utilize the services of specialty subcontractors on those parts of the work, which, under normal contracting practices, are performed, by specialty subcontractors. In case any or all of this work is subcontracted, Developer shall require the subcontractor to procure and maintain all insurance required and shall require any and all subcontractors with whom it enters into a contract to perform work on the Project to protect DED and Sub Applicant through insurance against applicable hazards or risks and shall, upon request of DED or Sub Applicant, provide evidence of such insurance.
  - a. Developer shall be fully responsible to DED and Sub Applicant for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as the Developer is for the acts and omissions of persons directly employed by it.
  - b. Sub Applicant and Developer shall insert in any subcontracts the federal labor

standards provisions contained in these Terms and Conditions and such other clauses as HUD may require, and also a clause requiring its subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

- c. In the event the scope or extent of DED's and Sub Applicant's tort liability as a governmental entity as described in §§ 537.600 through 537.650 RSMo is broadened or increased during the term of this Agreement by legislative or judicial action, DED and/or Sub Applicant may require Developer, upon 10 days' written notice, to execute a contract addendum whereby Developer agrees to provide, at a price not exceeding Developer's actual increased premium cost, additional liability insurance coverage as DED and/or Sub Applicant may require to protect DED and Sub Applicant from increased tort liability exposure as the result of such legislative or judicial action. Any such additional insurance coverage shall be evidenced by an appropriate certificate of insurance and shall take effect within the time set forth in the addendum, or within 20 days following the written notice provided by DED and/or Sub Applicant in this **Section I.E.7**, whichever is earlier.
8. The Developer shall purchase and maintain performance bonds as prescribed in the amount of 100% of the amount in Exhibit D, table at bottom of page 1, titled Private Financing/Match, should Private Financing or Match become necessary for the completion of this project. In lieu of performance bonds, the Developer may provide an irrevocable letter of credit in a form and amount reasonably acceptable to Sub Applicant. This bond or irrevocable letter of credit is due within 10 days of award of grant.
  9. Developer shall, within five days following execution of Construction contract agreements, require Contractor to furnish a performance security deposit in the form of an original bond or an irrevocable letter of credit (no copy or facsimile is acceptable) issued by a surety company authorized to do business in the State of Missouri and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the U.S. Department of the Treasury Circular Number 570, cash, a bank draft, or an irrevocable letter of credit to the Missouri Department of Economic Development (any and each of the foregoing options a "Performance Security Deposit").
    - a. Such Performance Security Deposit or an irrevocable letter of credit shall be in an amount at least equal to 100 percent of the Construction contract agreement amount, conditioned upon the performance by the Developer and Contractor of all undertakings, covenants, terms, conditions, and agreements of the Agreement, and upon the prompt payment by Sub Applicant and Developer to all persons supplying labor and materials in the performance of the work provided by the Agreement. In lieu of performance and payment bonds, a contractor may provide a letter of credit in a form and amount reasonably acceptable to DED. The Performance Security Deposit shall be in effect through

the completion date in the Agreement at Section II.A.1.

- b. The Project name and number must be specified on such Performance Security Deposit.
- c. The Construction Contractor shall bear the expense of the Performance Security Deposit. In the event the Performance Security Deposit is in the form of a bond:
  - i. If at any time a surety on any such bond is declared a bankrupt or loses its right to do business in the state of Missouri or is removed from the referenced list of surety companies accepted on federal bonds, Developer shall, within 10 days after notice from DED to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to DED. No further payment to Sub Applicant or Developer shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond to DED. The premiums on such bond(s) shall be paid by the Contractor.

The bond(s) shall include the following language:

“It is expressly understood and agreed that in the event said principal defaults, the Missouri Department of Economic Development may enforce this bond; and said surety, its successors and assigns, shall, within 30 days of receipt of a written demand after principal’s nonperformance, pay to the Missouri Department of Economic Development the full penal sum of this bond as specified by the Department.”

- d. In the event this Agreement is amended to extend its term for any additional period, Developer shall, at its sole expense, maintain the validity and enforcement of the Performance Security Deposit for such extended term.

#### **F. Suspension, Termination, Non-compliance, and Repayment**

- 1. HUD or DED may terminate this Agreement in whole or in part if the Project no longer effectuates the Program goals, or HUD’s or DED’s priorities.
- 2. HUD or DED may terminate this Agreement in whole or in part with the consent of Sub Applicant, in which case the terminating Party and Sub Applicant must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.
- 3. This Agreement may also be terminated by Sub Applicant, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if, in the case of a partial

termination, HUD or DED determines that the remaining portion of the award under this Agreement will not accomplish the purposes of the Project, HUD or DED may terminate the Agreement in its entirety.

4. HUD or DED may suspend or terminate this Agreement if Sub Applicant or Developer materially fails to comply with any term of this Agreement, which includes but is not limited to noncompliance as follows:
  - a. Failure to comply with any of the statutes, regulations, ordinances, or provisions referred to in this Agreement, or such stated and federal statutes, regulations, executive orders, and HUD and Program policies or directives as may become applicable at any time;
  - b. Failure, for any reason, of Sub Applicant or Developer to fulfill in a timely and proper manner their respective obligations under this Agreement;
  - c. Ineffective or improper use of funds provided under this Agreement; and

Submission of reports to DED that are incorrect or incomplete in any material respect.

5. Whenever it is determined by HUD or DED to terminate this Agreement because Sub Applicant or Developer has materially failed to comply with the Agreement, the determining Party DED shall notify Sub Applicant and Developer in writing of the determination and the reasons for the termination, together with the effective date.
  - a. DED shall provide notice to a non-compliant Party and provide a copy of such notice to any other Party.
  - b. DED shall give a non-compliant Party 30 days' notice to come into compliance with the Agreement. If the non-compliant Party does not come into compliance during that time, the termination of this Agreement, in whole or in part as DED determines in its sole discretion, will take effect within 10 days from the compliance deadline.
  - c. The non-compliant Party shall perform any remedial actions determined appropriate by DED to correct the failure to comply, which actions may include, but are not limited to:
    - i. The repayment or reimbursement to DED of inappropriately used CDBG-DR funds;
    - ii. The return of any equipment, real property, materials, or supplies purchased or leased using CDBG-DR funds and repayment or reimbursement in full to DED; and

- iii. Any other actions DED deems appropriate.
6. In the event that Sub Applicant or Developer uses Program funds for any other purpose beyond the Project or fails to comply with any requirement established by the Program or by this Agreement; does not timely remedy such non-compliance upon notice from DED; and does not timely meet any repayment obligations, with such timeliness to be determined by DED in its sole discretion; then Sub Applicant and Developer shall be jointly and severally liable to return any remaining Program funds for the Project to DED and to repay DED for all Program funds provided for the Project as of the repayment date.
7. The State and DED reserve all remedies available to them at law and at equity, and any remedies expressly provided for in this Agreement are in addition to, and not in lieu of, any other remedies that may be available to either of them.
8. It shall be the Sub Applicant's and Developer's respective duties to take any and all legal efforts to cancel any Project obligations outstanding upon termination of the Agreement.
9. Following termination in whole or in part, DED, Sub Applicant, and Developer shall remain responsible for compliance with the closeout requirements in 2 CFR 200.343 and the post-closeout adjustments and continuing responsibilities in 2 CFR 200.344.

#### **G. Indemnification**

Sub Applicant and Developer shall hold harmless, defend, and indemnify the Applicant from any and all claims, actions, suits, charges, and judgments whatsoever that arise out of the Sub Applicant's and Developer's performance or nonperformance of the services or subject matter called for in this Agreement, except for claims, actions, suits, charges, and judgments arising from the Applicant's performance or nonperformance of its duties and obligations called for in this Agreement. Nothing in this Agreement shall be construed as a waiver in whole or in part of the State's or DED's sovereign immunity or their employees' official immunity.

#### **H. Choice of Law, Jurisdiction, and Venue**

1. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.
2. Sub Applicant and Developer each agree irrevocably, generally, and unconditionally, consent to be subject to the exclusive jurisdiction of the courts of the State of Missouri in Cole County, Missouri, or of the U.S. District Court for the Western District of Missouri, as selected by DED, in any action or proceeding with respect to this Agreement.

3. Sub Applicant and Developer each acknowledge and agree that any rights or claims against DED or its employees relating to this Agreement, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies allowable at law, if any, and subject to sovereign and official immunity. Sub Applicant and Developer each hereby waive their rights to pursue any equitable remedies related to this Agreement.
4. Sub Applicant and Developer each irrevocably consent to the service of process directed by any of the aforementioned courts and in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to their respective addresses for notices set forth in the Agreement at **Section V**, such service to become effective 10 days after such mailing. Nothing herein shall affect the right of DED to effect service of process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Sub Applicant or Developer, or any of their respective property in any other jurisdiction, and Sub Applicant and Developer each hereby expressly and irrevocably waive, to the fullest extent permitted by law, any objection which they respectively may now or hereafter have to the jurisdiction or laying of venue of any such litigation brought in any such court referred to in this **Section I.H** and any claim that any such litigation has been brought in an inconvenient forum.

## **II. ADMINISTRATIVE REQUIREMENTS**

### **A. Financial Management**

1. Sub Applicant and Developer agree to comply with 2 CFR Part 200 for non-Federal entities and agree to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary source documentation for all costs incurred.
2. Sub Applicant and Developer agree to comply with 2 CFR Part 200, Subpart E and agree to adhere to the cost principles therein. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

### **B. Documentation and Record Keeping**

1. Developer shall maintain client data demonstrating client eligibility for any services provided under this Agreement. Such data shall include, but not be limited to, client name, address, income level, or other basis for determining eligibility, and description of service or benefit provided. Such information shall be made available upon request to DED monitors and their designees for review.
2. Sub Applicant and Developer shall maintain all records required by federal regulations including as specified in 24 CFR 570.506. Such records shall include but

not be limited to:

- a. Records providing a full description of each activity undertaken;
  - b. Records demonstrating that each activity undertaken benefits low-, moderate-, or middle-income persons;
  - c. Records required to determine the eligibility of activities and the eligibility of all properties assisted;
  - d. Records required to document the occupancy of each unit and the sources and uses of funds;
  - e. Records documenting compliance with the fair housing and equal opportunity requirements for CDBG-DR, including but not limited to the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the Program;
  - f. Financial records as required by 24 CFR 570.502 and 2 CFR Part 200; and
  - g. Other records necessary to document compliance with 24 CFR Part 570, Subpart K.
3. Sub Applicant and Developer shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five years past the Affordability Period. Notwithstanding the preceding sentence, if there are claims, audits, negotiations, litigation, or other actions that involve any such records and that start before the expiration of the proscribed retention period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the retention period, whichever occurs later.
  4. Sub Applicant and Developer understand that client information collected under this Agreement is private, and the use or disclosure of such information, when not directly connected with the administration of DED's, Sub Applicant's, or Developer's responsibilities with respect to the Project, this Agreement, or the Program, is prohibited by law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent or guardian.
  5. All Sub Applicant and Developer records with respect to any matters covered by this Agreement shall be made available to HUD, the Comptroller General of the United States, the State Auditor's Office, DED, or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

- a. Any deficiencies noted in an audit report must be fully cleared by Sub Applicant and Developer, respectively, within 30 days after receipt of the audit. Failure of Sub Applicant or Developer to comply with applicable audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments or termination of this agreement.

In addition to future withholding, Sub Applicant and Developer each understand and agree that they shall be liable to the Program for any costs disallowed pursuant to any financial and/or compliance audit of funds received under this Agreement and that such reimbursement of disallowed costs shall be paid from funds that were not provided or otherwise made available under this Agreement or from a federal, state, or local funding source.

- b. Developer hereby agrees to have an annual agency audit, or a single audit, conducted in accordance with current DED policy concerning Developer audits and OMB Circular A-133.

### **C. Reporting and Payment Procedures**

1. Developer cannot charge direct or indirect costs of its staff. Developer will be reimbursed for internal costs through a developer fee approved as part of the Project and incorporated into the Project Development Costs and Pro Forma.
2. Sub Applicant and any other subrecipient may not earn a developer's fee.
3. DED will pay to Sub Applicant CDBG-DR funds available under this Agreement for Sub Applicant and Developer based upon information submitted by Sub Applicant or Developer and consistent with any approved budget and HUD and DED policy concerning payments.
4. Sub Applicant is responsible for the fiscal administration of CDBG-DR funds for the Project, including disbursement to Developer, in accordance with applicable law, the Program policy, HUD guidelines, and the terms of this Agreement. Payments will be made for eligible Project expenses actually incurred by Developer and will not exceed actual cash requirements. In addition, DED reserves the right to liquidate funds available under this Agreement for costs incurred by DED on behalf of Sub Applicant or Developer.
5. HUD, through the Disaster Recovery Grant Reporting, or DRGR, system, generally provides access to grant funds within three business days, or days that are not weekends or holidays, of an electronically submitted request by DED. To ensure expeditious implementation of activities, DED agrees to draw funds from the allocation and make payment to Sub Applicant on behalf of Developer within 10 business days of receipt of Developer's complete and properly submitted requests

for payment for the Project under this Agreement, if feasible. Sub Applicant and Developer agree to submit requests for payment in a timely manner in the form and at the times directed by DED.

#### **D. Use of and Reversion of Assets**

1. The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 200 and 24 CFR 570.503, 570.504, and 570.505, as applicable, which include but are not limited to the following:
  - a. Sub Applicant and Developer shall transfer to DED any CDBG-DR funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination, unless otherwise specified in the HUD closeout agreement with DED.
  - b. Real property under Sub Applicant's or Developer's control that was acquired or improved, in whole or in part, with funds under this Agreement shall be used in accordance with the CDBG-DR requirements for the Affordability Period and consistent with the affordability requirements. If Sub Applicant or Developer fails to use CDBG-DR-assisted real property in the Project in a manner that meets CDBG-DR affordability requirements within and for the prescribed period of time, Sub Applicant and Developer shall comply with the applicable sections under 24 CFR 570.503, 570.504, and 570.505.
  - c. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be Program Income, as defined below in **Section E**, prorated to reflect the extent to which funds received under this Agreement were used to acquire the equipment.
  - d. Equipment not needed by Sub Applicant or Developer for activities under this Agreement shall be either transferred to DED for the CDBG-DR program, or retained after compensating DED an amount equal to the current fair market value of the equipment less the percentage of non-CDBG-DR funds used to acquire the equipment.

#### **E. Program Income**

1. As defined in 24 CFR 570.500, program income ("Program Income") means "gross income received by the recipient [i.e., the Sub Applicant in this Agreement], or a subrecipient directly generated from the use of CDBG funds."
2. Program Income includes, but is not limited to, the following:
  - a. Proceeds from the disposition by sale or long-term lease of real property

purchased or improved with CDBG funds;

- b. Proceeds from the disposition of equipment purchased with CDBG funds;
  - c. Gross income from the use or rental of real or personal property acquired by the Sub Applicant or by a subrecipient with CDBG funds, less costs incidental to generation of the income (i.e., net income);
  - d. Net income from the use or rental of real property owned by the Sub Applicant or by a subrecipient, that was constructed or improved with CDBG funds;
  - e. Payments of principal and interest on loans made using CDBG funds;
  - f. Proceeds from the sale of loans made with CDBG funds;
  - g. Proceeds from the sale of obligations secured by loans made with CDBG funds;
  - h. Interest earned on such income pending its disposition; and
  - i. Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, when the assessments are used to recover all or part of the CDBG portion of a public improvement.
3. Program Income does not include:
- a. Any income received in a single program year by the Sub Applicant and any subrecipient if the total amount of such income does not exceed \$25,000; and
  - b. Amounts generated by activities that are financed by a loan guaranteed under Section 108 of the Housing and Community Development Act of 1974 ("Section 108") and meet one or more of the public benefit criteria specified at 24 CFR 570.209(b)(2)(v) or are carried out in conjunction with a grant under Section 108(q) in an area determined by HUD to meet the eligibility requirements for designation as an Urban Empowerment Zone pursuant to 24 CFR 597, Subpart B. Such exclusion shall not apply if CDBG funds are used to repay the guaranteed loan.
  - c. When such a guaranteed loan is partially repaid with CDBG funds, the amount generated shall be prorated to reflect the percentage of CDBG funds used.
  - d. Amounts generated by activities financed with loans guaranteed under Section 108 which are not defined as Program Income shall be treated as miscellaneous revenue and shall not be subject to any of the requirements of this part, except that the use of such funds shall be limited to activities that are located in a

revitalization strategy area and implement a HUD approved area revitalization strategy pursuant to 24 CFR 91.215(e). However, such treatment shall not affect the right of the Secretary of Housing and Urban Development to require the Section 108 borrower to pledge such amounts as security for the guaranteed loan. The determination whether such amounts shall constitute Program Income shall be governed by the provisions of the contract required by 24 CFR 570.705(b)(1).

4. DED will allow Sub Applicant to retain income for the following activities:
  - a. Offsetting operational and maintenance expenses that are incidental to the generation of the income;
    - i. Operational expenses include the salary of staff for the oversight and operation of the CDBG-DR funded facility, utilities, insurance, property taxes, security, maintenance, and marketing.
    - ii. Utilities include water, electric, gas, and internet.
  - b. Funding expansions to existing approved, eligible activities; and
  - c. Escrowing net operating cash flow.
5. Individual maintenance expenses in excess of \$15,000 shall be reviewed and approved by DED prior to using Program Income to cover the expense and shall be included in Developer's property management and maintenance schedule.
6. When Program Income is to be retained by Sub Applicant and used for the activities listed in **Section II.E.4** of these Terms and Conditions, all provisions of the Agreement shall apply to such specified activities. Substantially all other Program Income shall be disbursed for eligible activities before DED will disburse additional payments to Sub Applicant.
7. When Sub Applicant intends to use Program Income to fund a new, eligible activity, DED must review and approve the proposed activity and determine appropriate next steps, such as whether the Program Income needs to be remitted, transferred to the Program, and then reallocated for the activities via a new or amended Project agreement.
8. Upon expiration of this Agreement:
  - a. Any Program Income attributable to the use of the CDBG funds on hand at that time, or received after the Agreement's expiration, may be retained by Sub Applicant or Developer and used for the eligible activities described in **Section II.E.4** of these Terms and Conditions; and

- b. Sub Applicant shall transfer to DED within 30 days any CDBG funds on hand and any accounts receivable attributable to the use of CDBG funds; and
  - c. Any real property under Sub Applicant's control that was part of the Project or was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 shall be either:
    - i. In use to meet one of the national objectives in 24 CFR 570.208 until the expiration of the Agreement; or
    - ii. If not used as such through the expiration of the Agreement, Sub Applicant shall be liable to pay to DED an amount equal to the current market value of the Project property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the Project property. Such payment shall be Program Income to the Sub Applicant.
9. If Sub Applicant receives Program Income that will not be used for any eligible activities described in **Section II.E.4** in these Terms and Conditions or for another new, eligible activity approved by DED, Sub Applicant is required to remit such Program Income back to DED annually.
10. Sub Applicant is required to report all Program Income to DED quarterly in a method prescribed by DED.
11. Sub Applicant will report Program Income for 20 years during the Affordability Period.
12. Sub Applicant must also follow the Program Income provisions as defined in 24 CFR 570.502, 24 CFR 570.503, and 24 CFR 570.504, which govern the use of CDBG-DR funds.
- a. Sub Applicant shall maintain inventory records of all non-expendable personal property purchased with Program funds. All unexpended program assets (including unexpended Program Income, property, equipment, etc.) shall revert to DED upon termination of this Agreement.
  - b. Sub Applicant shall obtain written approval from DED for any costs for travel outside the area served with funds provided under this Agreement.
13. Sub Applicant shall impose on any contractors and subcontractors the obligations under this Agreement, specifically or by reference, so that such obligations will be binding upon each of its contractors and subcontractors. CDBG funds may not be provided to excluded or disqualified persons. Sub Applicant shall maintain oversight

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

#### **F. Procurement Compliance**

1. Sub Applicant and Developer shall comply with current Program policy concerning the purchase of equipment, materials, and services. Sub Applicant and Developer shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided pursuant to this Agreement. All unexpended Program assets (including unexpended Program Income, property, equipment, etc.) shall revert to DED upon termination of this Agreement.
2. Unless specified otherwise within this Agreement, Sub Applicant and Developer shall procure all materials, property, and services in accordance with the requirements of 2 CFR 200.318.

#### **G. Real property acquisition**

1. To the extent applicable to the Project, Sub Applicant and Developer shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, with respect to the Project.
2. To the extent applicable to the Project, Sub Applicant and Developer each agree to comply with the Recovery Act (Public Law 115-123) provisions concerning tenant protections applicable to CDBG-DR acquisitions of foreclosed property. Sub Applicant and Developer each must document their respective efforts to ensure that the initial successor in interest ("ISII") in a foreclosed upon dwelling or residential real property (typically, the ISII in property acquired through foreclosure is the lender or trustee for holders of obligations secured by mortgage liens) has provided bona fide tenants with the notice and other protections outlined in the Recovery Act (Public Law 115-123).
3. Sub Applicant and Developer will not use CDBG-DR funds to finance the acquisition of property from any ISII that failed to comply with applicable requirements unless Sub Applicant or Developer assumes the obligations of such ISII with respect to bona fide tenants. If Sub Applicant or Developer elects to assume such obligations, it may only do so if the tenant is still occupying the property and will provide any tenant displaced as a result of the CDBG-DR funded acquisition with the assistance outlined in 24 CFR 570.606.
4. If Sub Applicant or Developer knows that the ISII did not comply with the CDBG-DR tenant protection requirements and vacated the property contrary to the CDBG-DR

requirements, CDBG-DR funds cannot be used to acquire such property.

### **III. PERSONNEL AND PARTICIPANT CONDITIONS**

#### **A. Civil Rights**

1. Sub Applicant and Developer each agree to comply with applicable state and local civilrights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, section 104(b) and section 109 of Title I of the Housing and Community Development Act of 1974 as amended (the "HCDA"), section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107, and 12086.
2. Sub Applicant and Developer each agree to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279, and to comply with the applicable non-discrimination provisions in section 109 of the HCDA.
3. Sub Applicant and Developer each agree to comply with all federal regulations issuedpursuant to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), which prohibits discrimination against individuals with disabilities or handicaps in any federally assisted program.

#### **B. Affirmative Action, Unauthorized Employment, and Subcontractor Provisions**

1. Sub Applicant and Developer each agree that it shall be committed to carry out, pursuant to DED's specifications, an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. Developer shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.
2. Sub Applicant and Developer each will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement.
  - a. As used in this Agreement, the term "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. § 632), and "minority and women's business enterprise" means a business at least 51 percent owned and controlled by minority group members or women.

- b. Sub Applicant and Developer may rely on written representations by businesses regarding their status as minority and women-owned business enterprises in lieu of an independent investigation.
  - c. Evidence of a “good faith effort” includes, but is not limited to:
    - i. Recruiting prospective employees through the State’s job bank website, managed by the Missouri Department of Higher Education and Workforce Development;
    - ii. Keeping specific records of efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women; and
    - iii. Actively soliciting and providing DED with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications, and electronic media.
3. Sub Applicant and Developer each shall furnish and cause each of their respective subcontractors to furnish all information and reports required pursuant to this Agreement and shall permit access to their books, records, and accounts by HUD, the Comptroller General of the United States, the State Auditor’s Office, DED, or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data for purposes of investigation to ascertain compliance with the rules, regulations, and provisions as stated in this Agreement.
4. During the performance of this Agreement, Subcontractor and Developer each agree as follows:
- a. Sub Applicant and Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Sub Applicant and Developer 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:
    - i. 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.
    - ii. Sub Applicant and Developer agree 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. Sub Applicant and Developer will, in all solicitations or advertisements for employees placed by it or on its behalf, 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. Sub Applicant and Developer 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 a 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 Sub Applicant's or Developer's legal duty to furnish information.
- d. Sub Applicant and Developer will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the U.S. Secretary of Labor.
- e. Sub Applicant and Developer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the U.S. Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by HUD, the U.S. Secretary of Labor, and DED for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of Sub Applicant's or Developer's noncompliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Sub Applicant and/or Developer may be declared ineligible for further Government contracts or federally 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, or order of the U.S. Secretary of Labor, or as otherwise provided by law.
- g. Sub Applicant and Developer shall ensure that the hours of minority and female employment and training must be substantially uniform throughout the length of the Agreement, or any subcontract, and throughout each trade.

Sub Applicant and Developer each shall make a good faith effort to employ minorities and women evenly on each of their projects, including the Project. The transfer of minority or female employees or trainees from subcontractor to subcontractor or from the Project/a project to another project for the sole purpose of meeting Sub Applicant's and Developer's respective goals shall be a violation of the Agreement, or any subcontract, and the Executive Order 11246 and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- h. Sub Applicant and Developer each will:
  - i. Include the provisions of **Section IV.A** through **Section IV.B** in these Terms and Conditions, specifically or by reference, in every subcontract or purchase order unless exempted by rules, regulations, or orders of the U.S. Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, and take such action with respect to any subcontract or purchase order as HUD, the U.S. Secretary of Labor, or DED may direct as a means of enforcing such provisions including sanctions for noncompliance; and
  - ii. Require execution of the "Affidavit Pursuant to § 285.530, RSMo" (the "Affidavit") attached as **Exhibit 1** to these Terms and Conditions, including its exhibits and attachments, as part of every contract or purchase order for the Project, so that such provisions will be binding upon each of their own contractors or subcontractors.
- i. Sub Applicant and Developer each hereby affirm that they do not knowingly employ any person who is an unauthorized alien and, if employing persons in Missouri, affirm their enrollment and participation in a federal work authorization program (as of the date of this Agreement, the Employment Eligibility Verification Program ("E-Verify") authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended), and have provided documentation of such enrollment and participation in the form of their respective executed Affidavits and Memoranda of Understanding ("MOU"):
  - i. Developer's Affidavit is incorporated into this Agreement by reference as **Exhibit 1**; and
  - ii. Sub Applicant's Affidavit and MOU are incorporated into this Agreement by reference as **Exhibit 2** and **Exhibit 2-A**, respectively.

### C. Employment Restrictions

1. Sub Applicant and Developer are prohibited from using funds provided herein or personnel employed in the administration of the Project for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. The work to be performed under this Agreement is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 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.
3. Sub Applicant and Developer each agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Agreement, Sub Applicant and Developer each certify that they are under no contractual or other impediment that would prevent them from complying with the 24 CFR Part 135 regulations.
4. Sub Applicant and Developer agree 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.
5. Sub Applicant and Developer will not subcontract with any subcontractor where either has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
6. Sub Applicant and Developer each will certify that any vacant employment positions, including training positions, that are filled (1) after the Project is approved and before the Agreement 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 Sub Applicant's or Developer's obligations under 24 CFR Part 135.
7. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
8. Sub Applicant and Developer shall assist DED in obtaining all necessary documentation to support Section 3 goals from Project commencement to completion.

#### **D. Assignments and Subcontractors**

1. Neither Sub Applicant nor Developer shall assign or transfer any interest in this Agreement without the prior written consent of DED; provided, however, that claims for money due or to become due to Developer from DED under this

Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to DED.

2. Sub Applicant and Developer each will monitor all respective subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.
3. Sub Applicant and Developer each shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any respective subcontract executed in the performance of this Agreement.
4. Sub Applicant and Developer each shall undertake to ensure that all respective subcontracts let in the performance of this Agreement shall be awarded on a fair and reasonable basis in accordance with applicable CDBG-DR procurement requirements. Executed copies of all subcontracts shall be forwarded to DED along with documentation concerning the selection process.

**E. Political Activity, Conflicts of Interest, Lobbying, Copyright, and Religious Activity**

1. Sub Applicant and Developer each agree that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the United States Code.
2. Sub Applicant and Developer each agree to abide by the conflict of interest rules for federal awards, as provided by in 2 CFR Part 200 (in general), 24 CFR 570.489 and 24 CFR 570.611 (CDGB-specific). For purposes of this Agreement, a conflict of Interest relationship exists if any officer, director, board member, or authorized agent of any Project team member (including any consultant, general contractor, supplier, vendor, vendee, attorney, management agent, seller of the land, etc.):
  - a. Is also an officer, director, board member or authorized agent of any other Project team member;
  - b. Has any financial interest in any other Project team member's firm or corporation;
  - c. Is a business partner of an officer, director, board member, or authorized agent of any other Project team member;
  - d. Has a family relationship through blood, marriage or adoption with an officer, director, board member, or authorized agent of any Project team member; or

- e. Advances any funds or items of value to Sub Applicant or Developer.
3. Sub Applicant and Developer shall notify DED in writing, prior to contracting with any entity or individual that may have a Conflict of Interest, whether proven or presumed, and provide:
  - a. The name of the potentially conflicted business entity or individual;
  - b. The nature of the conflict;
  - c. The business purpose between such Party and the entity;
  - d. The company names of additional bids received, as well as the reason(s) those were not considered by such Party for the same work or service; and
  - e. The prevailing reason why the conflicted entity or individual is being considered.
4. Depending on the outcome of DED's consideration of the exceptions to conflict of interest factors outlined in 24 CFR 570.489(h)(4), DED will have the right, in its sole discretion, to require the cancellation of any contract between a Party and any such entity or individual that is deemed by DED's discretion to have an irreconcilable Conflict of Interest, at any time during the term of the contract, and all contracts between the Party and any entity or individual shall permit such cancellation for Conflict of Interest, should it arise.
5. Sub Applicant and Developer hereby certify that:
  - a. No federally appropriated funds have been paid or will be paid, by or on behalf of such Party, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;
  - b. If any funds other than federally 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, such Party will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
  - c. They will require that the language of paragraph (d) of this certification be

included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly:

*“Lobbying 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 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty.

6. If this Agreement results in any copyrightable material or inventions, HUD reserves the right to a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the work or materials for governmental purposes.
7. Sub Applicant and Developer each agree that they will comply with 24 CFR 570.200(j) so that CDBG-DR funds are not used to support inherently religious activities.

#### **IV. ENVIRONMENTAL CONDITIONS**

##### **A. Air and Water**

1. The Developer agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:
  - a. Clean Air Act, 42 U.S.C. § 7401, *et seq.*;
  - b. Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251, *et seq.*, as amended, including § 1318, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said § 114 and § 308, and all regulations and guidelines issued thereunder; and
  - c. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

##### **B. Flood Disaster Protection**

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4001), the Developer shall assure that for activities located in an area identified by the Federal Emergency Management Agency, or FEMA, as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

### **C. Lead-Based Paint**

Developer agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.487 or 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-DR-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under age seven.

The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted. Documentation shall be retained in the files for compliance with the notice requirements.

### **D. Historic Preservation**

Developer agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are 50 years old or older or that are included on a federal, state, or local historic property list.

## **V. ENVIRONMENTAL REVIEW**

All CDBG-DR assistance is subject to the National Environmental Policy Act of 1969 and related federal environmental authorities and regulations at 24 CFR 58.5 and 58.6.

## **VI. PERIOD OF PERFORMANCE AND FORCE MAJEURE**

### **A. Period of Performance**

1. Sub Applicant and Developer will complete Project closeout activities within 36 months of the grant award date.
2. Closeout documents will report all completion of all funded Project activities without respect to the funding source, and will successfully document the CDBG-DR national

objective, which is met by occupancy of the Project construction as described in this Agreement.

## **B. Force Majeure**

1. Except with respect to the obligation of payments under this Agreement, if any Party, after a good faith effort, is prevented from complying with any express or implied covenant of this Agreement by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, ordinance, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively 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 Parties of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration of such event.
2. The Party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event when possible to do so and shall resume performance at the earliest possible date. However, if non-performance continues for more than 30 days, DED may terminate this Agreement immediately upon notice to Sub Applicant and Developer.

## **VII. ELIGIBILITY AND ALLOWABLE COSTS**

Sub Applicant and Developer each will ensure and document that their CDBG-DR activities meet eligible use, allowable cost, and eligible activity requirements of CDBG-DR.

## **VIII. SEVERABILITY**

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

## **IX. INTERPRETATION**

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

All Parties to this Agreement have been represented by counsel, or have had the opportunity to be so represented. Therefore, this Agreement shall not be construed against any Party by virtue of the fact that it was prepared initially by counsel for one of the Parties. DED, Sub Applicant, and Developer specifically acknowledge that each Party understands the nature, terms, and object of this Agreement.

## **X. WAIVER**

The State's or DED's failure to act with respect to a breach by Sub Applicant or Developer does not waive the State's or DED's right to act with respect to subsequent or similar breaches and shall not constitute a waiver of such right or provision.

## **XI. PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of any Party the Agreement shall forthwith be physically amended to make such insertion or correction.

Exhibit 1

**Affidavit Pursuant to § 285.530 RSMo**

STATE OF MISSOURI )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

As used in this Affidavit, the following terms shall have the following meanings:

1. **Employee**: Any person performing work or service of any kind for hire within the State of Missouri.
2. **Federal Work Authorization Program**: Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986, or IRCA, Public Law 99-603.
3. **Knowingly**: A person acts knowingly or with knowledge,
  - a. with respect to the person’s conduct or to attendant circumstances when the person is aware of the nature of the person’s conduct or that those circumstances exist; or
  - b. with respect to a result of the person’s conduct when the person is aware that the person’s conduct is practically certain to cause that result.
4. **Project**: Elevate Branson Community Village Phase 2, Branson, Missouri.
5. **Unauthorized alien**: An alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. § 1324a(h)(3).

Before me, the undersigned authority, personally appeared Bryan Stallings, who, being duly sworn, states on the undersigned’s oath or affirmation as follows:

1. I am currently the President and Executive Director of Elevate Branson, and I am authorized to make this Affidavit on Company’s behalf.
2. I am of sound mind and capable of making this Affidavit and am personally acquainted with the facts stated in this Affidavit.
3. Company does not and will not, for the duration of the Project, have employees working in connection with the goods and services Company is providing for the Project.
4. Company does not knowingly employ any person who is an unauthorized alien in connection with the contracted goods and services for the Project.

\_\_\_\_\_  
Affiant's Signature

\_\_\_\_\_  
Notary Public's Signature

Subscribed and sworn before me on this date: \_\_\_\_\_

Notary Public's Seal:

Exhibit 2

**Affidavit Pursuant to § 285.530 RSMo**

STATE OF MISSOURI )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

As used in this Affidavit, the following terms shall have the following meanings:

1. **Employee**: Any person performing work or service of any kind for hire within the State of Missouri.
2. **Federal Work Authorization Program**: Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986, or IRCA, Public Law 99-603.
3. **Knowingly**: A person acts knowingly or with knowledge,
  - a. with respect to the person’s conduct or to attendant circumstances when the person is aware of the nature of the person’s conduct or that those circumstances exist; or
  - b. with respect to a result of the person’s conduct when the person is aware that the person’s conduct is practically certain to cause that result.
4. **Project**: Elevate Branson Community Village Phase 2, Branson, Missouri.
5. **Unauthorized alien**: An alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. § 1324a(h)(3).

Before me, the undersigned authority, personally appeared Sub Applicant, who, being duly sworn, states on the undersigned’s oath or affirmation as follows:

1. I am currently the Title at the City of Branson, and I am authorized to make this Affidavit on Organization’s behalf.
2. I am of sound mind and capable of making this Affidavit and am personally acquainted with the facts stated in this Affidavit.
3. Organization is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the goods and services Company is providing for the Project.
4. Organization does not knowingly employ any person who is an unauthorized alien in connection with the contracted goods and services for the Project.
5. Attached to this Affidavit is documentation (Exhibit 2-A) affirming Organization’s enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted goods and services.

\_\_\_\_\_  
Affiant's Signature

\_\_\_\_\_  
Notary Public's Signature

Subscribed and sworn before me on this date: \_\_\_\_\_

Notary Public's Seal:

## **Exhibit 2-A: Sub Applicant's E-Verify Memorandum of Understanding**

[Sub Applicant's eVerify Memorandum of Understanding Attached to Application]

# Exhibit C: Project Plan



Date: 04.09.2024

Subject Project: Elevate Branson, Tiny Home Village

Elevate Branson's mission "to elevate our community by empowering our neighbors to reach their full potential". Providing quality affordable housing is just one way of fulfilling their mission. This new tiny home park will provide dignity and independence for the residence as well as provide community.

The village will consist of twenty Energy Star rated, 390 square foot prefabricated homes. Construction will meet all current codes & current ADA criteria. Please see attached documents provided by SolSource.

Prefabricated construction cost:

Footing & Foundation	\$8235
Appliances	\$1840
HVAC	\$1322
Electricity	\$2817
Plumbing	\$2127
Paint & Trim	\$2376
Doors, Windows, Blinds	\$3291
Framing, Siding, Trusses	\$15,230
Sheetrock	\$1984
Cabinets & Countertops	\$3279
Tile & Surround	\$499
Railing & Porch	\$3300
Insulation	\$1915
Roofing	\$2285
Transportation	\$3000
In-Ground Utilities	\$11,500
Total:	\$65,000.00 per unit

Project alternative: New construction estimated cost.

New construction fee- 390sf x \$250= \$97,500.00 per unit

Please feel free to contact me should you find the need.

Sincerely,

Pete Long  
Design One Architects  
234 Corporate Place  
Branson, MO. 65616  
417.230.3563



4.9.24

DATE:  
PETER A LONG- ARCHITECT  
MO. #A-2010038151

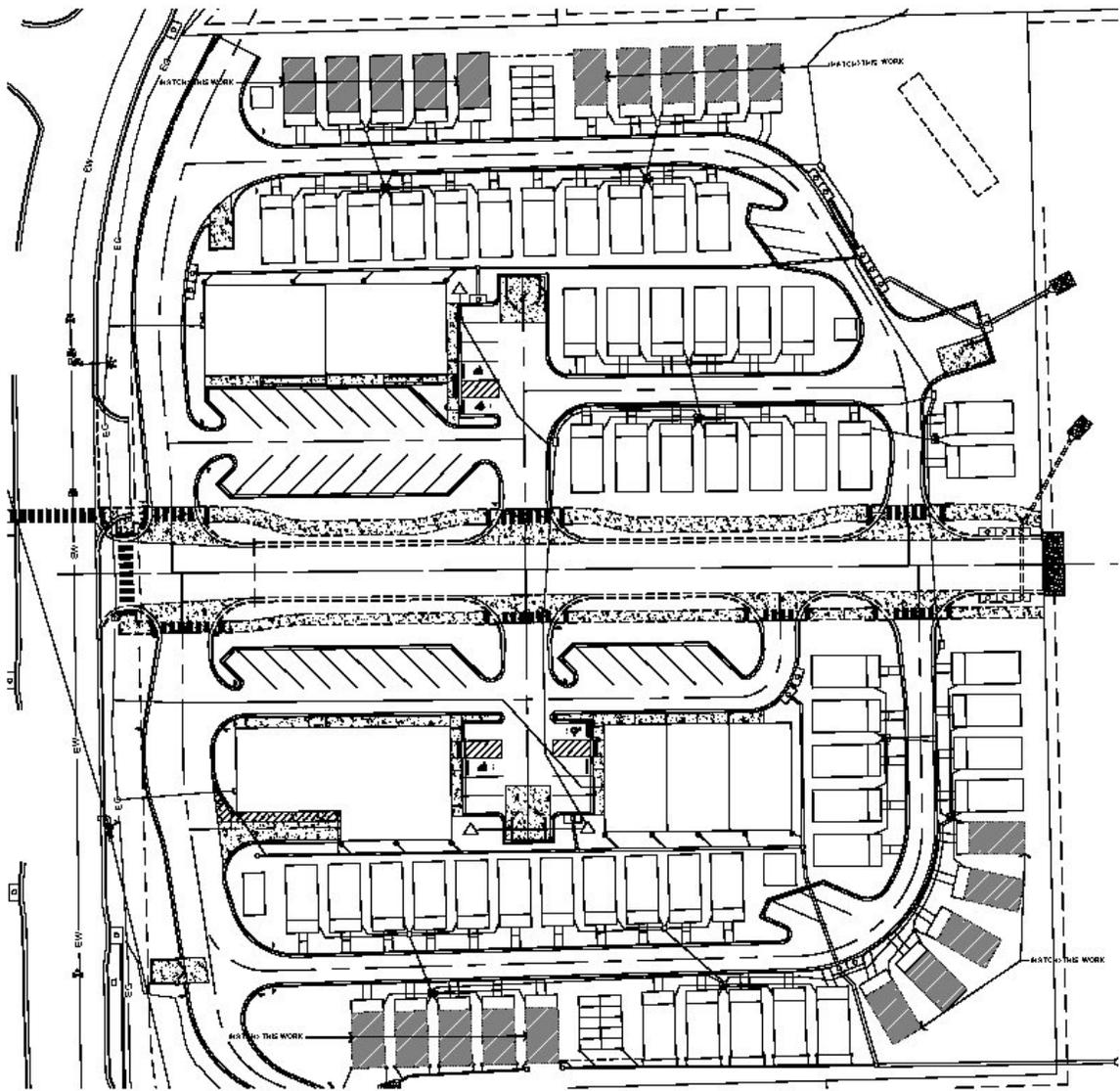














Our homes meet ENERGY STAR “U.S. DOE Zero Energy Ready Home” criteria. We are currently seeking certification for this, which also requires plant (the construction facility) certification. The “Zero Energy Ready Home” criteria ensures that the home is a high-performance home whose energy use could be mostly offset with a renewable energy system (solar panels). Our homes are solar-ready, and we have solar packages available as an option, both for grid-tied and off-grid applications.



Village I, 390 sq. ft.

**Energy Efficiency, Air Quality, and Moisture/Water Management features:**

Envelope & Glazing

- Wall Insulation: R-22
- Floor Insulation: R-30
- Ceiling Insulation: R-54
- Door U-factor: 0.40
- Window U-factor: 0.30

HVAC, Thermostat & Ductwork

- HVAC: Ductless Pioneer Diamante mini-split, 19 SEER (rated to -13°F)
- Programmable thermostat/remote

Optional Envelope Improvements

- Coefficient of heat transmission ( $U_o$ )  $\leq 0.49^5$

Optional Lighting, Appliances, & Water Fixtures

- LED lighting installed in all permanently installed fixtures
- Bathroom faucets  $\leq 1.5$  gallons per minute (gpm) and showerheads  $\leq 2.0$  gpm

- ENERGY STAR certified refrigerator

#### Reduced Thermal Bridging

- Ceiling: Energy Truss
- Wall: 1" Polyiso insulation foam (R-6.5) sandwiched between exterior OSB and structural LP Smartside

#### Air Sealing

- LED recessed lighting, below attic insulation
- Sealed exterior doors
- All plumbing, electrical, and HVAC penetrations through the floor or walls are sealed

#### Ventilation:

- Bathroom fans on timer and ENERGY STAR certified

#### Local Mechanical Exhaust

- Kitchen Range hood achieves  $\leq 100$ CFM
- Bath exhaust achieves  $\leq 50$ CFM and sound level is  $\leq 3$  sones

#### Air Filtration (HVAC/ductwork)

- N/A: Ductless Mini-split

#### Combustion Appliances

- N/A

#### Air Circulation

- Ceiling fans are ENERGY STAR certified

#### Water-Managed Building Assembly & Moisture Control

- Window and door openings fully flashed
- Step and kick-out flashing at all roof-wall intersections
- Drain pan and backflow prevention
- All piping placed on the conditioned side of the insulation
- Hard-surface flooring throughout the house

#### HVAC

- Dehumidification setting available on the HVAC Ductless Pioneer Diamante mini-split

#### Materials

- Congoleum Low VOC vinyl flooring

#### **Additional Features of our floor plan design and construction:**

- Generous kitchen pantry
- Bedroom which accommodates a queen-size bed

- Full-size range and over-the-range microwave
- 30" Refrigerator
- Built-in entertainment center
- Built-in 3 drawer bedroom dresser
- 2" white faux wood blinds installed

**"ADA Friendly" Features:**

- Walk-in, low threshold shower with seat, grab bar support and hand-held shower-head
- 36" wide front and bedroom doors, and 48" double pocket door going from bedroom to bathroom to increase turning radius for walkers and wheelchairs
- Electrical outlet near toilet for addition of bidet

**Options available:**

- Alcove for stacking washer/dryer
- Bi-fold or bypass closet in place of the 2 small closets
- 2nd door in bedroom (32" wide) in place of window
- Fire-suppression sprinkler system
- Roof mounted grid-tied or off-grid solar packages

**Structural Integrity**

- Homes are constructed with #1 Yellow Pine, 16" o.c. for floor joists and roof trusses. Walls are 16" o.c.

**CERTIFICATION:** Our homes all are certified as a modular home by a third party inspection company, who assures that the homes meet the requirements of the local building code at the location where the homes will be placed. We work with local municipal building departments to ensure that our homes meet the requirements of the current codes. Our third party inspection company provides sealed plans specific to the location where the homes will be placed.

For additional information, please contact me at the information below.

Thank you,

Vickie Boyt

[vickie.boyt@gmail.com](mailto:vickie.boyt@gmail.com)

(417)658-9898

## Exhibit D: Project Development Costs and Pro Forma

<b>Elevate Branson Tiny Homes Phase 2 Pro-Forma Summary</b>	
<b>Project Revenues</b>	
Number of Units	20
Average annual rent revenue per year (20 units)	\$240,000
Gross Sales (over 20 years)	\$4,800,000
Less Commissions, Fees, Overhead	\$0
<b>Net Project Revenues</b>	<b>\$4,800,000</b>
<b>Project Costs</b>	
Land Acquisition	\$0
Main Architectural Design	\$100,000
Construction (\$65,000 per unit) x 20 units	\$1,300,000
Additional On-Site Construction Costs	\$400,000
Construction Permitting and Fees	\$100,000
Construction Activity Deliverable Costs	\$40,000
Grant Administration	\$20,000
Contingency	\$40,000
<b>Total Project Cost</b>	<b>\$2,000,000</b>
Net Cash Flow to Developer	\$2,800,000
Grant Award	\$2,000,000
Private Financing/Match	\$0

## Exhibit E: Project Master Schedule

Removal of Grant Conditions: Months 1-3

Start of Project: Month 3

50% Construction Completion: Month 18

100% Construction Completion: Month 33

Project Closeout: Months 34-36

**Exhibit F: Consent and Release for Nonpublic Personal Information**  
**Missouri Department of Economic Development**  
**Community Development Block Grant-Disaster Recovery (CDBG-DR)**  
**Program**  
**Consent and Release for Nonpublic Personal Information**

**CONSENT AND RELEASE:**

I \_\_\_\_\_, do hereby consent to, and authorize, Missouri Department of Economic Development CDBG-DR Program (including the subrecipient I am applying to, partners, affiliates, agents, and contractors), to request, review and/or share any and all information received with respect to my application for the Program (“Nonpublic Personal Information” or “NPI”), whether provided by me or by third parties with whom I may or may not have a relationship, as needed to determine my eligibility for the Program and otherwise process the amount of assistance under the Program. I understand and acknowledge that Missouri Department of Economic Development CDBG-DR Program (including the subrecipient I am applying to, partners, affiliates, agents, and contractors), may obtain, use and disclose any NPI it receives with certain third parties (including certain financial institutions, insurers, other government agencies and credit bureaus) in connection with its processing of my application and determination of eligibility for assistance under the Program.

I agree to hold Missouri Department of Economic Development CDBG-DR Program, including the subrecipient I am applying to, partners, affiliates, agents, and contractors, harmless from and against all claims, actions, suits or other proceedings, and any and all losses, judgments, damages, expenses or other costs (including reasonable counsel fees and disbursements), arising from or in any way relating to any disclosure of my NPI.

I understand that I may revoke or terminate this consent and release at any time by giving written notice to Missouri Department of Economic Development CDBG-DR Program. I further understand and acknowledge that any such revocation (ending) of this Consent may affect my ability to receive assistance under the Program.

By completing and signing this form, I acknowledge and agree to the above.

\_\_\_\_\_  
Applicant/Owner/Occupant Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Applicant/Owner/Occupant Print Name

\_\_\_\_\_  
Applicant/Owner/Occupant Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Applicant/Owner/Occupant Print Name