

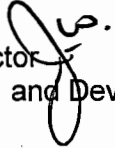


Interoffice Memorandum

AGENDA ITEM

September 30, 2021

TO: Mayor Jerry L. Demings
—AND—
County Commissioners

FROM: Jon V. Weiss, P.E., Director
Planning, Environmental, and Development
Services Department 

CONTACT PERSON: **Mitchell Glasser, Manager**
Housing and Community Development Division
407-836-5190

SUBJECT: October 26, 2021 – Consent Item
Affordable Housing Funding and Program Administration Agreement

Neighborhood Lending Partners of Florida, Inc., (NLP) is a well-known not-for-profit Community Development Financial Institution that provides financing for affordable housing communities. The agency offers technical assistance to project sponsors and efficiently works with governmental jurisdictions to leverage public and private funding for affordable housing. Since 2009, Orange County has been using the services of NLP to assist in the underwriting, closing, and servicing of low-interest rate and deferred loans for affordable housing projects.

Orange County is interested in continuing the use of NLP's expertise and technical assistance for underwriting, servicing, and project management. This includes services required for loan closings, draw requests, and project quality monitoring for multi-family affordable housing projects. The County has an increased need for NLP's services due to increasing Housing for All activities, especially as it relates to the Housing Trust Fund. The current agreement with NLP expired on September 1, 2021.

As a result, Orange County and NLP desire to enter into a renewed agreement for services. The term of the new Affordable Housing Funding and Program Administration Agreement will be three years, effective September 1, 2021, and the annual fees for services shall not exceed \$50,000 per year.

ACTION REQUESTED: **Approval and execution of Affordable Housing Funding and Program Administration Agreement between Orange County, Florida and Neighborhood Lending Partners of Florida, Inc., in an amount not to exceed \$50,000 per year for three years to provide technical services, loan underwriting, project management, and loan servicing. All Districts.**

JVW:MG
Attachment

BCC Mtg. Date: Oct. 26, 2021

**AFFORDABLE HOUSING FUNDING AND
PROGRAM ADMINISTRATION AGREEMENT
BETWEEN
ORANGE COUNTY, FLORIDA AND
NEIGHBORHOOD LENDING PARTNERS OF FLORIDA, INC.**

THIS AGREEMENT is entered into by ORANGE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, (hereinafter referred to as the "County") and Neighborhood Lending Partners of Florida, Inc., a Florida not-for-profit corporation, hereinafter ("NLP").

RECITALS

WHEREAS, the County desires to utilize the services of NLP to facilitate the making of low-interest and deferred loans to owners/developers of affordable housing projects in Orange County, Florida; and

WHEREAS, NLP is a community development financial institution (CDFI) and is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, exempt from federal income taxation that was established by its member area and regional commercial banks and financial institutions to assist its member banks in providing loans ("Project Loans") for construction and/or rehabilitation of affordable housing ("Projects") by underwriting and servicing such Project Loans, and monitoring the Projects financed thereby; and

WHEREAS, the repayment of Project Loans to be made by NLP will generate revenue for both NLP and the County to be used for future eligible affordable housing activities; and

WHEREAS, the County finds that creating affordable housing opportunities with NLP is a valid County purpose under the laws of Florida; and

NOW THEREFORE, in consideration of the mutual promises herein contained and set forth in the foregoing premises, which by reference are hereby incorporated into this Agreement, and intending to be legally bound hereby, the parties agree as follows:

I. SCOPE OF SERVICES

- A. NLP agrees to review proposals provided by the County from organizations wishing to acquire, construct, and/or rehabilitate affordable multi-family housing in the County. NLP's services will include loan underwriting, loan closing, loan servicing, compliance monitoring and project monitoring. The program guidelines that NLP and the County shall follow are contained in the attached guidelines made a part hereof as **Exhibit "A"** (as the same may be amended or replaced, the "Program Guidelines").

- B. NLP shall administer all Project Loans in the same manner that it administers Member Loans (as defined below).

NLP shall conduct a preliminary review of proposed affordable housing Projects. NLP will review the project team and perform a financial analysis of Projects using standard underwriting criteria. A preliminary review will summarize each Project's overall strengths and weakness and will provide recommendations, if possible, to strengthen perceived weakness through underwriting. If NLP believes that the weakness cannot be overcome through underwriting, NLP will recommend rejection of the Project(s).

- C. For Projects where NLP recommends acceptance of the Project after analyzing underwriting criteria, NLP will order an MAI appraisal, the cost of which will be the responsibility of the applicant/prospective borrower. Upon receipt, NLP will forward the appraisal to its appraisal review consultant for a technical review of the appraisal and the Project. The appraisal must substantiate the value of the Project, and the market conditions in order for the Project to proceed.
- D. An applicant/prospective borrower will be required to order a Phase I Environmental Assessment from NLP's list of approved engineers. Upon receipt of the environmental report, NLP will review the findings to determine whether the property (including the subsurface) is adversely affected by any hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos or asbestos-containing materials, polychlorinated biphenyls, petroleum or petroleum products or byproducts, flammable explosives, radioactive materials, lead-based paint, mold, infectious substances or raw materials which include hazardous constituents) or any other substances or materials which are included under or regulated by federal or state law. If additional testing is necessary, it will be the applicant's/prospective borrower's responsibility. The applicant/prospective borrower covers the costs of all environmental reports. The applicant/prospective borrower cannot proceed without satisfactory environmental reports, as recommended by NLP.
- E. NLP will recommend a course of action and a final loan/grant amount after careful review of the application, the appraisal and the environmental reports. Said recommendation will conform to NLP's standard underwriting criteria including a projected debt service ratio, which is commonly accepted by its member lending institutions.
- F. NLP agrees to provide on-going Project quality monitoring for the affordable communities, which are approved and supported by the County. NLP shall provide an impartial evaluation by October 31 of each year regarding the state of each Project, including an on-site annual physical inspection. The purpose of said monitoring is to insure that every community financed meets and maintains the projected financial performance, affordability levels and high quality of life standards that are expected from the County. NLP will provide a Credit Review

Memo, Property Underwriting Analysis and a Site Inspection Report highlighting the financial performance and the physical condition of each property over the preceding year.

In addition, NLP will require proof of insurance payment and real estate taxes. This documentation will be housed at NLP and open to the County for review at any time. The documentation will be subject to public inspection under Florida's public records law (Article I, Section 24, Constitution of the State of Florida and Chapter 119, Florida Statutes); provided, however, NLP shall have no obligation to the County to determine whether any particular request for such public inspection is exempt from such disclosure. Additionally, on or before October 31 of each year that this Agreement is in effect, NLP shall provide a copy of all Project Loan closing documentation to the County's Housing and Community Development Division for all Project Loans closing during the preceding fiscal year.

II. PROJECT LOANS

- A. County shall provide NLP with funds for loans approved in accordance with the Program Guidelines by NLP. NLP shall utilize the County's funds available in the NLP or County's loan account to make Project Loans meeting the requirements and approval process of Orange County Board of County Commissioners. Each Project Loan shall be secured by a mortgage and promissory note in favor of NLP, as servicing agent for the County. If such Project Loan is not secured by a first mortgage, the Project Loan shall be subordinate only to a mortgage or mortgages approved by NLP and the County. Project Loans shall be made only on Projects designated as affordable by the County and shall be permanent loans unless, prior to NLP's making a commitment to make a Project Loan, the County notifies NLP in writing to the contrary.

Each Project Loan shall be subject to the same documentation requirements as would be required by NLP for the same loan on the Project if such loan were funded by NLP out of its members' funds (a "Member Loan") rather than out of County funds. Such requirements include but are not limited to a Construction Loan Agreement, Replacement Reserve and Security Agreement (if such reserves are not held by any senior lender) and Multi-Family Mortgage, Assignment of Rents and Security Agreement

- B. The parties recognize and agree that, the notes and mortgages and other security documents (collectively "Security Instruments") executed in connection with any Project loan hereunder will be made in the name of NLP. By this Agreement, the County will be the sole beneficial owner of the loan documents and Project Loan(s) with 100 percent interest in the loan documents and the corresponding Project Loan(s) with NLP as the servicing agent for the County. The County will also retain ownership of any uncommitted County funds in the possession of NLP. NLP will be authorized to retain for its own benefit only such fees and other amounts as are authorized under this Agreement.

III. FEES

Except as NLP and the County otherwise agree in writing with respect to a particular Project Loan:

- A. Preliminary Underwriting Fee: The County will be charged by NLP a \$2,750 underwriting fee for each Project reviewed.
- B. NLP will charge the Borrower a \$2,000 application fee and \$3,000 underwriting fee per project loan.
- C. Re-underwriting Fee: the County will be charged by NLP \$1,000 each time NLP is asked to modify a preliminary or final underwriting report.
- D. Origination Fee: As compensation for underwriting and originating Project Loan(s), NLP shall be entitled to charge each borrower and retain for NLP's account, an origination fee of one percent (1%) of each Project Loan.
- E. Loan Servicing Fee: As compensation for servicing Project Loan(s) (whether permanent or construction loans), NLP shall be entitled to charge a fee of 50 basis points on the Project Loan amount (the "Servicing Fee"), which fee shall be paid out of the monthly interest payments collected on the Project Loan;
- F. Liability for Collection Fees: The County shall not be liable to NLP for any uncollected origination or program administration fees on any Project Loan, the risk of collection being borne solely by NLP.
- G. Payment. In addition to the amounts that NLP is entitled to receive under Section III, the County may request additional services, not to exceed a total of \$50,000 annually for all services, under this Agreement. NLP shall provide proper invoices and receipts to the County. Since these services will enhance Orange County's ability to create viable affordable housing communities, the County will pay invoices with supporting documentation of work performed by NLP beginning upon the approval and full execution of this Agreement.

IV. FUNDING AND METHOD OF PAYMENT

- A. Project Loans shall be made in accordance with the Program Guidelines in **Exhibit A**. Requests for funds to close approved loans during the term of this Agreement will be made in writing by NLP which request shall contain a statement affirming that, to the best belief of NLP, based upon the borrower's certifications (with invoices and other backup) expenditures were made in accordance with the Program Guidelines.

NLP (as set forth in the Program Guidelines) shall notify the County's Housing and Community Development Division in writing not less than ten (10) working days prior to the scheduled closing of an approved Project Loan. The County shall then disburse the requested amount of funds for the subject closing to NLP no less than one (1) business day prior to the scheduled closing. Sums not disbursed at closing and retained for disbursement to the borrower in periodic draws shall be retained in a separate account identifying the County's interest in the funds deposited therein and shall be so disbursed in accordance with NLP's loan administration procedures and as set forth in the Program Guidelines.

All disbursement records and any other documents related to loan services by NLP shall be fully documented and retained by NLP for five (5) years after the satisfaction of the loan to which the documents relate or at the conclusion of any claim, audit, or litigation commenced and not concluded prior to the end of that five year period, so as to be available, at the request of the County, for inspection or audit in accordance with the provisions of this Agreement and applicable law.

- B. The repayment and disposition of interest and principal payments made by each borrower to NLP shall be as follows:
 - 1. NLP shall remit net interest received (less its 50 basis point Servicing Fee) to the County monthly, along with a report summarizing loan activity.
 - 2. NLP shall remit principal payments received by NLP less any expenses to the County monthly along with a report summarizing loan activity.
- C. The County shall pay NLP for any and all costs and expenses of enforcing the Project Loan documents, including legal fees and expenses of counsel retained by NLP, and, upon foreclosure of the property or acceptance of a deed in lieu of foreclosure, the reasonable expenses incurred by NLP in holding such property as agent for the County for ultimate sale or other disposition as the County may direct, including property taxes and assessments, insurance, demolition of unsafe structures on the property, compliance and other costs, including reimbursement of amounts advance by NLP to pay taxes and insurance, demolition and compliance costs.
- D. Any funds not disbursed to NLP by the Program Termination Date (as such date may be extended) shall be retained by County.

V. TERMINATION

- A. Term of Agreement: The term of this Agreement shall be for three years beginning July-September 1, 2021. However, if services are not completed in three years, by mutual consent of both parties to this Agreement, this Agreement may be automatically renewed for an additional one-year period under the aforementioned stated terms and conditions unless terminated pursuant to the provisions hereof.

The loan servicing of all new loans made under this agreement survives termination of this Agreement unless cancelled by Orange County or NLP.

- B. Termination: Either party may terminate this Agreement without cause upon thirty (30) days prior to the renewal date by written notice of intent to terminate, delivered by certified mail, return receipt requested, or in person with proof of delivery.

If NLP breaches any provision of this Agreement and fails to cure such breach within thirty (30) days after written notice thereof, the County may terminate or suspend this Agreement in whole or in part immediately upon the completion of the applicable cure period. However, if such breach is not a breach of fiduciary duty or an unauthorized or improper use of Grants and cannot be cured within thirty (30) days, the County, at its option, may extend the cure period provided NLP begins such cure within the thirty (30) day period and diligently prosecutes such cure to completion within the extended period.

- C. Effect of Termination or Suspension: After receipt of a notice of termination or suspension from the County's Housing and Community Development Division, and except as otherwise directed, NLP shall:

1. Cease making any commitments of funds in the loan account to the extent specified in the notice of termination or suspension.
2. Immediately return all Uncommitted Funds to the County, including the balance of funds in the loan account.
3. Prepare all necessary reports and documents required under the terms of this Agreement, and any other Agreements with the County in which NLP is servicing a particular loan, including the semi-annual financial report of usage/income of Project Loan funds and the annual financial report, showing required information up to the date of termination.
4. Take any other reasonable actions related to the termination of this Agreement as directed in writing by the County.

Termination or suspension of this Agreement may not prevent NLP from funding any Project Loans that have been legally committed as of the effective date of such termination or suspension and will not affect the right or responsibility of NLP to enforce the terms of any outstanding Project Loan or mortgage, unless termination or suspension is for a breach of fiduciary duty, an unauthorized use of Grants or any other unlawful acts.

VI. ASSIGNMENT AND SUBCONTRACTS

- A. The parties deem the services to be rendered by NLP to be personal in nature. Except for engagement of a third party to review appraisal reports as provided in Paragraph 1.C. hereof or as otherwise as provided herein, NLP shall not assign or subcontract any rights or duties under this Agreement to any other party without prior written permission of the County.

VII. COMPLIANCE WITH LAWS AND REGULATIONS

- A. In the performance of this Agreement, NLP shall comply with the rules and regulations of the Program as well as laws and regulations pertaining to the State of Florida and the County Program, and with those county, state, and federal laws, ordinances, rules, regulations, and resolutions of governmental authorities described on **Exhibit B** attached hereto and made a part hereof (the "Governmental Requirements").

VIII. INDEMNIFICATION AND INSURANCE

- A. NLP agrees to maintain, on a primary basis and at its sole expense, the following types of insurance coverage with limits and on forms (including endorsements) as described herein in **Exhibit C**. These requirements, as well as the County's review or acceptance of insurance maintained by NLP, are not intended to, and shall not in any manner limit or qualify the liabilities or obligations assumed by NLP under this Agreement.
- B. NLP shall require and ensure that each of its contractors, sub-contractors and consultants providing services hereunder (if any) procures and maintains until the completion of their respective services, insurance of the types and to the limits specified herein.
- C. Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A- Class VIII or better.
- D. Required Coverage as stated in this Agreement and the Loan Documents:
 - 1. **Workers' Compensation** NLP shall maintain coverage for its employees with statutory workers' compensation limits, and no less than \$100,000 each incident of bodily injury or disease for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the County. Elective exemptions as defined in Florida Statutes Chapter 440 will be considered on a case-by-case basis. Any agency/vendor using an employee leasing company shall complete the Leased Employee Affidavit, herein as **Exhibit D**.

2. Commercial General Liability - NLP shall maintain coverage issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with a limit of liability of not less than \$500,000 per occurrence. NLP further agrees coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability, or Separation of Insureds. The General Aggregate limit shall either apply separately to this Agreement or shall be at least twice the required occurrence limit.
 3. Business Automobile Liability - NLP shall maintain coverage for all owned; non owned and hired vehicles issued on the recent version of the ISO form as filed for use in Florida or its equivalent, with limits of not less than \$500,000 per accident. In the event NLP does not own automobiles, NLP shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
 4. Professional Liability (if applicable) - NLP shall require architecture and engineering companies providing professional services to maintain professional liability (errors and omissions or medical malpractice) coverage with limits of not less than \$1,000,000 per occurrence.
- E. When a self-insured retention or deductible exceeds \$100,000, the County reserves the right to request a copy of NLP's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis NLP agrees to maintain a retroactive date prior to or equal to the effective date of this Agreement. In the event the policy is canceled, not renewed, switched to occurrence form, or any other event which triggers the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this Agreement NLP agrees to purchase the SERP with a minimum reporting period of not less than two (2) years. Purchase of the SERP shall not relieve NLP of the obligation to provide replacement coverage.
- F. By entering into this Agreement, NLP agrees to provide a waiver of subrogation or waiver of transfer of rights of recovery, in favor of the County for the workers' compensation and general liability policies as required herein. When required by the insurer or should a policy condition not permit NLP to enter into a pre-loss Agreement to waive subrogation without an endorsement, then NLP agrees to notify the insurer and request the policy be endorsed with a Waiver of Subrogation or a Waiver of Transfer of Rights of Recovery Against Others endorsement.
- G. NLP agrees that the County should be declared as an Additional Insured with a CG 2010 Additional Insured, or its equivalent to all commercial general liability policies called for in this Agreement. The additional insured shall be listed in the name of Orange County Board of County Commissioners.

- H. Any request for an exception to these insurance requirements must be submitted in writing to the County for approval, which County may decline to approve in the County's sole discretion.

IX. REPORTS AND RECORDS

- A. General Records and Project Loan Records: NLP shall keep orderly and complete records of its accounts and operations as they relate to the matters contemplated by this Agreement and shall keep open these records to inspection by County personnel at reasonable business hours during the entire term of this Agreement plus five (5) years after the termination date of this Agreement. At a minimum, NLP shall keep and make available to the County for inspection pursuant to the terms of this Agreement a file on each Project Loan, including all loan documentation, and records of the funds deposited in the loan account and the disbursements from such account. If any litigation, claim or audit is commenced prior to the expiration of the five-year period and extends beyond such period, the records shall be maintained until all litigation, claims or audit findings involving the records have been resolved. Any person duly authorized by the County shall have full access to and the right to examine any of said records during said period.
- B. Program Annual Report: NLP shall maintain all records regarding the Property and disbursement and repayment of the Project Loan. All records shall be retained for the period required by this Agreement.

NLP shall maintain income records related to funds loaned under this Agreement and shall submit financial reports of the usage and income of Project Loan funds to the County semi-annually. In addition, an annual financial report shall be submitted within one hundred twenty (120) days after each fiscal year during which this financial Agreement is in effect. Such report shall be audited by an independent certified public accountant retained and paid by NLP. NLP shall also provide to the County a compliance report, by October 31 of each calendar year the following information for each multi-family Project that received funds for the period ending September 30.

1. The number of people served by income, age, family size and race and data regarding any special needs populations such as farm workers, rural residents and the elderly.
2. The number of units, which have been issued a certificate of occupancy and the average cost of producing units.
3. The amount of rent charged for a rental unit based on unit size.
4. A concise description of the support services that are available to the residents.

5. All sources of subsidy used in the Project, such as federal, state or local grants.
6. Loans disbursed or expended per the County definition. If the funds are subject to other reporting requirements and the County notifies NLP, NLP shall use its best efforts to comply with such other reporting requirements as well.

X. COMPLIANCE WITH APPLICABLE LAWS

- A. Civil Rights: NLP shall not discriminate against any employee or person served on account of race, color, sex, age, religion, ancestry, national origin, handicap or marital status in the performance of this Agreement.
- B. Applicable Laws: NLP shall comply with all applicable federal, state and local laws, rules, regulations and order in the performance of its duties hereunder.
- C. Licenses and Permits: NLP shall obtain and possess throughout the term of this Agreement all licenses and permits applicable to its operations under federal, state and local laws and shall comply with all fire, health and other applicable regulatory codes.

XI. INDEPENDENT CONTRACTOR RELATIONSHIP

- A. NLP is, and shall be, in the performance of all work, services and activities under this Agreement, an independent contractor, and not the employee, agent or servant of the County. NLP does not have the power or authority to bind the County in any promise, agreement or representation other than as specifically provided for in this Agreement. NLP shall be responsible to the County as all the work or services performed by NLP or any person or firm engaged by NLP to perform work in fulfillment of this Agreement.
- B. The County shall not be liable to any person, firm, or corporation who contracts with or who provides goods or services to NLP in connection with the services it has agreed to perform or for debts or claims accruing to such parties against NLP, and there is no contractual relationship, either expressed or implied, between County and any other person, firm or corporation supplying any work, labor, services, goods, or materials to NLP as a result of its services to County hereunder.

XII. MISCELLANEOUS

- A. Amendments: Any alterations, variations, modifications or waivers of provisions of this Agreement shall be valid only when they have been reduced to writing, duly signed by the legally authorized representative of both parties, and attached to the original of this Agreement. The parties agree to renegotiate this Agreement if

revision of any applicable laws or regulations make changes in this Agreement necessary.

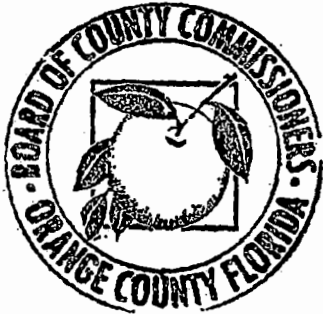
- B. Entire Agreement: This Agreement contains all of the terms and conditions agreed upon by the parties. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.
- C. Unavoidable Delay: County funds provided under the agreement shall be expended by NLP within a reasonable time frame for the completion of each Project. Neither party shall be liable for any failure of or delay in the performance of its obligations under this Agreement to the extent that such failure or delay is due to circumstances beyond its reasonable control, nor shall any such failure or delay give the other party the right to terminate this Agreement. Each party shall use its best efforts to minimize the duration and consequences of any failure of or delay in performance resulting from such event.
- D. Validity and Enforceability: If any court finds any part of this Agreement invalid or unenforceable, such invalidity or unenforceability shall not affect the other parts of this Agreement. If rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can continue to be effected, this Agreement is declared severable.
- E. NLP Liability: NLP shall exercise its duties hereunder according to industry standards and shall uphold a standard of care applicable to similarly situated underwriting organizations. Notwithstanding the foregoing, neither NLP nor its members shall be liable to the County for any loss or expense resulting from any Project Loan or default hereunder unless such default or loss is a direct result of gross negligence or willful misconduct on the part of NLP. NLP employees shall refrain from personal business activity that may conflict with proper execution of the fiduciary responsibilities to the County under this contract.
- F. Enforcement: Any enforcement procedures under any Project Loan, with prior County approval, may be taken by NLP for the benefit of the County so long as the County has agreed to pay reasonable cost of any such enforcement proceeding, including attorney fees and costs. Alternatively, the County may make its own enforcement proceedings for any Project Loan.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officials.

ORANGE COUNTY, FLORIDA

BY: Board of County Commissioners



BY: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

ATTEST: Phil Diamond, CPA, Orange County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Smith*
Deputy Clerk

Date: October 26, 2021

NEIGHBORHOOD LENDING PARTNERS OF FLORIDA, INC.,

By: M Fellows
Executive Vice President

Date: 8-26-2021

STATE OF FLORIDA
COUNTY OF ~~ORANGE~~ Hillsborough

Personally appeared before me, the undersigned authority Mary Fellows well known to me and known by me to be the Executive Vice President of Neighborhood Lending Partners of Florida, Inc., a Florida non-profit corporation, and acknowledged before me that he/she was duly authorized so to do. She is personally known to me or has produced

WITNESS my hand and official seal in the County and State last aforesaid this 26th
day of August, 2021

Leeanne Devine
Notary Public

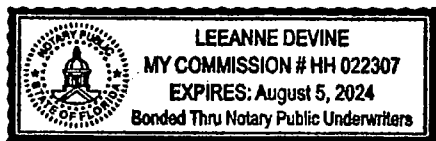


EXHIBIT A

PROGRAM GUIDELINES

PURPOSE

The Program Funds may be used in conjunction with NLP's Loan Program, to provide financing for multi-family permanent loans. Funds from the County Program are disbursed to NLP on a transactional basis in accordance with the Developer's Agreement for the Project Loan.

The funds are available to for-profit and not-for-profit developers who build or substantially rehabilitate rental projects that include units deemed affordable by Orange County. Funds must be expended in a manner consistent with the County's affordable housing goals and objectives.

All properties receiving funding under the Program are for very worthy and needed housing properties. Specific review criteria are utilized for loans offered under this program to ensure accountability. Each property funded under the Program has a portion of the units reserved for very-low or low-income residents and meets Orange County's affordability criteria.

LOAN PRODUCT

Permanent Loans for construction and/or substantial rehabilitation of multi-family housing.

Loan Terms: Notes and mortgages evidencing and securing NLP's loans to developers contain terms and provisions typically found in commercial loan documents produced by national banks in Florida.

Term: Up to 40-year maturities.

Amortization: Up to 30 years for loans to finance the construction of new buildings and up to 25 year for loans to rehabilitate existing buildings; provided, however, amortization periods of up to 40 years may be approved if supported by the particular facts and circumstances. In such cases, principal and interest payments will be required in the year that projections indicate adequate cash flow to service the debt.

Interest Rate: Fixed rate of between 0 percent – 3 percent, based on the project cash flow and ability to repay.

Security: The developer loans from NLP will be secured by a mortgage and evidenced by a promissory note.

Loan to Value: Restrictions will not be established; however, approval will be conditioned upon a loan-to-cost of no greater than 100 percent and debt service coverage as described below.

Note: The underwriting set forth herein will allow for a deferral of both principal and interest for up to a five year period, if necessary to make the transaction viable; however, the projections beginning with year six will need to support repayment of the loan as specified above. For projection purposes, rental income increases of 2 percent annually will be allowed, with expenses increasing at 2 percent annually (based on market conditions at the time of closing the Project Loan).

Public Subsidy Allowed: The Program will allow other forms of public subsidy and will assume the debt position necessary to make the transaction feasible.

Minimum Loan: No minimum

Maximum Loan: The subordinated mortgage loan will be limited to 25 percent of project costs. Exceptions to this requirement will be considered based on the individual circumstances of each proposal.

Repayment: Repayment of the developer notes will be underwritten to minimum debt service coverage of 1.00X on total debt, and 1.15X on the first mortgage debt, with provisions for deferment of both principal and interest as noted above. As developer loans are repaid, NLP will escrow the interest and principal, in a segregated account for the County with payment and appropriate reporting to the County on quarterly basis and shall provide interim reports upon request by the County.

Rental Regulatory Agreements: The developers will be required to enter into a Tri-Party Agreement relative to the affordability requirements of the Program. This agreement will be for the life of the loan, and failure to comply will represent a default under the loan agreement.

GENERAL REVIEW GUIDELINES AND CONSIDERATIONS

Provisions of the NLP Loan Program: The determination of the level of subsidy will be based on the level of low-income set-asides as follows:

At least 20 percent of the units must be occupied by households earning not more than 50 percent of the area median income for the appropriate MSA or County, or

At least 40 percent of the units must be occupied by households earning not more than 60 percent of the area median income.

Project Sale and Loan Assumptions: Projects financed under the Program that are sold, refinanced, or transferred, or if the rental and income requirements are not met will become due and payable in full. There will be provisions for assumption or future subordinations, but the assumption will be subject to the same review process as is applied to the initial granting of the subsidized loan.

NLP Liability: As borrowers repay the subordinate mortgage notes, the repayments of principal will be returned to the County.

NLP is NOT a guarantor of the Project Loan. NLP's obligation to pay the County is limited to amounts paid by the respective borrower, as and when collected from the borrower, or any surety, guarantor, endorser or any other person liable on the Project Loan or the net proceeds (after reimbursement for costs of collection or to insure or preserve such collateral) on the liquidation of any real or personal property collateral mortgaged or pledged by the borrower or any other person to secure repayment of the Project Loan.

Loan Underwriting and Program Monitoring: All underwriting will continue through NLP's current underwriting process. Additional review criteria will be added to ensure the County is supportive of the transaction, with the right to veto any project to be funded with their dollars.

Advances Under the Project Loan: The County will initially advance funds to NLP based upon a request from NLP relative to a closing statement for a scheduled loan closing previously approved by the Housing Department. It will be NLP's sole responsibility to advance funds to the individual project and ensure adequate documentation.

NLP. certifies that:

- A. No Federally appropriated funds have been paid or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress or a member of the Florida Legislature, an officer, or employee of the Florida Legislature in connection with any state grant, the making of any state loan, the entering into of any 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. No funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, an employee of a member of Congress or officer or employee of any agency, member of the Florida Legislature or an employee of the Florida Legislature in connection with this state contract grant, loan or cooperative agreement in connection with this application the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction; and
- C. NLP shall require that the language of this certification be included in the Project Loan documents and that all borrowers under such Project Loan documents shall certify and disclose accordingly.

NLP hereby discloses that it is a member of the Florida Affordable Development Coalition, which is a professional organization for developers and other affordable housing professionals. The organization is involved in affordable housing development in the state of Florida and based on the direction of its board of

directors is involved in assisting in the creation of new legislation, amending proposed and existing regulation and legislation in the State.

NLP. also discloses its membership in the National Association of Affordable Housing Lenders, which is a professional association for financial institution executives who are responsible for developing new products and originating loans for first time home buyers, lower income purchasers and affordable rental housing. The organization presents regional and national forums, technical assistance, and information on legislative and regulatory changes affecting affordable housing lending.

EXHIBIT B

GOVERNMENTAL REQUIREMENTS

The following are statutory, rule or code references to all Governmental Requirements to be met by NLP in the performance of this Agreement, including audit requirements.

- William E. Sadowski Act of 1992
- State Housing Initiatives Partnership Program, Florida Statutes 420.9071-.9079
- F.A.C. Chapter 67-37 (to which all provisions from former Chapter 91-37 were transferred)
- 24 CFR Part 570.502
- 24 CFR Part 570.611
- 24 CFR Part 92 (HOME Program)
- Sections 11.45 and 216.349, Florida Statutes, and Chapter 10.550, Rules of the Auditor General
- Section 1352, Title 31, U.S. Code
- Title VII of the 1964 Civil Rights Act, as amended
- Florida Civil Rights Act of 1992, as amended
- F.S. 287.03(l)(g) relating to Public Entity Crimes
- F.S. 287.133(3)(a)
- Housing and Economic Recovery Act 2008

EXHIBIT C
INSURANCE

- A. The Borrower agrees to maintain on a primary basis and at its sole expense, at all times throughout the duration of this contract the following types of insurance coverage with limits and on forms (including endorsements) as described herein. These requirements, as well as the County's review or acceptance of insurance maintained by the Borrower is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by The Borrower under this contract.
- B. The Borrower shall require and ensure that each of its sub-contractors/consultants providing services hereunder (if any) procures and maintains until the completion of their respective services, insurance of the types and to the limits specified herein.
- C. Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A-Class VIII or better.
- 1 Workers' Compensation: The Borrower shall maintain coverage for its employees with statutory workers' compensation limits and no less than \$500,000 each incident of bodily injury or disease for Employers' Liability.
 2. Commercial General Liability: The Borrower shall maintain coverage issued on an ISO form CG 00 01 12 04 or its equivalent, with a limit of liability of not less than \$1,000,000 per occurrence. The Borrower further agrees coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability, or Separation of Insureds. The General Aggregate limit shall either apply separately to this contract or shall be at least twice the required occurrence limit.
 3. Business Automobile Liability: The Borrower shall maintain coverage for all owned; non-owned and hired vehicles issued on ISO form CA 00 01 or its equivalent, with limits of not less than \$500,000 per accident. In the event the Borrower does not own automobiles, the Borrower shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
 4. Professional Liability (if applicable): NLP shall maintain professional liability (errors and omissions or medical malpractice) coverage with limits of not less than \$1,000,000 per occurrence. Purchasing may decrease the limit to \$500,000 per occurrence for small not-for profit human services agencies.

5. When a self-insured retention or deductible exceeds \$100,000 the County reserves the right to request a copy of NLP's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, the Borrower agrees to maintain a retroactive date prior to or equal to the effective date of this contract. In the event the policy is canceled, non-renewed, switched to occurrence form, or any other event which triggers the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract, the Borrower shall agree to purchase the SERP with a minimum reporting period of not less than two years. Purchase of the SERP shall not relieve the Borrower of the obligation to provide replacement coverage.
 6. By entering into this Project Loan the Borrower agrees to provide a Waiver of Subrogation in favor of the County for each policy required herein. When required by the insurer or should a policy condition not permit the Borrower to enter into a pre-loss agreement to waive subrogation without an endorsement, then the Borrower shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others endorsement.
 7. NLP agrees to endorse the County as an Additional Insured with a CG 20 26 Additional Insured - Designated Person or Organization endorsement, or its equivalent to all commercial general liability policies. The additional insured shall be listed in the name of **Orange County Board of County Commissioners**.
- D. Any request for an exception to these insurance requirements must be submitted in writing to the County for approval.

Prior to execution and commencement of any operations/services provided under this Project Loan, NLP shall provide the County with current certificates of insurance evidencing all required coverage. For continuing service contracts renewal certificates shall be submitted upon request by either the County or its certificate management representative. The certificates shall clearly indicate that the Borrower has obtained insurance of the type, amount and classification as required for strict compliance with this insurance section. No material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the County. Certificates shall specifically reference the respective contract number. The certificate holder shall read:

Orange County Board of County Commissioners
Housing and Community Development Division
525 E. South Street
Orlando, FL 32801

EXHIBIT D

LEASED EMPLOYEE AFFIDAVIT

I affirm that an employee leasing company provides my workers' compensation coverage. I further understand that my contract with the employee leasing company limits my workers' compensation coverage to enrolled worksite employees only. My leasing arrangement does not cover un-enrolled worksite employees, independent contractors, uninsured subcontractors or casual labor exposure.

I hereby certify that 100 percent of my workers are covered as worksite employees with the employee leasing company. I certify that I do not hire any casual or uninsured labor outside the employee leasing arrangement. I agree to notify the County in the event that I have any workers not covered by the employee leasing workers' compensation policy. In the event that I have any workers not subject to the employee leasing arrangement, I agree to obtain a separate workers' compensation policy to cover these workers. I further agree to provide the County with a certificate of insurance providing proof of workers' compensation coverage prior to these workers entering any County jobsite.

I further agree to notify the County terminates with the employee leasing company and I understand that I am required to furnish proof of replacement workers' compensation coverage prior to the termination of the employee leasing arrangement.

I certify that I have workers' compensation coverage for through the employee leasing arrangement specified below:

Name of Employee Leasing Company: _____

Workers' Compensation Carrier: _____

A.M. Best Rating of Carrier: _____

Inception Date of Leasing Arrangement: _____

I further agree to notify the County in the event that I switch employee-leasing companies. I recognize that I have an obligation to supply an updated workers' compensation certificate to the County that documents the change of carrier.

Name of Contractor: _____

Signature of Owner/Officer _____

Title: _____

Date: _____