K23-525

FIRST AMENDMENT TO THE LOAN AGREEMENT
BY AND BETWEEN
THE CITY OF NEW ORLEANS
AND
LAKE FOREST MANOR, LLC
FOR LAKE FOREST MANOR AFFORDABLE HOUSING

THIS FIRST AMENDMENT (the "**Amendment**") is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the "**City**"), and Lake Forest Manor, LLC, represented by Michael W. Tubre, its Managing Member (the "**Subrecipient**"). The City and the Subrecipient are sometimes collectively referred to as the "**Parties.**" The Amendment is effective December 16, 2022 (the "**Effective Date**").

RECITALS

WHEREAS, on July 15, 2020, the City and the Subrecipient entered into a Loan Agreement to produce two hundred units of affordable housing (the "**Agreement**"); and

WHEREAS, the City and the Subrecipient, each having the authority to do so, now desire to enter into this Amendment to change the funding source from Disaster Community Development Block Grant (D-CDBG) to Community Development Block Grant (CDBG) and to update essential provisions;

NOW THEREFORE, for good and valuable consideration, the City and the Subrecipient amend the Agreement as follows:

I. ***Change of funding Source***. The City is changing the funding source from Disaster-Community Develop Block Grant to Community Development Block Grant. Therefore, all instances in the Agreement of the terms, "Disaster-Community Development Block Grant" and "D-CDBG" shall be deleted in their entirety and replaced with "Community Development Block Grant" and "CDBG," respectively.

II. ***Additional Provisions***. The following provisions shall be added to the Agreement:

1. ***Disadvantaged Business Enterprises.***

This subsection 1 applies to only the construction period.

A. ***In General*.** The Contractor agrees to abide by the City Code Sections 70-456, *et seq.*, to use its best efforts to carry out all applicable requirements of the City's DBE Program for the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City's Office of Supplier Diversity

(“**OSD**”) oversees the DBE Program and assigns a DBE Compliance Officer (“**DBECO**”) to ensure compliance.

B. ***Monitoring*.** To ensure compliance with DBE requirements during the term of this Agreement, the DBECO will monitor the Contractor' use of DBE subcontractors/suppliers (“**DBE Entities**”) through the following actions:

1. Job site visits;

2. Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;

3. Routine audits of contract payments to all subcontractors;

4. Reviewing of records and reports; and/or

5. Interviews of selected personnel.

The DBECO may schedule inspections and on-site visits with or without prior notice to the Contractor or DBE Entities.

C. ***Cooperation***. The Contractor shall:

1. Designate an individual as the “DBE Liaison” who will monitor the Contractor's DBE participation as well as document and maintain records of “Good Faith Efforts” with DBE Entities.

2. Execute written contracts with DBE Entities that meet the applicable DBE goals.

a. The Contractor shall provide the DBECO with copies of said contracts within 30 days from the date this Agreement is fully executed between the City and the Contractor.

b. The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.

3. Establish and maintain the following records for review upon request by the OSD:

a. Copies of written contracts with DBE Entities and purchase orders;

b. Documentation of payments and other transactions with DBE Entities;

c. Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of “Post-Award Good Faith Efforts” for each certified firm that the Contractor does not use in accordance with the approved DBE participation submission;

d. Any other records required by the OSD.

The Contractor is required to maintain such records for 3 years after completion or closeout of this Agreement. Such records are necessary to determine compliance with their DBE obligations.

4. Post monthly payments and submit regular reports to the DBECO as required via the online "Contract Compliance Monitoring System" or other means approved by the OSD.

   a. The Contractor shall submit the initial report outlining DBE participation within 30 days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, "DBE Utilization" reports shall be due on or before the fifteenth day of each month until all DBE subcontracting work is completed.

   b. Reports are required even when no activity has occurred in a monthly period.

   c. If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.

   d. The Contractor may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee, and amount of transfer to verify payment information as indicated on the form.

5. Conform to the established percentage as approved by the OSD.

   a. The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.

   b. No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.

   c. The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

D. ***<u>Post-Award Modification</u>***. The OSD may grant a post-award modification request if:

   a. for a reason beyond the Contractor's control, the Contractor is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Contractor must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Contractor shall use and document "Good Faith Efforts" to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE Entities prior to awarding the Agreement will also apply to the substitution of DBE subcontractors during the performance of the Agreement; or

   b. the Contractor reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the City is unlikely to meet the established percentage or terms. In such case, the Contractor shall use and document "Good Faith Efforts" to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

2. ***Remedies for Non-Compliance***. If the Subrecipient fails to comply with federal statutes, regulations or the terms and conditions of a Federal award, the HUD or the City may impose additional conditions, as described in § 200.207 Specific conditions. If HUD or the City determines that noncompliance cannot be remedied by imposing additional conditions, then either may take one or more of the following actions, as appropriate in the circumstances:

A. Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.

B. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

C. Wholly or partly suspend or terminate the Federal award.

D. Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).

E. Withhold further Federal awards for the project or program.

F. Take other remedies that may be legally available.

3. ***Compliance with CDBG Regulations and HUD Notices.*** The language of Article I, Section C, shall be deleted and replaced with:

The Subrecipient, as well as any of its sub-Sub-recipients, shall:

A. ***In general.*** Comply with the federal regulations published in Volume 24, Part 570, of the *Code of Federal Regulations* (24 CFR 570), as well as all federal regulations and requirements incorporated therein by reference, whether specifically discussed herein or not.

B. ***Uniform Administrative Requirements.*** Comply with the applicable Uniform Administrative Requirements as described in 2 CFR 200.

C. ***Procurement.*** Comply with the procurement standards in 2 CFR §200.318 - §200.326 when procuring property and services under this Agreement.

D. ***Other Program Requirements.*** Comply with other program requirements 24 CFR §570.600 - 570.615 inclusive, except §570.604.

E. ***Notices***. Comply with all applicable Notices and directives promulgated by the U.S. Department of Housing and Urban Development.

III. ***Non-Solicitation Statement.*** The Sub-recipient swears that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Amendment. The Sub-recipient has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Amendment.

IV. ***Prior Terms Binding.*** Except as otherwise provided by this Amendment, the terms and conditions of the Agreement, as amended, remain in full force and effect.

V. ***Electronic Signature and Delivery.*** The Parties agree that a manually signed copy of this Amendment and any other document(s) attached to this Amendment delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Amendment.

[SIGNATURES CONTAINED ON NEXT PAGE]

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the City and the Subrecipient, through their duly authorized representatives, execute this Amendment to be effective as of the Effective Date.

CITY OF NEW ORLEANS

BY: ______________________________
LATOYA CANTRELL, MAYOR

Executed on this 16th **of** June, **2023.**

FORM AND LEGALITY APPROVED:
Law Department

By: ______________________________

Printed Name: Tracey Taylor

LAKE FOREST MANOR, LLC

BY: ______________________________
MICHAEL W. TUBRE, MANAGING MEMBER

[redacted]
EIN