

**COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY GRANT
AGREEMENT BETWEEN THE NC DEPARTMENT OF COMMERCE; THE NC
DEPARTMENT OF PUBLIC SAFETY, DIVISION OF EMERGENCY MANAGEMENT;
AND THE CITY OF FAYETTEVILLE**

This Grant Agreement (“Agreement”) between the NC Department of Commerce (“Commerce”); NC Department of Public Safety, Division of Emergency Management (“NCEM”); and the City of Fayetteville, NC (“Subrecipient”), provides funding through the Community Development Block Grant -- Disaster Recovery for the Subrecipient to carry out disaster recovery activities in the Subrecipient’s jurisdiction.

RECITALS

WHEREAS, on October 8-9, 2016, Hurricane Matthew hit central and eastern North Carolina, including Cumberland County and the City of Fayetteville, with record-breaking rainfall that created 1,000-year flood events that devastated the people, infrastructure, businesses, and schools of entire communities; and

WHEREAS, certain buildings, facilities, personal items, and equipment owned or rented by residents in the city were damaged by floodwaters associated with Hurricane Matthew; and

WHEREAS, on October 9, 2016, an expedited major disaster declaration from the President of the United States was requested and was granted on October 10, 2016 as FEMA-4285-DR-NC, allowing North Carolina to receive federal aid in the form of individual and public assistance for citizens and local governments; and

WHEREAS, the U.S. Department of Housing and Urban Development (“HUD”) has allocated Community Development Block Grant -- Disaster Recovery funds (“CDBG-DR”) to Commerce under the Further Continuing and Security Assistance Appropriations Act of 2017 (Public Law 114-254) and the Consolidated Appropriations Act of 2017 (Public Law 115-31) for the purpose of assisting recovery in the most impacted and distressed areas declared a major disaster due to Hurricane Matthew;

WHEREAS, pursuant to 82 Fed. Reg. 5591 (Jan. 18, 2017) and 82 Fed. Reg. 36812 (Aug. 7, 2017), the State of North Carolina has received an allocation of CDBG-DR funds from HUD in the amount of \$236,529,000;

WHEREAS, North Carolina General Assembly passed the Disaster Recovery Act of 2016 (S.L. 2016-124) requiring Commerce to transfer to NCEM all CDBG-DR program funds corresponding with Hurricane Matthew;

WHEREAS, Commerce and NCEM executed an agreement on June 30, 2017 to carry out the requirements of S.L. 2016-124;

WHEREAS, NCEM, as the contract administrator for the CDBG-DR program, executed a grant agreement with Cumberland County that became effective on December 1, 2017, to implement the State's CDBG-DR Action Plan that was approved by HUD on August 7, 2017;

WHEREAS, pursuant to that grant agreement, Cumberland County executed a sub-grant agreement with the City of Fayetteville on April 3, 2018, to award a portion of the county's grant amount to the city;

WHEREAS, both Cumberland County and the City of Fayetteville now wish to dissolve their April 3, 2018 sub-grant agreement, and the county wishes to dissolve its December 1, 2017 grant agreement with NCEM, and in place of these agreements, the county wishes to enter into a new agreement with NCEM that allocates the county's portion of its CDBG-DR award, and the city wishes to enter into this Agreement with NCEM to allocate the city's portion of the county's CDBG-DR award;

WHEREAS, upon the dissolution of the county's December 1, 2017 grant agreement and the city's April 3, 2018 grant agreement, and upon the execution of this Agreement and a new grant agreement between NCEM and the county, both the county and the city will be in a direct grantee relationship with NCEM;

WHEREAS, the Parties desire to enter into this Agreement and intend to be bound by its terms;

NOW, THEREFORE, for and in consideration of the Grant, the mutual promises each to the other made, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

Article I. GENERAL TERMS AND CONDITIONS OF AGREEMENT

1.1 Grant Documents. The documents described below are hereinafter collectively referred to as the "Grant Documents." In the case of conflict between any of these documents, the terms of Amendment Number One will control. Upon execution and delivery of this Agreement, it and the other Grant Documents and items required hereunder will constitute a valid and binding agreement between the Parties, enforceable in accordance with the terms thereof. The Agreement constitutes the entire agreement between the Parties, superseding all prior oral and written statements or agreements.

The Grant Documents consist of:

- (1) This Agreement
- (2) Exhibit A – Project Budget
- (3) Exhibit B – NCEM–Cumberland County Agreement to Terminate their December 1, 2017 Grant Agreement
- (4) Exhibit C – Cumberland County–City of Fayetteville Agreement to Terminate their April 3, 2018 Grant Agreement

Upon execution and delivery of this Agreement, and the Subrecipient has received its counterpart original of this Agreement, fully executed and with all dates inserted where indicated, then the Agreement will constitute a valid and binding agreement between the Parties, enforceable with the terms thereof.

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

Federal Award Identification Number: B-16-DL-37-0001

CFDA Number and Name: 14.228

Federal Award Date: 8/14/2017

Federal award project description: To provide disaster recovery to communities in the Subrecipient's jurisdiction, consistent with the State's HUD-approved CDBG-DR Action Plan.

Is this award for research and development? No

Subrecipient's unique entity identifier: 040031700

Subrecipient's state award number: _____

Subrecipient's Award Period of Performance: 12/1/2017 – 12/31/2023

Total Amount of the Federal Award Committed to the Subrecipient: \$14,241,746

Amount of Federal funds obligated by this Agreement: \$18,838,746

Total Amount of Federal Funds Obligated to the Subrecipient: \$14,241,746

1.3 Purpose. Consistent with 2 C.F.R. § 200, Subpart D § 331, the CDBG-DR grant will provide assistance that aids disaster relief, long-term recovery, restoration of infrastructure, and housing and economic revitalization that is needed as a result of Hurricane Matthew, particularly for low-and-moderate-income residents. These services will help the Subrecipient and its residents recover from this disaster and, as a result, will increase the functional status of the community, allowing for greater financial and personal stability of individuals impacted by this disaster.

This grant to the City of Fayetteville will carry out projects as shown in the HUD-approved State CDBG-DR Action Plan, as permitted by this Agreement. To that end, subject to the appropriation, allocation, and availability to NCEM of funds for the activities described in the State Action Plan, NCEM hereby agrees to pay the Grant funds to the Subrecipient in accordance with the payment procedures set forth herein. The obligation of NCEM to pay any amounts under this Agreement are contingent upon the availability and continuation of funds for such

purpose. NCEM's obligation to pay Grant funds shall not exceed the total amount budgeted for Subrecipient, as shown in Exhibit A.

1.4 State and City Scope of Work. The implementation of the CDBG-DR program in North Carolina is a shared responsibility between Commerce, NCEM, and the Subrecipient.

- (a) Homeowner Recovery Programs. For the Homeowner Recovery Programs described in the State Action Plan, the Subrecipient has elected to conduct all steps in implementing this eight-step program. The following are the primary steps in the program process: 1) application intake; 2) eligibility review; 3) duplication check to prevent duplication of benefits; 4) inspections for damage assessments and conduct environmental reviews; 5) grant determination including grant calculations and awards; 6) contractor selection, to include construction management; 7) construction; and 8) completion, to include verification and oversight of all spending of grant dollars awarded to recipients.
- (b) Infrastructure and Supportive Services Programs. For the Community Recovery Infrastructure Program and the Supportive Services Program described in the State Action Plan, the Subrecipient shall identify eligible projects and manage the allocation set forth in the budget table in Exhibit A, in accordance with the terms of this Agreement. NCEM will be responsible, however, for conducting environmental reviews for projects to be funded by these programs, to ensure compliance with 24 C.F.R., Part 58. NCEM will coordinate closely with the Subrecipient to conduct these environmental reviews and to ensure that, as the projects move toward and into construction, CDBG-DR requirements are met. After completion of environmental review and the issuance of a notice to proceed from NCEM, the Subrecipient must notify NCEM of any changes in scope of work that may require reevaluation of the environmental review.
- (c) Other Programs. The Multi-Family Rental Program and the Public Housing Program—which are described in the State Action Plan—shall be managed by NCEM. In the event that the Subrecipient is awarded funds through a competitive-proposal process for one of these programs and/or NCEM decides to allocate funds to the Subrecipient for one of these programs, this Agreement shall be amended to incorporate a scope of work for those activities.

1.5 CDBG National Objectives. All activities funded by this Agreement must meet one of the CDBG-DR program's national objectives: benefit low-and-moderate-income persons; aid in the prevention or elimination of slum or blight; or meet community development needs having a particular urgency. The criteria for meeting these national objectives are found in 24 C.F.R. § 570.208, as amended by 81 Fed. Reg. 83254 (Nov. 21, 2016) (made applicable to the funds provided by this Agreement through 82 Fed. Reg. 5591 (Jan. 18, 2017)). The State's CDBG-DR Action Plan outlines the ways that the program activities funded by this and other subrecipient grants will accomplish the national objectives.

Pursuant to 24 C.F.R. § 570.506, both NCEM and the Subrecipient are required to maintain records sufficient to demonstrate compliance with the criteria for accomplishing the national objectives of CDBG-DR.

1.6 Prohibited Activities. The Subrecipient may only carry out the activities described in this Agreement. The Subrecipient is prohibited from charging to this award the costs of ineligible activities under CDBG-DR, including those described at 24 C.F.R. § 570.207, and from using funds provided herein or personnel employed in the administration of activities under this agreement for political activities, inherently religious activities, or lobbying.

1.7 Contract and Reimbursement Period. The term for this grant agreement is from 2/1/2018 to 12/31/2023. The Subrecipient shall commit 100% of non-administrative grant funds and provide documentation to NCEM of the commitments no later than July 31, 2022, and all funds must be expended by the Subrecipient by December 31, 2022.

The burden is on the Subrecipient to request any extensions under the Agreement if the Subrecipient anticipates that the project funds will not be committed by the date by which funds must be committed or expended. Any requests for extensions must be made in writing, addressed to NCEM, explaining why an extension is needed and proposing the requested new date. NCEM must receive this request at least 60 days before December 31, 2022. NCEM, within its sole discretion, may or may not approve the extension, based on project performance and other contributing factors. NCEM is not responsible for notifying the Subrecipient of any approaching deadlines.

1.8 CCR Registration. The Subrecipient must provide NCEM with documentation of registration in the Central Contractor Registration (CCR) system. The CCR system may be accessed online at www.sam.gov.

1.9 Notice; Contract Administrator. For purposes of this grant agreement where the Subrecipient is required to submit documentation to NCEM pursuant to this Agreement, the Subrecipient shall provide any documentation first to NCEM as contract administrator and subgrantee of the CDBG-DR funds from Commerce, per the terms of the agreement between the two agencies dated June 30, 2017. NCEM will then provide the documentation to Commerce as the entity that is directly responsible to HUD.

All notices, requests or other communications permitted or required to be made by the Subrecipient under this Agreement or other documentation relating to this Agreement shall be given to the Contract Administrator or his/her designee.

The Contract Administrator is:

Mike Sprayberry, Director NC Emergency Management
1636 Gold Star Drive
Raleigh, NC 27607

Notice shall be in writing, signed by the party giving such notice. Notice shall be deemed given three (3) business days following the date when deposited in the mail, postage prepaid, registered or certified mail, return receipt requested.

Article II. PERFORMANCE MONITORING, REPORTING, AND BUDGET

2.1 Monitoring. NCEM shall monitor the performance of the Subrecipient as necessary and in accordance with regulations on Subrecipient Monitoring and Management, 2 C.F.R. §§ 200.330 –200.332, to ensure Subrecipient compliance with all of the requirements of this Agreement, including the timeframes and performance goals associated with the activities. NCEM’s protocol for monitoring Subrecipient compliance is derived from Chapter 6 of HUD’s *Community Planning and Development Monitoring Guidebook*, which may be accessed at https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/6509.2.

Substandard performance as determined by NCEM will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a time period specified by NCEM after being notified by NCEM, NCEM may impose additional conditions on the Subrecipient and its use of CDBG-DR funds consistent with 2 C.F.R. § 200.207, suspend or terminate this Agreement, or initiate other remedies for noncompliance as appropriate and permitted under 2 C.F.R. § 200.338.

2.2 Reporting. The Grantee shall report regular performance metrics to NCEM that are necessary to comply with HUD CDBG-DR reporting requirements. NCEM will provide reporting templates and schedules to the Subrecipient. In the event that Subrecipient performs technical assistance, copies of the technical assistance offered shall be provided to NCEM on a quarterly basis. NCEM, at its discretion, may conduct technical assistance and monitoring of the Subrecipient on topics relating to the CDBG-DR program.

2.3 Project Schedule. Within 90 days of execution of Amendment One of this Agreement, the Subrecipient must provide a proposed project schedule for activities, using HUD’s “Template for Grantee Projections.” The Template, along with a guidance document to assist the Subrecipient in completing the Template, can be found at <https://www.hudexchange.info/resource/3685/cdbg-dr-grantee-projections-of-expenditures-and-outcomes/>. For activities that will be administered by NCEM, NCEM will provide a proposed project schedule in consultation with the Subrecipient. On a quarterly basis, Subrecipient shall work with NCEM on updated estimates and projections, as activities progress.

2.4 Budget, Disbursement, and Repayment. The Subrecipient’s approved budget under this Agreement is attached as Exhibit A. Exhibit A also governs disbursement procedures, allowed administrative costs, program income, refunds, reversion of unexpended funds, and reduction of grant funds based on lesser actual expenses

Article III. AMENDMENT AND TERMINATION

3.1 Amendment. NCEM, Commerce, and the Subrecipient may amend this agreement at any time provided that such amendments are in writing, make specific reference to this Agreement, are approved by all Parties, and are signed by a duly authorized representative of each Party. Such amendments shall not invalidate this Agreement, nor relieve or release NCEM or Subrecipient from their obligations under this Agreement. Amendments will generally be required when any of the following are anticipated: i) revision to the scope or objectives of the

Program, including purpose or beneficiaries; ii) need to extend the availability of Grant Funds; iii) revision that would result in the need for additional funding; and iv) expenditures on items for which applicable cost principles require prior approval (see 24 C.F.R. § 570.200(h) for pre-award/pre-agreement costs).

NCEM or Commerce may, in their discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this agreement, such modifications will be incorporated only by written amendment signed by NCEM, Commerce, and Subrecipient.

3.2. Termination by Mutual Consent. The Parties may terminate this Contract by mutual written consent with 60 days prior written notice to the Parties, or as otherwise provided by law.

3.3 Termination in the Event of Default. NCEM may suspend, reduce, or terminate its obligations under this Agreement, in whole or in part, upon 30 days' notice, whenever they determine that the Subrecipient has failed to comply with any term, condition, requirement, or provision of this Agreement. Subrecipient shall be afforded a reasonable period of time to cure any noncompliance. Failure to comply with any terms of this agreement, include (but are not limited to) the following:

- (a) Default in Performance. The default by the Subrecipient or a subsequent Recipient in the observance or performance of any of the terms, conditions or covenants of this Agreement.
- (b) Misrepresentation. If any representation or warranty made by the Subrecipient in connection with the Grant or any information, certificate, statement or report heretofore or hereafter made shall be untrue or misleading in any material respect at the time made.
- (c) Abandonment of the Project. If Subrecipient abandons or otherwise ceases to continue to make reasonable progress towards completion of the Project.

NCEM shall promptly notify the Subrecipient, in writing, of its determination and the reasons for the termination together with the date on which the termination shall take effect, along with other notifications required under 2 C.F.R., Part 200, Subpart D. Upon termination, NCEM retains the right to recover any improper expenditures from the Subrecipient and the Subrecipient shall return to NCEM any improper expenditures no later than 30 days after the date of termination. NCEM may, at its sole discretion, allow Subrecipient to retain or be reimbursed for costs reasonably incurred prior to termination, that were not made in anticipation of termination and cannot be canceled, provided that said costs meet the provisions of this Agreement, 2 C.F.R., Part 200, Subpart E, Cost Principles, and any other applicable state or federal statutes, regulations or requirements.

3.4 Additional Remedies. If Subrecipient defaults, NCEM shall have the power and authority, consistent with their statutory authorities: (a) to prevent any impairment of the Grant activities by any acts which may be unlawful or in violation of this Agreement or any other item or document required hereunder; (b) to compel specific performance of any of Subrecipient's

obligations under this Agreement; (c) to obtain return of all Grant Funds, including equipment if applicable; and (d) to seek damages from any appropriate person or entity. NCEM shall be under no obligation to complete the activities funded by this Agreement.

3.5 Unavailability of Funds. If funds for the Grant become unavailable, the Subrecipient agrees that NCEM or Commerce has the right to terminate this Agreement by giving 60 days' written notice specifying the termination date of the Agreement, which NCEM or Commerce shall determine in its sole discretion. Upon such termination, the State shall have no responsibility to make additional Grant payments. Further, upon such termination, the Subrecipient shall not expend any Grant funds without NCEM's or Commerce's express written authorization and shall return all unspent Grant funds to NCEM or Commerce upon demand.

3.6 Nonwaiver. No delay, forbearance, waiver, or omission by NCEM or Commerce to exercise any right, power or remedy upon any event of default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such event of default or to constitute acquiescence therein.

Article IV. FEDERAL AND STATE LAW COMPLIANCE.

The CDBG-DR funds available to the Subrecipient through this Agreement constitute a subaward of Commerce's federal award under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R., Part 200. This Agreement includes terms and conditions of Commerce's Federal award that are imposed on both NCEM and the Subrecipient, and the Subrecipient agrees to carry out its obligations in compliance with all of the obligations described in this Agreement.

Due to the division of responsibilities for the Homeowner Recovery Programs, as detailed in Section 1.4, some of the following provisions may not apply to the Subrecipient with regard to the Homeowner Recovery Program. This Agreement attempts to make clear that certain obligations will be retained by the State where the State is responsible for carrying out the activities to which certain obligations pertain. In other words, the Subrecipient is not responsible for compliance with obligations that pertain to activities that the State is carrying out under the Housing Recovery Program. To the extent that the Subrecipient is unclear whether it must comply with any of the following provisions as a result of the division of responsibilities noted in Section 1.4 (e.g., if there is a shared responsibility for an activity), the Subrecipient is strongly encouraged to consult with NCEM to determine its compliance obligations.

In contrast with the Housing Recovery Program, the Subrecipient is fully responsible for compliance with the following obligations under any city-run programs funded by this Agreement (e.g., the Community Recovery Infrastructure Program), except to the extent that NCEM has explicitly agreed to undertake any portion of that compliance (e.g., environmental reviews for the Community Recovery Infrastructure Program).

4.1 General Compliance. The Subrecipient shall comply with all applicable provisions of the Housing and Community Development Act of 1974, as amended, and the regulations at 24 C.F.R., Part 570, as modified by the Federal Register notices that govern the use of CDBG-DR

funds available under this Agreement. These Federal Register notices include, but are not limited to, 81 Fed. Reg. 83254 (Nov. 21, 2016), 82 Fed. Reg. 5591 (Jan. 18, 2017), 82 Fed. Reg. 36812 (Aug. 7, 2017). The Subrecipient shall also comply with all other applicable federal, state and local laws, regulations, and policies that govern the use of the CDBG-DR funds in complying with its obligations under this Agreement, regardless of whether CDBG-DR funds are made available to the Subrecipient on an advance or reimbursement basis.

4.2 Duplication of Benefits. The Subrecipient shall not carry out any of the activities under this agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5155). The following provisions apply to the extent that the Subrecipient has retained responsibility for reviewing applications for assistance, as indicated in Section 1.4 of this Agreement and as such review may be required for city-managed CDBG-DR programs:

Subrecipient must ensure that any applicants for funds provided under this Agreement disclose all financial assistance awarded and/or received in response to the damage from the pertinent disaster, including but not limited to FEMA, the Small Business Administration (SBA), private insurance, National Flood Insurance Program (NFIP), other state, local or federal programs, and private or non-profit organizations donations. The Subrecipient must: (a) verify all sources of disaster relief received by the applicant by conducting third-party verification, as applicable; (b) determine an applicant's unmet need before awarding assistance; and (c) ensure beneficiaries sign a subrogation agreement to repay the assistance if they later receive other disaster assistance for the same purpose. The Subrecipient's procedures shall provide that prior to the award of assistance, the Subrecipient will obtain the best, most available data from FEMA, the Small Business Administration (SBA), etc. The Subrecipient shall reserve the right to adjust the amount of assistance available for an applicant based on the receipt of previous assistance, to prevent the duplication of benefits. Recipients of assistance must report any home damage-related assistance they receive for one year after the award of Program funds. The Subrecipient will monitor compliance with the agreement for one year, by contacting the various agencies noted above or listed in the original DOB calculation and by contacting the recipient of CDBG-DR funds. The applicant must repay any assistance later received for the same purpose as those awarded or provided CDBG-DR funds.

Subrogation: In order to ensure compliance with the duplication-of-benefits requirements of CDBG-DR, Subrecipient must execute a subrogation agreement with any applicant who receives an award of CDBG-DR funds from the Subrecipient. The subrogation agreement shall ensure that the Subrecipient has the right to reimbursement for any payments that an applicant receives under any federal or state program, policy of flood, casualty or property damage insurance, nonprofit donations or grants, or any other funding, or from claims or causes of action the applicant may have related to physical damage to their damaged property (not including contents) caused by Hurricane Matthew that have not previously been included in the calculation of the applicant's award. The subrogation agreement may be standalone, or may be included as a clause in any broader agreement between the Subrecipient and the applicant receiving CDBG-DR funds. NCEM can provide the Subrecipient with sample language for a subrogation agreement.

4.3 Drug-Free Workplace. The Subrecipient must comply with drug-free workplace requirements in Subpart B of 2 C.F.R., Part 2429, which adopts the governmentwide implementation (2 C.F.R., Part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. §§ 701 – 707).

4.4 Insurance and Bonding. The Subrecipient shall comply with the bonding and insurance requirements of 2 C.F.R. §§ 200.310 and 200.325, as applicable.

4.5 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The Subrecipient shall comply with the applicable provisions in 2 C.F.R., Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, except as modified by 24 C.F.R. § 570.502 and 81 Fed. Reg. 83254 (Nov. 21, 2016). These provisions include:

- (a) Financial & Program Management. The Subrecipient shall expend and account for all CDBG-DR funds received under this Agreement in accordance with the requirements in 2 C.F.R., Part 200, including 2 C.F.R., Part 200, Subpart D, which covers Standards for Financial and Program Management.
- (b) Cost Principles. Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with 2 C.F.R., Part 200, Subpart E. All items of cost listed in Subpart E that require prior federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in Subpart E and are otherwise eligible under this agreement, except for the following:
 - (i) Depreciation methods for fixed assets shall not be changed without the approval of the Federal cognizant agency;
 - (ii) Fines penalties, damages, and other settlements are unallowable costs to the CDBG program;
 - (iii) Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses (goods or services for personal use) regardless of whether reported as taxable income to the employees (2 C.F.R. § 200.445);
 - (iv) Organization costs (2 C.F.R. § 200.455); and
 - (v) Pre-Award Costs, as limited by this agreement.

4.6 Documentation and Record Keeping.

- (a) Records to be Maintained. The Subrecipient shall establish and maintain records sufficient to enable NCEM and Commerce to (1) determine whether the Subrecipient has complied with this Agreement, applicable federal statutes and regulations, and the terms and conditions of Commerce's Federal award and (2) satisfy recordkeeping requirements applicable to Commerce and NCEM. These records include the records described in Section 1.5 of this Agreement.

At a minimum, the Subrecipient shall maintain records required by 24 C.F.R. § 570.506, as if the requirements in 24 C.F.R. § 570.506 were directly imposed upon the Subrecipient.

Subject to the foregoing provision regarding the division of responsibility between the State and City, in order to meet the recordkeeping requirements listed above, the Subrecipient must maintain the following, at a minimum:

- (i) Records providing a full description of each activity undertaken;
 - (ii) Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG–DR program;
 - (iii) Records required to determine the eligibility of activities;
 - (iv) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
 - (v) Records documenting compliance with the fair housing and equal opportunity requirements of the CDBG program regulations;
 - (vi) Financial records as required by 24 C.F.R. § 570.502, and 2 C.F.R., Part 200, including records necessary to demonstrate compliance with all applicable procurement requirements; and
 - (vii) Other records necessary to document compliance with this Agreement, any other applicable federal statutes and regulations, and the terms and conditions of this federal award.
- (b) Access to Records. The Subrecipient shall provide any duly authorized representative of Commerce and NCEM, The North Carolina State Auditor, the North Carolina Office of State Budget and Management, HUD, and the Comptroller General, the Inspector General and other authorized parties at all reasonable times access to and the right to inspect, copy, monitor, and examine all of the books, papers, records, and other documents relating to the grant during the period of performance of this Agreement and for three years following the completion of all closeout procedures. All original files shall be maintained at the Subrecipient’s offices for access purposes.
- (c) Record Retention and Transmission of Records to Subrecipient. Prior to closeout of this Agreement, the Subrecipient must transmit to NCEM records sufficient for NCEM to demonstrate that all costs under this agreement met the requirements of the federal award. Subrecipient shall retain financial records, supporting documents, statistical records, and all other Subrecipient records pertinent to this Agreement and Subrecipient’s award for the longer of 3 years after the expiration or termination of this Agreement, or 3 years after the submission of Commerce’s annual performance and evaluation report, as prescribed in 24 C.F.R. § 91.520, in which the specific activity is reported on for the final time. The preceding requirement is however, subject to the following exceptions:
- (i) Records for activities subject to the reversion of assets provisions at 24 C.F.R. § 570.503(b)(7) or change of use provisions at 24 C.F.R. § 570.505 must be maintained for as long as those provisions continue to apply to the activity,

otherwise, records for real property and equipment acquired under this agreement must be retained for 3 years after final disposition;

- (ii) Records for individual activities for which there are outstanding loan balances, other receivables, or contingent liabilities must be retained until such receivables or liabilities have been satisfied;
 - (iii) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken;
 - (iv) When the Subrecipient is notified in writing by HUD, the cognizant agency for audit as defined in 2 C.F.R. § 200.18, the oversight agency for audit as defined in 2 C.F.R. § 200.73, the cognizant agency for indirect costs as defined in 2 C.F.R. § 200.19, or NCEM or Commerce, the Subrecipient shall extend the retention period consistent with the notification;
 - (v) When records are transferred to or maintained by HUD or Commerce or NCEM, the 3-year retention requirement is not applicable to the Subrecipient;
 - (vi) If the Subrecipient is required to report on program income after the period of performance, the retention period for the records pertaining to the earning of the program income (as defined in this Agreement) starts from the end of the Subrecipient's fiscal year in which the program income is earned; and
 - (vii) For indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates), and their supporting records:
 - a. If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to NCEM or Commerce) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.
 - b. If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to NCEM or Commerce) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.
- (d) Client Data and Other Sensitive Information. The Subrecipient is required to maintain data demonstrating client eligibility for activities provided under this Agreement. Such data may include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of activities provided. The Subrecipient who obtains this data must comply with 2 C.F.R. § 200.303(e) and take reasonable measures to safeguard protected personally identifiable information, as defined in 2 C.F.R. § 200.82, and other information HUD, Commerce, or NCEM designates as sensitive or the Subrecipient considers sensitive consistent with applicable federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

4.7 Closeout. The Subrecipient shall closeout its use of the CDBG-DR funds and its obligations under this Agreement by complying with the closeout procedures in 2 C.F.R. § 200.343. Activities during this closeout period may include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to NCEM), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income. The rules governing program income acquired after closeout are modified in the Federal Register notice that applies to this Agreement. *See* 81 Fed. Reg. 83254, sec. VI, no. 17 (Nov. 21, 2016).

4.8 Audits, Inspections, and Monitoring

- (a) Single Audit. The Subrecipient must be audited as required by 2 C.F.R., Part 200, Subpart F when it is expected that the Subrecipient's federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in § 200.501.
- (b) Inspections and Monitoring. The Subrecipient shall permit NCEM and Commerce and auditors to have access to the Subrecipient's records and financial statements as necessary for the state agencies to meet the requirements of 2 C.F.R., Part 200. The Subrecipient must submit to monitoring of its activities by NCEM and Commerce as necessary to ensure that the award is used for authorized purposes, in compliance with federal statutes, regulations, and the terms and conditions of this agreement. This review must include: (1) reviewing financial and performance reports required by the state agencies; (2) following-up and ensuring that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the federal award provided to the Subrecipient from the state agencies detected through audits, on-site reviews, and other means; and (3) issuing a management decision for audit findings pertaining to this federal award provided to the Subrecipient from the state agencies as required by 2 C.F.R. § 200.521.
- (c) Corrective Actions. NCEM or Commerce may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits. The state agencies may require the Subrecipient to take timely and appropriate action on all deficiencies pertaining to the federal award provided to the Subrecipient detected through audits, on-site reviews, and other means. In response to audit deficiencies or other findings of noncompliance with this agreement, NCEM or Commerce may impose additional conditions on the use of the CDBG-DR funds to ensure future compliance, or provide training and technical assistance as needed to correct noncompliance.

4.9 Procurement and Contractor Oversight. The Subrecipient shall comply with the procurement standards in 2 C.F.R. §§ 200.318 – §200.326 when procuring property and services under this Agreement.

The Subrecipient shall impose the Subrecipient's obligations under this Agreement on its contractors, specifically or by reference, so that such obligations will be binding upon each of its contractors.

The Subrecipient must comply with CDBG regulations regarding debarred or suspended entities, including including 2 C.F.R. § 200, Subpart F. The Subrecipient is responsible to ensure that it has checked the federal System for Awards Management (SAM) (<https://www.sam.gov/portal/SAM>) and the State Debarred Vendors Listing (<http://www.pandc.nc.gov/actions.asp>) to verify that contractors or subsequent recipients have not been suspended or debarred from doing business with the Federal or State government.

The Subrecipient must receive the written approval of NCEM before entering into any contract for which they are seeking reimbursement through CDBG-DR. All subcontractors must be procured in accordance with 2 C.F.R., Part 200. NCEM reviews, verifies, and approves contracts prior to forwarding its approval and all documentation to Commerce.

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

4.10 Property Standards. Real property acquired by the Subrecipient under this Agreement shall be subject to 24 C.F.R. § 570.505, 24 C.F.R. § 570.489(j), and 24 C.F.R. § 570.200(j) (imposing 24 C.F.R. § 5.109 requirements regarding disposition and change in use of real property by a faith-based organization).

The Subrecipient shall also comply with the property standards at 2 C.F.R. §§ 200.310 – 200.316, except to the extent they are inconsistent with 24 C.F.R. §§ 570.200(j) and 570.489(j), in which case Subrecipient shall comply with 24 C.F.R. §§ 570.200(j) and 570.489(j), and except to the extent that proceeds from the sale of equipment are program income and subject to the program income requirements under this Agreement, pursuant to 24 C.F.R. § 570.489(e)(1)(ii).

Green Building. Pursuant to 81 Fed. Reg. 83254, sec. VI, no. 28(a) – (d) (Nov. 21, 2016), all new construction of residential buildings and all replacement of substantially damaged residential buildings funded under this Agreement must meet an industry-recognized standard that has achieved certification under at least one of the following programs: (i) ENERGY STAR (Certified Homes or Multifamily High-Rise), (ii) Enterprise Green Communities; (iii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development), (iv) ICC–700 National Green Building Standard, (v) EPA Indoor AirPlus (ENERGY STAR a prerequisite), or (vi) any other equivalent comprehensive green building program acceptable to HUD.

For rehabilitation work funded by this Agreement, Subrecipients must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist, available at <https://www.hudexchange.info/resource/3684/guidance-on-the-cpd-green-buildingchecklist/>. When older or obsolete products are replaced as part of the rehabilitation work, rehabilitation is

required to use ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products and appliances.

4.11 Federal Funding Accountability and Transparency Act (FFATA). The Subrecipient shall comply with the requirements of 2 C.F.R., Part 25 Universal Identifier and System for Award Management (SAM). The Subrecipient must have an active registration in SAM in accordance with 2 C.F.R., Part 25, Appendix A, and must have a Data Universal Numbering System (DUNS) number. The Subrecipient must also comply with provisions of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, and 2 C.F.R., Part 170 Reporting Subaward and Executive Compensation Information.

4.12 Relocation and Real Property Acquisition. The Subrecipient shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), 42 U.S.C. §§ 4601 – 4655, 49 C.F.R., part 24, 24 C.F.R., part 42, and 24 C.F.R. § 570.606. In addition to other URA requirements, these regulations implement Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5181, which provides that “Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the [URA] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.” Portions of these regulations have been waived for the funds provided under this Agreement, pursuant to 81 Fed. Reg. 83254, sec. VI, no. 19 (Nov. 21, 2016).

4.13 Nondiscrimination.

- (a) 24 C.F.R., Part 6. The Subrecipient will comply with 24 C.F.R., Part 6, which implements the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. § 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance. The Subrecipient will adhere to the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 – 6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) (Section 504). Section 109 of the HCDA makes these requirements applicable to programs or activities funded in whole or in part with CDBG-DR funds. Thus, the Subrecipient shall comply with regulations of 24 C.F.R., Part 8, which implement Section 504 for HUD programs, and the regulations of 24 C.F.R., Part 146, which implement the Age Discrimination Act for HUD programs.
- (b) Architectural Barriers Act and the Americans with Disabilities Act. The Subrecipient shall ensure that its activities funded under this Agreement are consistent with requirements of Architectural Barriers Act and the Americans with Disabilities Act. The Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151 – 4156) requires certain Federal

and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of “residential structure” as defined in 24 C.F.R. § 40.2 or the definition of “building” as defined in 41 C.F.R. § 101-19.602(a) is subject to the requirements of the Architectural Barriers Act and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 C.F.R., Part 40 for residential structures, and appendix A to 41 C.F.R., Part 101-19, subpart 101-19.6, for general type buildings).

The Americans with Disabilities Act (42 U.S.C. § 12131; 47 U.S.C. §§ 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

Additionally, for projects funded under this Agreement, the Subrecipient must comply with the North Carolina Building Code’s standards for constructing or altering building and facilities to make them accessible to and useable by the physically handicapped.

- (c) State and Local Nondiscrimination Provisions. Subrecipient agrees to comply with state nondiscrimination provisions found at N.C. Gen. Stat. §§ 143-422.1 – 422.3 (Equal Employment Practices); and § 41A-1–10 (NC Fair Housing Act).
- (d) Title VI of the Civil Rights Act of 1964 (24 CFR part 1).
 - (i) *General Compliance:* The Subrecipient shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352), as amended and 24 C.F.R. §§ 570.601 and 570.602. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this agreement. The specific nondiscrimination provisions at 24 C.F.R. § 1.4 apply to the use of these funds. The Subrecipient shall not intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by Title VI of the Civil Rights Act of 1964 or 24 C.F.R., Part 1, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under 24 C.F.R., Part 1. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of 24 C.F.R., Part 1, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

- (ii) *Assurances and Real Property Covenants:* As a condition to the approval of this Agreement and the extension of any Federal financial assistance, the Subrecipient assures that the program or activities described in this Agreement will be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this Part 1.

If the Federal financial assistance under this Agreement is to provide or is in the form of personal property or real property or interest therein or structures thereon, the Subrecipient's assurance herein shall obligate the Subrecipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the Subrecipient for the period during which Federal financial assistance is extended pursuant to the contract or application. This assurance gives the State and the United States a right to seek judicial enforcement of the assurance and the requirements on real property.

In the case of real property, structures or improvements thereon, or interests therein, acquired with Federal financial assistance under this Agreement or acquired with CDBG-DR funds and provided to the Subrecipient under this Agreement, the instrument effecting any disposition by the Subrecipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

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

(e) Affirmative Action.

- (i) *Approved Plan.* The Subrecipient agrees that it shall carry out, pursuant to NCEM's specifications, an Affirmative Action Program in compliance with the President's Executive Order 11246 of September 24, 1966, as amended, and implementing regulations at 41 C.F.R., Part 60. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the release of funds under this Agreement.

- (ii) *Women- and Minority-Owned Businesses (W/MBE).* The Subrecipient shall take the affirmative steps listed in 2 C.F.R. § 200.321(b)(1) – (5) to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible when the Subrecipient procures property or services under this agreement. In addition, consistent with N.C. Gen. Stat. § 143-128.2, Subrecipient must include a 10% goal for participation by minority- and women-owned businesses in total value of work for every building project funded by this Agreement, and shall make good-faith effort to recruit minority- and women-owned businesses for the work.
- (iii) *Notifications.* The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker’s representative of the Subrecipient’s commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (iv) *Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement.* The Subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

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

4.15 Section 3 of the Housing and Urban Development Act Notice. The Subrecipient agrees to comply with these “Section 3” requirements and to include the following language in all agreements executed under this Agreement:

“The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. § 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.”

4.16 Conduct.

- (a) Hatch Act. The Subrecipient shall comply with the Hatch Act, 5 U.S.C. §§ 1501 – 1508, ensuring that no funds provided, nor personnel employed under this Agreement, shall be in any way engaged in the conduct of political activities in violation of Chapter 15 of Title V of the United States Code.
- (b) Conflict of Interest. In the procurement of supplies, equipment, construction, and services pursuant to this agreement, the Subrecipient shall comply with the conflict of interest provisions in 2 C.F.R. §§ 200.317 and 200.318, N.C. Gen. Stat. § 14-234, and 04 N.C.A.C. 19L.0914. In all cases not governed by 2 C.F.R. §§ 200.317 and 200.318, the Subrecipient shall comply with the conflict of interest provisions in 24 CFR 570.611. Certain limited exceptions to the conflict of interest rules listed in 24 C.F.R. § 570.489 may be granted in writing by Department of Housing and Urban Development (“HUD”) and/or Commerce or NCEM upon written request and the provision of information specified in 24 C.F.R. § 570.489(h)(4).
- (c) Lobbying Certification. The Subrecipient hereby certifies that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement; This certification is a material representative of fact upon which reliance was placed with this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- (i) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions;
- (ii) It shall require that the language of paragraph (a) through (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and
- (iii) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this

certification is required by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure

4.17 Religious Activities. The Subrecipient shall comply with all applicable regulations set forth under 24 C.F.R. § 5.109 concerning the participation of faith-based organizations in HUD programs, including subsection (j) regarding the acquisition, construction, and rehabilitation of structures that may involve religious purposes. Funds provided under this agreement shall not be utilized for inherently religious activities, such as worship, religious instruction, or proselytization.

4.18 Environmental Conditions. Recipients of CDBG-DR funds are required to comply with the requirements of the National Environmental Policy Act of 1969 (NEPA) found at 24 C.F.R., Part 58 and complete an Environmental Review Record (ERR). NCEM may also require additional environmental reviews for projects that receive these funds. No funds may be obligated or expended by Subrecipient until the environment review procedures outlined in Part 58 have been complied with.

Regardless of whether the State or the Subrecipient will conduct environmental reviews, the Subrecipient must comply with the limitations in 24 C.F.R. § 58.22, which imposes limitations on activities pending environmental clearance, and specifically limits commitments of HUD funds or non-HUD funds by any participant in the development process before completion of the environmental review. A Request for Release of Funds may be processed after all conditions and compliance requirements have been met. A violation of this requirement may result in a prohibition on the use of Federal funds for the activity.

The Subrecipient shall also comply with the following environmental compliance requirements, insofar as they apply to the performance of this Agreement: (1) The Clean Air Act (42 U.S.C. § 7401 et seq.) as amended, particularly sections 176(c) and (d) (42 U.S.C. §§ 7506(c) and (d)); (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 C.F.R., Parts 6, 51, and 93); and (3) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq., as amended, including the requirements specified in Sections 114 and 308 of the Federal Water Pollution Control Act, as amended, and all regulations and guidelines issued thereunder.

4.19 Lead-Based Paint. The Subrecipient agrees that any construction or rehabilitation of residential housing with assistance provided under this Agreement shall be subject to HUD's Lead-Based Paint Regulations at 24 C.F.R. § 570.608, 24 C.F.R. § 35, Subpart B, and Chapter 130A of the North Carolina General Statutes, Article 19A (Lead-Based Paint Hazard Management Program). Such regulations pertain to all CDBG-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 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.

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

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

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

Additional elevation standards, as set forth in 81 Fed. Reg. 83254, sec. VI, no. 28(e) (Nov. 21, 2016), apply to projects funded by this Agreement. All structures, defined at 44 C.F.R. § 59.1, designed principally for residential use and located in the 1 percent annual (or 100-year) floodplain that receive assistance for new construction, repair of substantial damage, or substantial improvement, as defined at 24 C.F.R. § 55.2(b)(10), must be elevated with the lowest floor, including the basement, at least two feet above the 1 percent annual floodplain elevation. Residential structures with no dwelling units and no residents below two feet above the 1 percent annual floodplain, must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 C.F.R. § 60.3(c)(3) or successor standard, up to at least two feet above the 1 percent annual floodplain. All Critical Actions, as defined at 24 C.F.R. § 55.2(b)(3), within the 0.2 percent annual floodplain (or 500-year) floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 0.2 percent annual floodplain flood elevation or three feet above the 1 percent annual floodplain. If the 0.2 percent annual floodplain

or elevation is unavailable for Critical Actions, and the structure is in the 1 percent annual floodplain, then the structure must be elevated or floodproofed at least three feet above the 1 percent annual floodplain level. Applicable State, local, and tribal codes and standards for floodplain management that exceed these requirements, including elevation, setbacks, and cumulative substantial damage requirements, must be followed.

4.21 Historic Preservation. To the extent that environmental review is carried out by the Subrecipient through funds provided under this Agreement, the Subrecipient shall follow the state historic preservation programmatic agreement, which can be found on the RebuildNC website at <https://www.rebuild.nc.gov/reporting-and-compliance/environmental-review>. The programmatic agreement implements the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended, codified in title 54 of the United States Code, and the procedures set forth in 36 C.F.R., Part 800, insofar as they apply to the performance of this agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list.

4.22 Eligibility Restrictions for Certain Resident Aliens. The Subrecipient shall comply with all applicable regulations set forth under the 24 C.F.R. § 570.613 regarding the eligibility requirements of certain resident aliens, unless the Subrecipient has chosen the state to conduct applicant-eligibility review.

4.23 Policies Concerning Nonviolent Demonstrations. Pursuant to 81 Fed. Reg. 83254, sec. VI, no. 47.k (Nov. 21, 2016), Subrecipient certifies that it has adopted and is enforcing: (1) a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and (2) a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

4.24 Citizen Participation. The Subrecipient must satisfy the requirements of 81 Fed. Reg. 83254, sec. VI, no. 4 (Nov. 21, 2016), which waives and replaces provisions of 24 C.F.R. § 570.486. Specifically, the Subrecipient must offer multiple methods of communication to provide applicants with timely information on the status of their applications, and must implement a system to accept citizen complaints and respond to such complaints in writing within 15 working days of receipt.

4.25 Housing Counseling. To the extent that any housing counseling is carried out by the Subrecipient through funds provided under this Agreement, such activities must be carried out in accordance with 24 C.F.R. § 5.111.

4.26 No Funding to Private Utilities. Pursuant to 81 Fed. Reg. 83254, sec. VI, no. 46 (Nov. 21, 2016), no funds provided under this Agreement may be used to assist a privately owned utility for any purpose.

4.27 Broadband Infrastructure in Housing. Pursuant to 81 Fed. Reg. 83254, sec. VI, no. 28(f) (Nov. 21, 2016), if funds under Agreement are used for any new construction or substantial rehabilitation (as defined by 24 C.F.R. § 5.100) of a building with more than four rental units, those structures must include installation of broadband infrastructure, except where the Subrecipient documents that: (a) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible; (b) the cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or (c) the structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

Article V. OTHER MISCELLANEOUS PROVISIONS

5.1 Deobligation of Unused Funds. When project costs are less than the grant award amount, excess award funds shall be deobligated back to NCEM. Administration and project delivery funds shall be deobligated in proportion to the amount of program funds being deobligated to NCEM.

5.2 Complaints and Grievance procedures for Compliance Plans. Subrecipient must address complaints to NCEM and/or the Rebuild NC website (<https://www.rebuild.nc.gov/>). Citizen complaints can be filed to NCEM and/or the Rebuild NC website (<https://www.rebuild.nc.gov/>).

5.3 Benefit. This Agreement is made and entered into for the sole protection and benefit of Commerce and NCEM, the State and the Subrecipient, and their respective successors and assigns, subject always to the provisions of the Agreement. Except as herein specifically provided otherwise, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Commerce and NCEM, the State and the Subrecipient and their respective successors and assigns. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person, other than as expressly provided in this Agreement. It is the express intention of the Parties and their respective successors and assigns that any such person or entity, other than the State, Commerce and NCEM, and the Subrecipient, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

5.4 Further Assurance. In connection with and after the disbursement of Grant funds under this Agreement, upon the reasonable request of NCEM or Commerce, the Subrecipient shall execute, acknowledge and deliver or cause to be delivered all such further documents and assurances, and comply with any other requests as may be reasonably required by NCEM or Commerce or otherwise appropriate to carry out and effectuate the Grant as contemplated by this Agreement. NCEM or Commerce may require the delivery of documents in hard copy or electronic media.

5.5 Independent Status of the Parties. The Parties are independent entities and neither this Agreement nor any provision of it or any of the Grant Documents shall be deemed to create a

partnership or joint venture between the Parties. Further, neither the Agreement nor any of the Grant Documents shall in any way be interpreted or construed as making the Subrecipient, its agents or employees, agents or representatives of Commerce and NCEM. The Subrecipient is and shall be an independent contractor in the performance of this Agreement and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. In no event shall Commerce and NCEM be liable for debts or claims accruing or arising against the Subrecipient. The Subrecipient represents that it has, or shall secure at its own expense, all personnel required in the performance of this Contract. Such employees shall not be employees of, nor have any individual contractual relationship with, Commerce and NCEM.

5.6 Indemnity. The Subrecipient agrees, to the fullest extent permitted by law, to release, defend, protect, indemnify and hold harmless the State, Commerce and NCEM, its employees and agents against claims, losses, liabilities, damages, and costs, including reasonable attorney fees, which result from or arise out of: (a) damages or injuries to persons or property caused by the negligent acts or omissions of Subrecipient, its employees, or agents in use or management of the Grant; and (b) for any claims, whether brought in contract, tort, or otherwise, arising out of this Agreement, if related to the Subrecipient's actions or omissions. The obligations under this paragraph are independent of all other rights or obligations set forth herein. This indemnity shall survive the disbursement of the Grant funds, as well as any termination of this Agreement.

5.7 Binding Effect, Contract Not Assignable. The terms hereof shall be binding upon and inure to the benefit of the successors, assigns, and personal representatives of the parties hereto; provided, however, that the Subrecipient may not assign this Agreement or any of its rights, interests, duties or obligations hereunder or any Grant proceeds or other moneys to be advanced hereunder in whole or in part unless expressly allowed under this Agreement, without the prior written consent of NCEM and Commerce, which may be withheld for any reason and that any such assignment (whether voluntary or by operation of law) without said consent shall be void.

5.8 Savings Clause. Invalidity of any one or more of the provisions of this Agreement, or portion thereof, shall in no way affect any of the other provisions hereof and portions thereof which shall remain in full force and effect.

5.9 Additional Remedies. Except as otherwise specifically set forth herein, the rights and remedies provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available in connection with this Agreement.

5.10 Survival. Where any representations, warranties, covenants, indemnities or other provisions contained in this Agreement by its context or otherwise, evidences the intent of the parties that such provisions should survive the termination of this Agreement or any Closing, the provisions shall survive any termination or Closing.

5.11 Incorporation of Exhibits. All exhibits attached to this Contract are fully incorporated as if set forth herein.

5.12 Entire Contract. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. All recitals, exhibits, schedules and other attachments hereto are incorporated herein by reference.

5.13 Headings. The headings of the various sections of this Agreement have been inserted for convenience only and shall not modify, define, limit or expand the express provisions of this Agreement.

IN WITNESS WHEREOF, the Subrecipient and Commerce and NCEM have executed this Agreement in two originals as of the Effective Date. One original shall be retained by each Party. If there is any controversy among the documents, the document on file in NCEM's office shall control.

[Signature page follows.]

AGREED:

Douglas J. Hewett, City Manager ICMA-CM
City of Fayetteville

Date

Michael A. Sprayberry
NCEM

Date

NC Department of Commerce

Date

EXHIBIT A

PROJECT BUDGET, DISTRIBUTION OF FUNDS, AND REFUNDS

CDBG-DR Project No. _____

1. Project Budget

- a. To obtain payment, the Subrecipient must submit itemized documentation substantiating direct costs incurred in implementing the CDBG-DR program. The Subrecipient's budget for the CDBG-DR program is as follows:

	Allocation
Administrative Costs - 1%	\$107,280
Project Delivery Costs	\$1,072,800
Planning & Capacity Costs ¹	\$667,000
Total Support Admin/PD	\$1,847,080
Housing Programs ²	\$6,928,000
Community Recovery Infrastructure (CRI) Program	\$1,500,000
Multi Family Rental Program ³	\$2,597,000
Public Housing Program	\$0
Supportive Services Program ⁴	\$3,966,666
DOC Economic Development Program ⁵	\$2,000,000
Activity Delivery	\$16,991,666
City Controlled Funds	\$14,241,746
DOC Economic Development Program	\$2,000,000
NCEM Implemented Funds in County	\$2,597,000
Total Hurricane Matthew CDBG-DR Funds	\$18,838,746

Notes:

¹In the initial grant agreement executed between NCEM and the county, NCEM provided up to \$1,000,000 for planning and capacity-building activities. The county and city are splitting this allocation with 67% of the funds being provided to the city and 33% of the funds provided to the county.

²Applications for the Housing Programs will be documented in the State's system of record for the Housing Programs. With a city-centered housing program model, reimbursements for homeowner programs will be requested by the city to NCEM.

³The Multi-Family Housing program is designed to be a state-run program with an open application period. The initial grant agreement between NCEM and the county allocated up to \$4,900,000 in funding for this program for a two-year period. NCEM is committed to working with the city and county to identify CDBG-DR eligible projects that will meet this commitment, consistent with division of multi-family housing funds selected by the city and county.

⁴The Supportive Services Program is designed to be a state-run program with an open application period. The initial grant agreement between NCEM and the county allocated up to \$2,500,000 in CDBG-DR funding for this program. The City has expressed a desire to manage this allocation.

⁵Economic development activities will be administered by Commerce.

2. Disbursement of Grant Funds.

- a.** No funds may be obligated or expended in any project activity except for the administrative activity in the project until the Subrecipient has complied with the Environmental Review Procedures for the CDBG Program and the CDBG environmental regulations contained in 24 C.F.R., Part 58.
- b.** No funds may be obligated or expended in any project activity except the administrative activity until the Subrecipient has submitted supporting documentation as specified in a document checklist to be provided to Subrecipient by NCEM.
- c.** Requests for Reimbursement.
 - i.** Any reimbursement request, other than administrative costs, must be accompanied by a request and any supporting materials as requested by NCEM. NCEM may, in its sole discretion, request additional documentation before approving any release of funds. NCEM will approve each request individually. The Subrecipient must receive the written approval of NCEM before entering into any contract for which they are seeking reimbursement through CDBG-DR.
 - ii.** Upon satisfactory documentary support for a reimbursement request, as determined by NCEM and Commerce, disbursement of grant funds will follow the check-write schedule for the NC Department of Public Safety, a schedule which will be provided to Subrecipient by NCEM. To obtain reimbursement, the Subrecipient shall submit to NCEM the following documentation:
 - A.** A completed and signed Payment Request form, accompanied by appropriate itemized documentation supporting all expenses claimed and that clearly identifies each expenditure of grant funds for which reimbursement is claimed, along with verification of

matching Subrecipient funds, if any are required. The supporting documentation must be organized in a manner that clearly relates the expenses shown in the supporting documentation to the line items shown in the Payment Request.

- B. Any request for reimbursement that does not clearly identify each expenditure and relate each expenditure to the line items shown on the request will not be processed, and will be returned to the Subrecipient for correction and re-submittal. **The Subrecipient shall identify any sales tax for which reimbursement has been or will be obtained from the State Department of Revenue, and such monies shall not be reimbursed.**
- d. **Reimbursement Based on Progress.** The Subrecipient agrees to proceed with diligence to accomplish the Project according to the schedule set out in the Agreement and shall show appropriate progress prior to each reimbursement. Reimbursement may be withheld or delayed if the Subrecipient fails to make progress on the Project satisfactory to NCEM. Amounts withheld shall be reimbursed with subsequent reimbursements in the event that the Subrecipient is able to demonstrate an ability to resume satisfactory progress toward completion of the Project.
- e. **No Excess Costs.** NCEM agrees to pay or reimburse the Subrecipient only for costs actually incurred by the Subrecipient that do not exceed the funds budgeted for the Project shown in Exhibit A.
- f. **Advances.** Upon consultation with NCEM, the Subrecipient may request advances for construction-related projects in extenuating circumstances. Approval of such advances are in the sole discretion of NCEM.
- 3. **Costs of Program Administration.** The Subrecipient's requests for reimbursement for program administration shall be made under either the Program Administration line item or the Activity Delivery line item of the reimbursement form, and shall conform with the following:
 - a. Costs allowable under the Program Administration line item are costs incurred for the general management, oversight, and coordination of the CDBG-DR grant. Examples include: monitoring overall program performance, leased office space and general operations, staff time and/or contracted services to manage the funds and CDBG-DR program overall, administrative support (e.g., legal/accounting/HR/audit), financial management/DRGR, reporting/QPR, and ongoing compliance monitoring after project close-out.
 - b. Costs allowable under the Activity Delivery line are costs incurred by the Subrecipient directly related to delivery of a specific CDBG-DR project or service to a beneficiary. Examples include: site-specific environmental costs, engineering/design/architecture services for a project, applicant intake/eligibility screening, project underwriting/selection, leased office space and related utility costs for delivering a single program.

- c. More information on the classification of CDBG-DR costs can be found at <https://www.hudexchange.info/trainings/courses/2016-cdbg-dr-program-planning-administration--activity-delivery-webinar/994/>.
- 4. Period for Incurring Reimbursable Expenditures. NCEM will reimburse the Subrecipient only for allowable Project expenditures that are incurred by the Subrecipient or the Subrecipient's consultants, contractors, or vendors during the period between the Award Date and the Expiration Date of the Agreement. NCEM will not reimburse the Subrecipient for Project expenditures that are not incurred during this period.
- 5. Program Income, Refunds, Reversion of Unexpended Funds, and Reduction of the Grant based on Qualified Made less than Budgeted Cost.
 - a. Program Income. The Subrecipient shall transfer all program income to NCEM, which will then transfer the program income to Commerce for a decision on reallocating the program income for eligible activities in accordance with 24 C.F.R. § 570.504. Program income is generally defined as gross income received by the Subrecipient directly generated from CDBG-DR funds. Examples of program income are included in the Federal Register notice applicable to this grant, 81 Fed. Reg. 83254, sec. VI, no. 17 (Nov. 21, 2016).
 - b. Refunds. The Subrecipient shall repay to NCEM any compensation it has received that exceeds the payment to which it is entitled herein, including any interest earned on funds reimbursed pursuant to the Agreement.
 - c. Unexpended Funds. Any unexpended Grant monies shall revert from NCEM to Commerce upon termination of the Agreement. If the Subrecipient has any CDBG-DR funds on hand or accounts receivable attributable to the use of CDBG-DR funds at the time of termination, the Subrecipient shall transfer such funds and accounts receivable to NCEM.
 - d. Reduction of the Grant made less than projected budget amounts. NCEM may reduce the Grant amount if the Subrecipient expects that actual expenses will be less than budgeted. A copy of the budget amendment will be forwarded from NCEM to Commerce.
 - e. Reimbursement for Improper Expenditures. In the sole discretion of NCEM, NCEM will recapture from the Subrecipient any amount of Grant assistance improperly expended, either deliberately or non-deliberately, by any person or entity. Additionally, a contract for administrative services should include a clause holding the administering organization responsible for reimbursement to the Subrecipient for any improperly expended grant funds, due to the actions or omissions of the administering organization, that had to be returned to NCEM.
 - f. Ineligible Real Property. Any real property under the Subrecipient's control that is acquired or improved in whole or in part with CDBG-DR funds in excess of \$25,000 must be used to meet one of the national objectives in 24 C.F.R. § 570.208 until five years after expiration of this Agreement. For any real property which is not used to meet one of the national objectives of CDBG-DR, the

Subrecipient shall pay to NCEM an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. No payment is required if the property no longer meets one of the national objectives after five years following the expiration of this Agreement. The regulations concerning any change in the use or planned use of real property acquired with CDBG-DR funds, found in 24 C.F.R. § 570.505, apply to this Agreement.