



**Louisiana Housing**  
Corporation

**LOUISIANA HOUSING CORPORATION (“LHC”)  
NOTICE OF FUNDING AVAILABILITY AND PROGRAM IMPLEMENTATION  
GUIDELINES  
FOR  
MULTIFAMILY PIGGYBACK/CDBG-DR LOAN FUNDING  
“PIGGYBACK 2019”**

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## 1. General Program Terms

### 1.1. Overview

The Louisiana Housing Corporation (“LHC” or “Corporation”) hereby releases this Notice of Funding Availability and Program Implementation Guideline (“NOFA” or “Program Description”) for the preliminary commitment of **\$25,000,000.00** of Community Development Block Grant Disaster Recovery funds (CDBG-DR funds). These funds were originally allocated by HUD pursuant to Hurricanes Katrina and Rita, and eligible projects must be located in the Katrina-Rita Parishes (see §8, Definitions). This NOFA is designed to provide funding for the new construction or acquisition/rehabilitation development of multifamily affordable housing developments that provide affordable housing as stipulated herein. Successful applicants will be required to utilize CDBG-DR funds with (4%) Low Income Housing Tax Credits (LIHTC) which are allowable from LHC Multifamily Revenue Bonds “LHC Tax-Exempt Bonds”) that are issued by the LHC in accordance with Section 42(h)(4) of the Internal Revenue Code of 1986, as amended (“Code”).

This LIHTC / CDBG-DR program, hereinafter referred to as ‘Piggyback 2019’ or ‘the Program’, corresponds with the “Piggyback Program” and is subject to amendments in the State of Louisiana Action Plan for the Utilization of Community Development Block Grant Funds in Response to Hurricanes Katrina and Rita. The Program will address long-term housing needs in parishes impacted by Katrina and Rita.<sup>1</sup> The Program objective is to create or preserve multifamily rental units primarily using LHC Tax-Exempt Bonds, CDBG-DR funds (structured as soft first or second mortgages), and equity from the sale of 4% Low Income Housing Tax Credits (LIHTC’s) allowable in accordance with Section 42(h)(4) of the Code. All developments funded through this Program would benefit low- and moderate-income populations. Piggyback 2019 is a competitive program and through its design it permits (a) mixed-income housing (with both market-rate units and units affordable to households with incomes at or below 60% of AMI); and (b) affordable housing (in which all units are affordable to households with incomes at or below 60% of AMI). Further requirements and preferences are enumerated in these Program Implementation Guidelines.

All CDBG-DR Funds will be awarded in the form of a soft cash flow first or second mortgage loan payable from Surplus Cash. CDBG-DR Funds will accrue interest at a rate not exceeding the long-term applicable federal rate (AFR) and will be payable from not less than 50% of Surplus Cash. Any deferred developer fees will be paid from the owner’s share of Surplus Cash in conjunction with the repayment of the soft cash flow loan, preferably within the ten-year credit period for LIHTCs, but not later than the initial fifteen-year compliance period for LIHTCs.

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<sup>1</sup> See Katrina-Rita Parishes, Definitions.

## 1.2. Funding

**Twenty Five Million Dollars (\$25,000,000.00)** in CDBG-DR funds will be made available through this NOFA. The highest scoring projects will be awarded until the funds are exhausted, subject to the provisions herein.

An applicant receiving funds under this NOFA will be expected to maintain the fiscal, physical and managerial soundness of the rental housing development receiving the CDBG-DR Funds for the longer the 35-year CDBG-DR Use Agreement, or the maturity of any loan or guaranty financing provided by the LHC. Applicants must assure compliance with all federal cross-cutting and LHC regulatory and administrative requirements, including but not limited to:

- Implementing the project or program activity as proposed in the submitted application;
- Ensuring compliance with all reporting requirements;
- Managing funds disbursement and accounting;
- Preparing work specifications;
- Conducting inspections;
- Affirmatively marketing;
- Program administration;
- Program documentation;
- Applicant intake; and
- Ensuring that all CDBG-DR and LIHTC requirements are met for the entire affordability period applicable to the project.

## 1.3. Eligible Uses

CDBG-DR Funds awarded under this NOFA will only reimburse eligible costs incurred to develop a project. No CDBG-DR Funds will be advanced to reimburse a project cost unless the electronic Funds Requisition Form with back-up AIA certification, invoices and receipts are submitted and approved. No funds will be disbursed until all funding commitments and grant agreements are signed, and environmental conditions are satisfied.

Purchases from affiliated persons or entities must be supported with an appraisal, acceptable to the LHC in its sole discretion. Construction / Rehabilitation costs must be included as a budgeted item and funds must be drawn on a pari passu basis with other construction-period funding sources.

## 1.4. Ineligible Uses

CDBG-DR will not be disbursed for any costs enumerated at 24 CFR §570.207, with the exception of those costs which are permitted under the State's waiver, which permits the use of CDBG-DR for new construction.

### 1.5. Eligible Projects

All borrowers must be LIHTC single asset entities organized as for-profit limited partnerships (“LPs”) or limited liability companies (“LLCs”). General Partners of LPs and Managing Members of LLCs may be for- or non-profit entities. A PHA may participate as General Partner or Managing Member. All properties must combine CDBG-DR with LIHTCs, allowable by LHC Tax-exempt Bonds which finance costs in accordance with Section 42(h)(4) of the Code. LHC Tax-exempt Bonds may, but are not required to, finance a 1<sup>st</sup> mortgage.<sup>2</sup>

Eligible projects must be located in a Katrina-Rita impacted Parish. See §8, Definitions.

Eligible projects may include market-rate units (with some units unrestricted as to rent or initial household income), but must include affordable units (restricted as to rent and initial household income). Set-aside requirements are as follows:

Eligible projects must set-aside no fewer than 5% of units as Permanent Supportive Housing (PSH).

No fewer than 40% of units must be set-aside at rents at or below 60% of AMI, and reserved for households with household incomes at move-in at or below 60% of AMI, for the duration of the 35-year affordability period.

At least 51% of the units must be restricted to rents at or below 80% of AMI, and reserved for households with household incomes, at move-in, at or below 80% of AMI, for the duration of the 35-year affordability period.

Eligible projects may be either new construction or acquisition-rehabilitation.

Applications may only be submitted for properties located in a Katrina-Rita eligible Parish.

Reserve for Replacement requirements consistent with 35-year viability apply. See §5.1, Replacement Reserve Deposit Requirements

Eligible projects must meet all eligibility requirements of this Program Description, including underwriting requirements. Eligible projects must comply with all application requirements.

### 1.6. Ineligible Projects

The following properties are Ineligible Projects:

1. Properties not located in a Katrina-Rita Eligible Parish. See §8, Definitions.
2. Properties not allowed LIHTCs, pursuant to Section 42(h)(4) of the Code.
3. Properties deemed non-feasible or non-viable by the LHC, based on its underwriting review.

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<sup>2</sup> The LHC Tax-Exempt bond-financed 1<sup>st</sup> may be construction-period only, or it may be construction to permanent.

4. Properties failing to submit a complete and fully responsive application for award of funding, or to respond to questions and concerns put forth by the LHC by the deadline imposed by the LHC for such responses when submitting an inquiry to the applicant.
5. Lease to Own Properties; because of the structure of the (35 year) CBDG-DR Gap Financing Mortgage, lease-to-own (Year 16) properties will NOT be permitted.
6. Projects which do not satisfy the requirements of §1.5, Eligible Projects.

#### 1.7. Eligible Applicants

All applicants will be LIHTC single asset entities. General partners of these limited partnerships may be for- or non-profit entities. A PHA may participate as general partner.

#### 1.8. Ineligible Applicants

1. Any person or entity on the federal debarred list, or an affiliate or an organization controlled by such person or entity on that list.
2. Any person or entity (or affiliate thereof) that received notice that they are currently out of compliance with the LHC and/or Louisiana Office of Community Development – Disaster Recovery Unit (OCD-DRU) regarding annual audits or who are in arrears on payments of LHC/OCD-DRU loans.
3. Any person or entity that currently owns or controls a LHC/OCD-DRU financed project with compliance issues that are unresolved for greater than 90 days as of the date of the application submission.

#### 1.9. Prior Awards

No awards under this NOFA may be combined with prior awards issued by the LHC/OCD, which have not closed and been fully funded.

#### 1.10. Funds Available, Maximum and Minimum Funding

Total funding to be awarded under this NOFA is Twenty Five Million Dollars (\$25,000,000.00). This amount is subject to adjustment by the LHC. Any adjustment will be subject to notification through an amendment to this NOFA.

No CDBG-DR funds award may exceed the lesser of \$80,000 per unit, or \$5,000,000 per project. However, note that applicants are discouraged from requesting a high percentage of CDBG-DR funds relative to total development costs through scoring criteria. See §3.2, CDBG-DR Efficiency.

Given the complexity of CDBG monitoring and loan management, the LHC will not award less than \$750,000 to any individual property.



### 1.11. Non-Assignability of Application and Award

The entity or individual submitting an application for CDBG-DR must be a principal of the proposed development team with the legal authority to execute a legal agreement on behalf of the LP or LLC ownership entity, with the LHC. All awards made will be to the established single-asset entity LP or LLC identified in the application, addressed to the principal of that entity submitting the application. Any assignment of such an award, without the prior, written consent of the LHC will immediately and irrevocably void the award. Any change in the proposed ownership from that which is stipulated in the application will constitute an assignment.

### 1.12. Strictly Enforced Deadlines

The LHC will **strictly adhere** and impose deadlines for committing and expending CDBG-DR fund awards under this NOFA based upon the activity proposed and other information provided in the application. Any CDBG-DR funds not committed or expended within the timeframes included in the loan agreement documents will be recaptured by the Corporation. Projects must adhere to the following:

1. CDBG-DR Soft Funds awards may be terminated at any time prior to the CDBG-DR Soft Funds award expiration date due to the absence of program/project productivity. CDBG-DR Funds advanced prior to the termination of a project (whether voluntary or involuntary) must be repaid to the LHC.
2. Applicants must adhere to the project schedule included in the application submission and satisfy placed in service requirements required by Section 42 of the Code.

**NOTE: FAILURE TO MEET ANY OF THE ABOVE REFERENCED TIMELINES/REQUIREMENTS WILL RESULT IN AN AUTOMATIC RESCISSION OF THE CONDITIONAL COMMITMENT OF CDBG-DR FUNDS.**

### 1.13. Project Readiness Requirement: Funding commitments

The Application must demonstrate and include commitments for all funding sources, to the satisfaction of the LHC, as follows:

- (a) Commitments for all non-CDBG sources of funding.
  - (i) All Commitments must be dated after the publication date of this NOFA.
  - (ii) LHC reserves the right to require updated commitments as it deems necessary.
  - (iii) Commitments for LIHTC equity must provide for at least 10% pay-in prior to the first payment of CDBG-DR funds from LHC.
  - (iv) All conditions contained in commitments shall be subject to determination by the LHC as to reasonableness. LHC may reject any commitment (and deem the application deficient) if, in the sole discretion of the LHC, any condition is outside of market requirements and/or is unlikely to be satisfied.
- (b) Projects that will utilize LIHTCs pursuant to Section 42(h)(4) of the Code must also submit a LIHTC Application in accordance with the requirements of Section 42(m) of the Code

and the provisions of the 2018 State Qualified Allocation Plan (“2018 QAP”). The LIHTC application must be submitted simultaneously with the CDBG-DR funds Application. Any award of CDBG-DR funds for a project utilizing LHC Tax-exempt Bonds to obtain LIHTCs allowable pursuant to Section 42(h)(4) of the Code will be made contingent upon approval from the Louisiana State Bond Commission.

## 2. CDBG Funding Criteria and Pools

CDBG-DR funding is available to Applicants based on project location and qualification for funding from one of two Pools. There are two Pools, as enumerated and described below:

- Pool A: \$14,717,062 is reserved for applicants to Pool A. Pool A Applicants must be located in Orleans Parish. All projects located in Orleans Parish are automatically entered into Pool A.
- Pool B: \$10,282,938 is reserved for applicants to Pool B. Pool B Applicants will be from the thirty-seven eligible parishes. All projects not located in Orleans Parish are automatically entered into Pool B.
- Unused CDBG-DR Funds: Funds will be allocated in each Pool until funds are insufficient to fund the next-highest scoring application in each Pool. Unused funds in Pool A will flow to Pool B, and will be used to fund the next highest-scoring application for which the remaining funds are sufficient, regardless of Pool. Applicants from Orleans Parish will be automatically entered into Pool A. When Pool A funds have been applied to fully fund applicants from Orleans Parish, any remaining unfunded projects from Orleans Parish will complete in Pool B, against applicants from the 36 other eligible parishes. Any remaining funds from Pool A, after fully funding the highest scoring applications from Orleans Parish, will be transferred to Pool B. For example, if the highest four scoring applications in Orleans Parish require \$13M, and the fifth highest scoring Orleans Parish application requests \$3M (i.e., more than can be funded in full with the remaining Pool A funds), then the four applications will be awarded \$13M, and the remaining \$1.47M will be moved to Pool B (increasing the total funding available in Pool B to \$11,754,644), and remaining Orleans applications will be considered in Pool B, against applicants from the other parishes, in descending order of score.

### 3. Scoring Criteria

2019 Piggyback funds will be used as Gap Financing for LIHTC allowable to developments utilizing LHC Tax-Exempt Bonds in accordance with Section 42(h)(4) of the Code. CDBG-DR will be awarded to developments based on a scored application verified by LHC and using a scoring formula unique to this Program, but which incorporates certain scoring elements similar to those found in the Louisiana Housing Corporation (LHC) 2018 Final Qualified Allocation Plan (QAP).

There are 64 total available points; however, no property can receive all the available points because certain categories are mutually exclusive, and because CDBG-DR Efficiency points will always be less than the (theoretical) maximum.

Note that in event of ties, LHC will use the non-rounded CDBG-DR efficiency score, to the number of decimal places necessary to break a tie.

#### 3.1. Minimum Score

The LHC reserves the right to determine that project applications which score below 24 total points are not eligible for funding.

#### 3.2. CDBG-DR Efficiency

This criterion rewards project applications which request a smaller percentage of CDBG-DR funds relative to total developmental costs. Projects will earn points based on the ratio. Note, in the event of a tie, the non-rounded score will be used. Each project's point score will be computed as follows:

- TDC<sup>3</sup> (2018 Application Model, 'Sources & Uses' Worksheet, Total Development Costs at Cell E180),
- Minus CDBG-DR Gap Financing Loan reservation requested,
- Divided by the TDC,
- Times 20, rounded.
  - Example 1 (more CDBG-DR relative to TDC): Project with a TDC of \$12.3M, requesting an award of \$4.56M.
    - \$12.3M TDC; \$4.56M Gap Financing Loan Request
    - $\$12.3\text{M} - \$4.56\text{M} = \$7.74\text{M} \div \$12.3\text{M} = .6292$
    - $.6292 \times 20 = 12.58$  points, rounded to 13 points.

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<sup>3</sup> For purposes of this calculation, TDC is used, not 'adjusted TDC'. There are no deductions from TDC when used for scoring Leveraging.

- Example 2 (less CDBG-DR relative to TDC): Project with a TDC of \$12.3M, requesting an award of \$1.85M.
  - \$12.3M TDC; \$1.85M Gap Financing Loan Request
  - $\$12.3M - \$1.85M = \$10.45M \div \$12.3M = .8496$
  - $.8496 \times 20 = 16.99$  points, rounded to 17 points.

### 3.3. Incremental Affordability

This criterion encourages affordability below the level at which low income housing tax credits are earned, toward greater affordability for residents of units committed to lower rent and income levels.

- Projects in which the ratio of units set aside at 60% AMI to units set aside at 50% AMI is not less than 3:1 will earn 10 points.<sup>4</sup>
  - For example, if a project has 9 units at 50% AMI and 24 units at 60% AMI, the ratio of 50% units to 60% units is 9:24, which is 37.5%, which is equal to or greater than 1:3, or 33.33%, and the property would earn ten (10) points for 1:3 Incremental Affordability.
- Projects in which the ratio of units set aside at 60% AMI to units set aside at 50% AMI is not less than 4:1 will earn 5 points.<sup>5</sup>
  - For example, if a project has 7 units at 50% AMI and 28 units at 60% AMI, the ratio of 50% units to 60% units is 7:28, which is 25%, which is equal to or greater than 1:4, or 25%, and the property would earn five (5) points for 1:4 Incremental Affordability.

For projects subject to existing affordability agreements, these increments must be over and above the current affordability mix to which the project is currently obligated under its existing extended affordability commitment. For example, if an Applicant with an existing affordability agreement currently has 30 units restricted at 60% AMI, it must agree to commit eight (36.3%) of these units to 50% AMI (10 points) or six (25%) of these units at 50% (5 points), *without regard to existing units already committed at 50% AMI affordability*. For a project subject to existing affordability agreement, units currently committed at 50% AMI affordability may not be counted toward this Incremental Affordability option. For applicants subject to an existing affordability agreement, commitments which earn points will be commitments which provide for greater affordability than the affordability to which the project is currently obligated.

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<sup>4</sup> That is, if a project has 25 units at 60% AMI and 9 units at 50% AMI, the ratio is 25:9 (.36, which is not less than 3:1 (.33)). For eligibility, for every three units at 60%, at least one unit must be at 50%.

<sup>5</sup> That is, if a project has 25 units at 60% AMI and 7 units at 50% AMI, the ratio is 25:7 (.28, which is not less than 4:1 (.25)). For eligibility, for every four units at 60%, at least one unit must be at 50%.

See §9, Examples of Affordability Mixes Which Comply with the Requirements of this NOFA for illustrations of this set aside option.

### 3.4. Rent-Burdened Parish

Points are awarded based on the rent-burdening factor (Gross Rents as a Percentage of Income, or “GRAPI”) applicable to the eligible parish in which the proposed development will be built.<sup>6</sup>

<b>PARISH</b>	<b>GRAPI</b>	<b>POINTS</b>
<b>Acadia</b>	46.4%	7.70
<b>Allen</b>	43.3%	7.10
<b>Ascension</b>	43.2%	7.10
<b>Assumption</b>	56.4%	9.30
<b>Beauregard</b>	48.9%	8.10
<b>Calcasieu</b>	49.5%	8.20
<b>Cameron</b>	35.6%	5.90
<b>East Baton Rouge</b>	53.5%	8.80
<b>East Feliciana</b>	48.2%	8.00
<b>Evangeline</b>	57.8%	9.50
<b>Iberia</b>	50.5%	8.30
<b>Iberville</b>	54.1%	8.90
<b>Jefferson</b>	53.7%	8.90
<b>Jefferson Davis</b>	51.5%	8.50
<b>Lafayette</b>	47.2%	7.80
<b>Lafourche</b>	45.7%	7.50
<b>Livingston</b>	40.6%	6.70
<b>Orleans</b>	60.4%	10.00
<b>Plaquemines</b>	42.3%	7.00
<b>Pointe Coupee</b>	45.9%	7.60
<b>Sabine</b>	45.3%	7.50
<b>St. Bernard</b>	56.3%	9.30
<b>St. Charles</b>	47.8%	7.90
<b>St. Helena</b>	48.9%	8.10
<b>St. James</b>	50.2%	8.30

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<sup>6</sup> Rent Burdened Parishes are parishes identified in the LSU Public Administration Report ‘Housing Needs Assessment of Louisiana’, identified as having a computed ratio of monthly gross rent to monthly household income of greater than 35%.

PARISH	GRAPI	POINTS
<b>St. John the Baptist</b>	53.1%	8.80
<b>St. Landry</b>	60.6%	10.00
<b>St. Martin</b>	46.7%	7.70
<b>St. Mary</b>	43.0%	7.10
<b>St. Tammany</b>	53.1%	8.80
<b>Tangipahoa</b>	56.6%	9.30
<b>Terrebonne</b>	44.4%	7.30
<b>Vermilion</b>	43.5%	7.20
<b>Vernon</b>	42.8%	7.10
<b>Washington</b>	56.2%	9.30
<b>West Baton Rouge</b>	48.1%	7.90
<b>West Feliciana</b>	42.6%	7.00

### 3.5. Deconcentration / Project Diversity

This criterion encourages mixed-income (properties with both market-rate and affordable (rent-restricted) units), toward greater economic diversity of resident populations within the affordable housing development. Units which are not restricted at-or-below 60% AMI will not qualify toward the LIHTC Applicable Fraction and will not generate LIHTC basis or equity; these non-LIHTC units may be market and/or 80% AMI units; however, applicants must achieve at least 51% of units at-or-below 80% AMI, for the duration of the 35-year period of affordability.

- A Project in which no more than 40% of the units are restricted as to household income and rents at or below 60% AMI will be awarded six (6) points<sup>7</sup>;
- A Project in which no more than 50% of the units are restricted as to household income and rents at or below 60% AMI will be awarded five (5) points;
- A Project in which no more than 60% of the units are restricted as to household income and rents at or below 60% AMI will be awarded four (4) points.

### 3.6. Economic Opportunity

This criterion encourages development within locations in which incomes are high relative to the overall MSA, toward promoting well-located affordable housing, in good neighborhoods,

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<sup>7</sup> Note that the minimum number of units at-or-below 60% AMI for LIHTC 40/60 purposes is 40%; for this reason, a project may require more than 40% (i.e., a project with 36 units, in which 40% is set aside at or below 60%, will require—at a minimum—that 15 units be set aside; this represents 41.7% of units. For purposes of the requirement that ‘no more than 40%...are restricted’ the LHC will permit the closest percentage to 40% which can be achieved, while still complying with the requirement that ‘at least’ 40% of units are LIHTC units.

with access to jobs, good schools, transportation, and other resources typical of higher-income neighborhoods.

- A Project in which the AMI of the primary census tract (in which the property will be located) is 120% of the AMI for the applicable MSA will be awarded six (6) points;
- A Project in which the AMI of the primary census tract (in which the property will be located) is 150% of the AMI for the applicable MSA will be awarded eight (8) points.

For purposes of determining the AMI of the census tract relative to the MSA, applicants should refer to the Federal Financial Institutions Examination Council website at <https://www.ffiec.gov/>. The census tract data is “2018 Est. Tract Median Family Income”

### 3.7. Preservation Priority

This criterion recognizes the value of preserving existing project-based rental assistance contracts, which provide deep affordability to covered units.

- A Project in which 100% of the units are covered by an existing HUD/USDA Project-Based Rental Assistance Contract will be awarded six (6) points;
- A Project in which 60% of the units are covered by an existing HUD/USDA Project-Based Rental Assistance Contract will be awarded five (5) points;
- A Project in which 40% of the units are covered by an existing HUD/USDA Project-Based Rental Assistance Contract will be awarded four (4) points.

### 3.8. Total Development Cost (TDC) per Unit

Max TDC is established consistent with the 2018 QAP (§V.D.2.c.). For scoring purposes, projects with TDC per unit which are below the maximum-permitted TDC will earn points, as follows:

- Projects which are 15% below maximum permitted TDC/unit will earn two (2) points;
- Projects which are 20% below maximum permitted TDC/unit will earn three (3) points;
- Projects which are 25% below maximum permitted TDC/unit will earn four (4) points.

### 3.9. QAP Scoring

Applicants submit projects to compete under this NOFA for CDBG-DR, with allowable low income housing tax credits awarded to those successful applicants who are awarded CDBG-DR, pursuant to the scoring criteria of this NOFA. The QAP scoring criteria, enumerated in the 2018 QAP, do not apply. All other aspects of the QAP apply.



#### 4. Gap Financing Terms

CDBG-DR financing will be in 1<sup>st</sup> or 2<sup>nd</sup> lien, repayable equal to 50% of Surplus Cash<sup>8</sup> with the balance due at term, in thirty-five (35) years. There will be no deferral of amounts due based on the deferred developer fee.<sup>9,10</sup> Loans will become due upon the earlier of (a) maturity at 35 years; (b) sale or refinancing of the property;<sup>11</sup> or (c) acceleration as the result of material noncompliance with the terms of the loan.

Applicants will be required to submit audited annual financial statements that include a Surplus Cash computation as defined by LHC and as established in the Loan Agreement. Surplus Cash is a balance sheet measurement that subtracts short-term obligations from available cash. If Surplus Cash were positive, it would be distributed in the following order of priority:

- One-half toward the CDBG-DR Gap Financing Loan.
- Any remaining amount to the applicant.

To be clear, the CDBG-DR Gap Financing Loan takes precedence over any provisions regarding Surplus Cash in the Limited Partnership Agreement. A submission under this NOFA acknowledges this legal principle.

The following must be paid solely from the sponsor's share of Surplus Cash: deferred developer fee, any tax credit adjusters, any asset management fees or investor service fees greater than \$4,000 per year in total, and the replenishment of any reserves, if required by any other financial partners. However, normal monthly deposits to the Reserve for Replacements may be paid from operations as if they were operating expenses (ongoing deposits to other reserves, and replenishment deposits to any reserve account, may be made only from Surplus Cash that is distributed to the owner).

##### 4.1. Interest Rate and Residual Value

The CDBG-DR Gap Financing loan will be at 0% interest. The developer may request 1% interest, or interest at the AFR, but interest rate greater than 0% will be permitted only if the balance when the Gap Financing Loan matures at Year 35 is projected by the LHC in its underwriting analysis to be than 80% of residual value, based in interest accrual, and repayments from

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<sup>8</sup> Note, it will only be in 1st lien if the underwriting determination is that the property cannot support a permanent 1st mortgage.

<sup>9</sup> The deferred developer fee must be projected in the underwriting to be recoverable from the developer's portion of Surplus Cash, within 15 years. The developer fee will be reduced to accommodate this restriction, if required.

<sup>10</sup> The loan will be at 0% interest. The developer may request 1% interest, or interest at the AFR, but this will be permitted only if the projected balance of the Gap Financing Loan at Year 35 is less than 80% of residual value.

<sup>11</sup> Due on sale or refinancing, unless the LHC, in its sole discretion, agrees to resubordinate to new financing.

projected Surplus Cash. Note that default interest may be charged, pursuant to the terms of the Legal Documents.

#### 4.2. Legal Documents

2019 Piggyback loans will be structured around standard-form legal documents, including an Award Acceptance Agreement, Loan Agreement, Note, Mortgage, Regulatory Agreement, Subordination Agreement, Completion Guaranty, Operating Deficit Guaranty, and Guaranty of Non-Recourse Carve-Outs. It is anticipated that these template legal documents will be posted no later than forty-five (45) days prior to the deadline for submission of applications under this NOFA.

Unless the application contains a summary of specific provisions which the applicant requests be amended, in submitting an application in response to this NOFA the applicant asserts its agreement with the terms and requirements set forth in these legal documents. The submission of a request for amendment or modification of provisions is not binding on the LHC, and it reserves the right to make any award of funds contingent on closing without modification of the legal documents.

## 5. Underwriting Standards and Requirements

The underwriting standards and requirements of the 2018 QAP, as reflected in the 2018 QAP the electronic application model, will apply to projects under this NOFA. However, the following additional provisions will apply.

### 5.1. Replacement Reserve Deposit Requirements

Notwithstanding any reserve deposit requirement imposed by other funders, this Program will require deposits to the Replacement Reserve Account to address future capital replacement requirements as follows:

1. For New Construction Developments: an Initial Deposit of \$1,000 per unit from Development Sources; plus, an Annual Deposit of \$500 per unit per year, from Operations.
2. For Acquisition-Rehab Developments: an Initial Deposit from Development Sources corresponding with the determinations of the required Physical Condition Assessment (“PCA”); plus an Annual Deposit to the Replacement Reserve corresponding with the determinations of the PCA. These deposits when considering the 20-year replacement needs of the project, shall result in an ending balance (Year-20) of between \$1,500 and \$2,000 per unit.

Annual deposits to the reserves shall be inflated by 2% annually. This provision supports greater long-term viability, consistent with the 35-year CDBG-DR loan term and period of affordability. See §5, Underwriting Standards and Requirements.

This provision supports greater long-term viability, consistent with the 35-year CDBG-DR loan term and period of affordability. See §1.5, Eligible Projects.

Replacement Reserves will be subject to controls as stipulated in the Legal Documents. See §4.2, Legal Documents.

### 5.2. Operating Deficit Reserve Requirements

Piggyback 2018 does not impose Operating Deficit reserve requirements, but will recognize reasonable establishment of such reserves from development funds, as required by other funding partners. As enumerated in the Legal Documents, any reserves released from the account for purposes other than curing operating deficits as defined in the Loan Agreement must be in the form of a payment against the Gap Financing Loan.

### 5.3. Lease-Up Reserve Requirements

Piggyback 2018 does not impose Lease-Up reserve requirements, but will recognize reasonable establishment of such reserves from development funds, as proposed by the applicant. All uses of such funds must appear in the audit of the partnership in the year the project is placed in service.

#### 5.4. Rents

- AMI-based rents must be underwritten at the lesser of (a) the maximum net rent (gross rent less applicable utility allowance) for the set-aside applicable to the unit; or (b) the market rent as established in the Market Study.
- For projects with 5% PSH: All units are underwritten at 20% AMI, notwithstanding that all PSH units will be awarded PSH PBV Contracts.
- Market units must be underwritten at the market rent established in the Market Study.

#### 5.5. 1<sup>st</sup> Mortgage Sizing

The initial debt service coverage ratio (“DSCR”) of the proposed 1<sup>st</sup> mortgage may not exceed 1.20 unless a larger initial DSCR is required to ensure that the DSCR does not drop below 1.0 during the term of the proposed 1<sup>st</sup> mortgage.

#### 5.6. PSH Underwriting

Projects must set aside and provide at least five-percent (5%) of total units for Permanent Supportive Housing (“PSH”). Such mandatory PSH Units are strongly preferred to be one-bedroom units.<sup>12</sup> Project-based vouchers (rents set at 110% of FMR) are reserved for PSH units in awarded projects and PBV contracts covering PSH units will be awarded to properties receiving an award of CDBG-DR under this Program. However, because such vouchers may only be used for PSH households and because there is no guarantee that PSH households will occupy those units, PSH units must be underwritten at 20% AMI, which is the default level of affordability.

All properties should endeavor to dedicate a number of accessible units as PSH units.

Note that the LHC retains the right to determine that a proposed project is not suited for PSH units, and to decline to offer a PSH Agreement. In this event, the project will not be required to set aside five-percent of units for PSH or for 20% AMI affordability. Applicants will be notified of this determination with the issuance of the Deficiency Letter (see §7.3, Deadline to Submit).

#### 5.7. Performance Bond

Each funded application that receives an award of CDBG-DR Funds may be required to post a performance bond during the period of construction sufficient to cover the CDBG-DR Funds award or provide proof of minimum net financial resources as indicated below.

In lieu of a performance bond, demonstration of minimum net financial resources is an option for a person or entity alone or in combination with other persons or entities having net assets equal to the applied for CDBG-DR Fund Loan **and** who has unrestricted liquid assets at least

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<sup>12</sup> For projects with the mandatory minimum 5% PSH set-aside, one bedroom units are strongly preferred. For projects electing 10% PSH, one bedroom units are required for at least half of the PSH units.

equal to 10% of the applied for CDBG-DR Fund Loan. Applicants must provide proof through submittal of certified audited financials, if so requested by the LHC.

## 6. Threshold Requirements

### 6.1. Overview

- (a) Applicants must complete and submit the LHC LIHTC electronic application by no later than the **Application Deadline**. See §7.5, Important Dates and Deadlines. Applicants must provide the required performance bond or provide proof of minimum financial requirements at start of construction.
- (b) Applicants must include a narrative describing the project. A project must be feasible and viable with an award of CDBG-DR Funds.
- (c) Projects with multiple environmental issues which cannot be addressed timely and cost-effectively will cause the award of CDBG-DR Funds to be canceled.

### 6.2. TDC Limits

Pursuant to the 2018 Qualified Allocation Plan (QAP), which governs the policies and procedures related to the allocation of low income housing tax credits (LIHTCs) in accordance with Section 42 of the Internal Revenue Code of 1986 as amended, certain limits on total development cost (TDC) per unit apply. Applicants should refer to Section V(D)(2)(c) of the 2018 QAP entitled “Maximum Unit Development Cost”. The applicable cost limits described in this section apply to funding under this NOFA. Applicants may use the updated HUD 2018 Cost Limits documentation which can be found using the following link:

<https://www.hud.gov/sites/dfiles/PIH/documents/TDC.pdf>.

If an application is submitted in which the maximum TDC/unit limitations are exceeded, a Waiver Request should accompany the application and the application will be subject to further review and approval by the LHC on a case-by-case basis to determine whether the costs included may be approved. As set forth in the QAP, the LHC will consider Waiver Requests which enumerate and detail Extraordinary Site Costs (§V(D)(2)(d)) based on supporting documentation submitted by the Applicant. Submitted Waiver Requests should establish whether the proposed development conforms to the Hard Construction Cost (HCC) limits which are published by HUD in the same document as the TDC limits. LHC provides no guarantee that any application which exceeds the TDC/unit limitations will receive a waiver of that limitation, but encourages the submission of applications which exceed the limitations for legitimate reasons related to their inherent costs.

### 6.3. Bond and LIHTC Requirements

All applications must combine CDBG-DR with 4% LIHTCs and bond-financed mortgage proceeds. Accordingly, all applications must conform to the standards and requirements related to these funding sources, as enumerated in the 2018 QAP.

#### 6.4. Permanent Supportive Housing (“PSH”) Set-Aside Requirement

Projects must set aside and provide at least 5% of total units for Permanent Supportive Housing (“PSH”). Such mandatory PSH Units are strongly preferred to be one-bedroom units. Project-based vouchers (rents set at 110% of FMR) are reserved for PSH units in awarded projects and PBV contracts covering PSH units will be awarded to properties receiving an award of CDBG-DR under this Program. However, because such vouchers may only be used for PSH households and because there is no guarantee that PSH households will occupy those units, PSH units must be underwritten at 20% AMI, which is the default level of affordability. To be clear: to the extent that a PSH unit, for which there is a PSH voucher, cannot be filled with a PSH tenant pursuant to the PSH Agreement, the owner must rent the unit to a household qualifying at or below 30% AMI, at a rent not to exceed the rent that is 30% of the 20% AMI, adjusted for household size, less utilities.

Note that in addition to the LHC’s strong preference for one-bedroom units for the mandatory five-percent PSH set aside, the LHC has a strong preference that a significant number of PSH units be accessible to persons with disabilities.

See §5.6, PSH Underwriting, and §10, PSH Program Summary.

#### 6.5. Physical Condition Assessment – Acquisition-Rehabilitation Projects Only

For Acquisition-Rehab projects only, a Physical Condition Assessment (“PCA”) must be submitted with the application. The PCA will establish, subject to the review and concurrence of the LHC, the Initial Deposit to the Replacement Reserves, and the Annual Deposit to the Replacement Reserves, such that the Year-20 ending balance when considering the timing and cost of capital replacements will be no less than \$1,500 per unit and no greater than \$2,500 per unit. The required PCA will be performed consistent with the requirements of The Mark-to-Market Operating Procedures Guide, Appendix I, Statement of Work for Physical Condition Assessment.

See [https://www.hud.gov/program\\_offices/housing/mfh/presrv/presmfh/opglinks](https://www.hud.gov/program_offices/housing/mfh/presrv/presmfh/opglinks).

Note that New Construction projects are not required to submit a PCA, but that the Initial and Annual deposit requirements are fixed. See §5.1, Replacement Reserve Deposit Requirements.

#### 6.6. Market-Study Determined Absorption Rate

The LHC will not fund a project for which the market study indicates the proposed units cannot be effectively absorbed. For new construction properties, the LHC will require a determination by the market study analyst that the new units can be absorbed at a rate of no less than 15% (i.e., 15% of the units per month, resulting in full occupancy no later than seven months from initial leasing). Applicants should be reasonably confident that there is market demand for their proposed units, prior to incurring the costs to apply.

#### 6.7. Changes to Project After Award

Any changes to a project, including but not limited to unit count and configuration, after a notice of award under this NOFA must be approved in advance by the Corporation in writing. Changes made without the prior written approval of the Corporation will result in the cancelation of the project and the recapture of all awarded funds.

#### 6.8. Payment of Developer Fee

Thirty percent (30%) of the non-deferred portion of the Developer Fee will be paid out at the Closing. Thirty percent (30%) of the non-deferred portion of the Developer Fee will be paid out when construction is complete. The remaining 40% of the non-deferred portion of the Developer Fee will be disbursed from the final draw subject to conditions outlined in the closing documents.

#### 6.9. Completed Projects

Projects are considered complete only after all units identified in a single project are at 100% construction and certificates of occupancy have been issued, and the project sponsor complied with all conditions precedent to the final release of CDBG-DR, as stipulated in the legal documents.

#### 6.10. Regulatory Authority and Requirements

All applications under this NOFA are governed by the 2018 Qualified Allocation Plan, Section 42 of the Internal Revenue Code and 24 CFR Part 570. Modification of federal statutes or regulations governing the CDBG-DR Program by Congress, the Department of Housing and Urban Development (HUD), the state legislature, or LHC may become effective immediately and apply to the activities funded under this NOFA.

This NOFA does not include the text of all applicable regulations that may be important to a particular project. For proper completion of the application, LHC strongly encourages potential applicants to consult the federal CDBG-DR Program regulations, and other federal cross-cutting regulations. Applicants should also consult the State's Uniform Construction Code.

#### 6.11. Site Development Requirements

Construction that is financed by CDBG-DR Funds must meet all applicable State and local building codes along with appropriate zoning ordinances in effect at the time of project completion.

#### 6.12. Insurance Requirements

Insurance requirements for projects are governed by the State of Louisiana Office of Risk Management Procedures Manual for Insurance Language in Contracts and Indemnification Agreements, Revised December 2015, Exhibit D. This Exhibit is appended for reference to this



NOFA, See §11, Insurance Requirements. The entire procedures manual can be found at the following URL: <http://www.doa.la.gov/orm/PDF/Contract%20Manual%20-%20Dec%202015.pdf>

#### 6.13. Housing Choice Opportunities

Projects awarded CDBG-DR Funds must comply with Title VI of the Civil Rights Acts of 1964, the Fair Housing Act, Section 504, Executive Order 11063 and HUD regulations issued pursuant thereto so as to promote greater choice of housing opportunities.

#### 6.14. Uniform Relocation and Real Property Acquisition Act

If CDBG-DR Funds are proposed to pay for acquisition costs and activities, the Applicant must follow the procedures of the Uniform Relocation and Real Property Acquisition Act to acquire the project site. The procedures must be followed prior to the site acquisition. CDBG-DR Funds cannot be used to pay or reimburse an applicant for site acquisition activities that do not comply with the requirements of the Uniform Act. In no case will CDBG-DR be used to pay for URA related costs; other sources must be applied to these costs.

#### 6.15. Cross Cutting Federal Requirements

All applicants shall comply with the following:

- Environmental clearance;
- Uniform Residential Requirements as applicable;
- Lead Based Paint
- Section 3

#### 6.16. Davis Bacon Prevailing Wage Compliance

If CDBG-DR Funds are awarded for rehabilitation, renovation or new construction the project budget costs must be based on the prevailing wage rates.

#### 6.17. Uniform Physical Property Condition Standard

Housing that is constructed or rehabilitated with CDBG-DR Funds must meet all applicable local codes, rehabilitation standards, zoning and related ordinances at the time of project completion. If there are no such standards or code requirements, the housing must meet the Uniform Physical Property Condition Standard for the entire affordability period.

#### 6.18. Accessibility Requirements

All funded projects must meet the accessibility requirements at 24 CFR Part 8, which implements Section 504 of Rehabilitation Act of 1973 (29 U.S.C. 794) and covers multifamily dwellings, as defined at 24 CFR 100.201, and must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619). These requirements must be met for the entire affordability period.

#### 6.19. Green Building Standard for Replacement and New Construction

Borrowers must meet the Green Building Standard for: (i) All new construction of residential buildings and (ii) all replacement of substantially damaged residential buildings. Replacement of residential buildings may include rehab in which there are changes to structural elements such as flooring systems, columns, or load bearing interior or exterior walls.

All new construction must meet an industry-recognized standard that has achieved certification under at least one of the following programs: (i) ENERGY STAR (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, applicants must follow the guidelines specified in the [HUD CPD Green Building Retrofit Checklist](#). 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. For example, if the furnace, air conditioner, windows, and appliances are replaced, the replacements must be ENERGY STAR-labeled or FEMP-designated products; WaterSense-labeled products (e.g., faucets, toilets, showerheads) must be used when water products are replaced. Rehabilitated housing may also implement measures recommended in a Physical Condition Assessment (PCA) or Green Physical Needs Assessment (GPNA).

#### 6.20. Nondiscrimination Requirements

The Sponsor agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1975, and Contractor agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

Sponsor agrees not to discriminate in its employment practices, and will render services under this Contract without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, veteran status, political affiliation, or disabilities.

## 7. Application Submission

This NOFA does not commit the LHC to award any contract nor to pay any costs incurred in the preparation or delivery of applications. Furthermore, the LHC reserves the right to accept or reject, in whole or in part, any and all applications submitted, and/or to cancel this NOFA. The LHC also reserves the right to ask for additional information or conduct interviews from/with any applicant and/or all applicants as may be necessary or appropriate for purposes of clarification. LHC reserves the right, at its sole discretion, to suspend or amend the provisions of this NOFA. Any such revisions will be formalized by the issuance of an amendment to this NOFA.

### 7.1. Application Fees

The following fees are charged in connection with this NOFA and due with the submission of an application:

- Application Fee
- Analysis Fee
- Market Study Fee (Note, the market study fee is due with the Letter of Intent to Submit, prior to the Application Deadline. See §7.3, Deadline to Submit)

Reprocessing fees will be charged in the event a reprocessing is required, as defined in the QAP. The Credit Award fee and Subsidy Layering/PIS fee will be charged and payable upon issuance of a Credit Award, only. The \$40 per unit fee will be charged and invoiced only to awarded applications.

#### **Application Fees**

1-4 units	\$100
5-32 units	1,000
33-60 units	1,500
61-100 units	2,500
Over 100 units	5,000

#### **Analysis Fees**

1-4 units	\$100
5-32 units	1,000
33-60 units	1,500
61-100 units	2,500
Over 100 units	5,000

#### **Market Study Fees**

Market Study Fee	\$4,500
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#### **Reprocessing Fee**

1-4 units	\$50
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5-32 units	\$500
33-60 units	\$750
61-100 units	1,250
Over 100 units	2,500

**Credit Award**

5% of Credit Reserved

**Return/Reallocated**

5% of Reallocated Credits

**Subsidy Layering/PIS cost**

Subsidy Layering Review	1/4 Analysis Fee
PIS Review	\$250

**Annual C&M Fee**

Per Unit	\$20
5-16 units	\$80
17-32 units	\$160
Over 33 units	Minimum fee is equal to \$5.00 per unit

Fees-Subject to confirmation that the following fees are consistent with provisions of Louisiana law, the fees described below shall apply:

Per unit	\$40
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Application and Analysis Fees and the Market Study Fee must be addressed as follows:

Louisiana Housing Corporation  
Housing Production  
2415 Quail Drive  
Baton Rouge, Louisiana 70808  
Re: 2019 Katrina Piggyback CDBG-DR NOFA  
Must include: Applicant/Company Name & Return Address

7.2. Requirements and Order of Submission

By the Deadline for the Letter of Intent, submit a Letter of Intent, and payment of the Market Study fee. By the Deadline to Apply, submit a completed LIHTC Electronic Underwriting

Application, Katrina Piggyback CDBG-DR Supplemental Application, all support documentation required by the 2018 QAP, and payment of the application and analysis fees.

### 7.3. Deadline to Submit

Applications must be received by the LHC, in their entirety, by no later than the date and time published herein. Note that a Letter of Intent to Submit, and the payment of Market Study fees have an earlier deadline, to enable the LHC to obtain the market studies concurrent with its review of the application.

The Application must be addressed as follows:

Louisiana Housing Corporation

2415 Quail Drive

Baton Rouge, Louisiana 70808

Re: Piggyback 2018 Program

Must include: Applicant/Company Name & Return Address

### 7.4. Methods of Submission

Applicants assume the risk of the delivery method chosen, including delivery via private courier or the U.S. Mail. Be advised that applications arriving after the application deadline, whether via personal delivery, U.S. Mail, FedEx, UPS, or other comparable method of delivery, will not be accepted for any reason. Applications must be submitted using the 2018 Electronic Underwriting Application using the instructions provided on the LHC website.

### 7.5. Important Dates and Deadlines

<b>NOFA and application published and posted to LHC website</b>	Friday, February 15, 2019
<b>Deadline to submit written inquiries regarding the NOFA to the LHC*</b>	Thursday, February 28, 2019
<b>Posting by LHC of FAQ in response to written inquiries (Amendment of NOFA)—if required</b>	Friday, March 1, 2019
<b>Letter of Intent and payment of Market Study Fee*</b>	Thursday, March 14, 2019
<b>Application deadline, including payment of application and analysis fees*</b>	Monday, April 8, 2019
<b>Deficiency Letters Issued by LHC to Applicants</b>	Tuesday, April 23, 2019
<b>Deficiency letter response deadline, by applicants to LHC*</b>	Friday, May 3, 2019
<b>Award determinations published</b>	Friday, May 24, 2019

\*For each deadline imposed on the applicant, the materials must be provided no later than 4:00 pm, CST, on the date of the deadline.

NOTE: LHC reserves the right to revise this schedule. Any such revision will be formalized by the issuance of an amendment to the NOFA.

#### 7.6. Questions and Communication

LHC will consider written inquiries from applicants regarding this NOFA. Inquiries will only be considered if they are **submitted in writing to [disasterrecovery@lhc.la.gov](mailto:disasterrecovery@lhc.la.gov) by the deadline for the submission of written inquiries** set forth above. Inquiries shall clearly reference the section of the NOFA for which the applicant is inquiring or seeking clarification. Any and all written inquiries from applicants submitted in writing will be deemed to require an official response.

In addition to written responses to individual inquiries, an official response to each inquiry, along with the actual inquiry, will be posted by the deadline above in the form of a Frequently Asked Questions Addendum (FAQ) at <http://www.lhc.la.gov>.

It is the sole responsibility of the applicant to inquire into and clarify any item of the NOFA that is not understood. The Corporation also reserves the right to decline to respond to any inquiry that will cause an undue burden or expense for LHC.

**It is the strict policy of the LHC that prospective respondents to this NOFA refrain from initiating any contact or communication, direct or indirect, with LHC staff or members of the Louisiana Housing Corporation's Board of Directors with regard to the competitive selection of applicants. Any violation of this policy will be considered as a basis for disqualification from consideration.**

The LHC will produce public records in accordance with LA R.S. Title 44.

## 8. Definitions

Terms not specifically defined herein have the meaning given to them in LHC's 2018 Qualified Allocation Plan (QAP) available on LHC's website at: <http://www.lhc.la.gov/page/archives>

- **Applicant** - A taxpayer or developer submitting an application to this NOFA.
- **Completed Projects** - Projects are considered complete only after all units are a 100% construction complete and certificates of occupancy have been issued.
- **Construction Completion** - All necessary title transfer requirements and construction work have been performed and the final drawdown of CDBG-DR Funds has been disbursed for the project.
- **Corporation** – The Louisiana Housing Corporation (LHC).
- **LHC** – Louisiana Housing Corporation (LHC).
- **Entity/ Organization** – A legal body (non-profit, for-profit, local units of government) that will have legal ownership of the project and property before and after project completion. A developer may contract with an entity or be a part of a development team.
- **Katrina-Rita Parishes.** The U.S. Department of Housing and Urban Development (HUD) appropriated \$13.4 billion in Community Development Block Grant funds to the state of Louisiana for recovery from hurricanes Katrina and Rita. Allocated funds administered under this NOFA may only be used in parishes eligible for these funds; the Parishes include: Acadia Parish, Allen Parish, Ascension Parish, Assumption Parish, Beauregard Parish, Calcasieu Parish, Cameron Parish, East Baton Rouge Parish, East Feliciana Parish, Evangeline Parish, Iberia Parish, Iberville Parish, Jefferson Parish, Jefferson Davis Parish, Lafayette (Parish), Lafourche (Parish), Livingston (Parish), Orleans (Parish), Plaquemines (Parish), Pointe Coupee (Parish), Sabine Parish, St. Bernard Parish, St. Charles Parish, St. Helena Parish, St. James Parish, St. John the Baptist Parish, St. Landry Parish, St. Martin Parish, St. Mary Parish, St. Tammany Parish, Tangipahoa Parish, Terrebonne Parish, Vermilion Parish, Vernon Parish, Washington Parish, West Baton Rouge Parish and West Feliciana Parish.
- **Project** – A site or sites together with any building or buildings located on the site(s) that are under common ownership, management, accounting and financing and are to be assisted with CDBG-DR Funds as a single undertaking located within a single governmental entity.
- **Responsible Entity** – Anybody of general government that has jurisdiction over the area in which a project is located, and exercises authority over land use issues in that jurisdiction (24 CFR § 58.2) which may include participating jurisdictions, state recipients, or insular areas responsible for conducting environmental reviews.
- **Rural Parish** – A Parish which is entirely defined by USDA as rural.
- **Sponsor** – Person(s) with respect to the project concerned, having site control (evidenced by a deed, a sales contract, or an option contract to acquire the property), a preliminary financial commitment, and a capable development team.

- **Substandard Housing** - Any housing unit which does not satisfy the Habitability Standards and requires Substantial Rehabilitation.
- **Written Agreement** – The document entered into between the LHC and the applicant for the CDBG-DR assisted units that includes, but is not limited to, the terms of funding.



## 9. Examples of Affordability Mixes Which Comply with the Requirements of this NOFA

Note, these unit mixes illustrate various options based on 100 units, for the sake of simplicity, only. Note the following key references that apply to these examples:

### 9.1. PSH Requirements, see §6.2, TDC Limits

Pursuant to the 2018 Qualified Allocation Plan (QAP), which governs the policies and procedures related to the allocation of low income housing tax credits (LIHTCs) in accordance with Section 42 of the Internal Revenue Code of 1986 as amended, certain limits on total development cost (TDC) per unit apply. Applicants should refer to Section V(D)(2)(c) of the 2018 QAP entitled “Maximum Unit Development Cost”. The applicable cost limits described in this section apply to funding under this NOFA. Applicants may use the updated HUD 2018 Cost Limits documentation which can be found using the following link:

<https://www.hud.gov/sites/dfiles/PIH/documents/TDC.pdf>.

If an application is submitted in which the maximum TDC/unit limitations are exceeded, a Waiver Request should accompany the application and the application will be subject to further review and approval by the LHC on a case-by-case basis to determine whether the costs included may be approved. As set forth in the QAP, the LHC will consider Waiver Requests which enumerate and detail Extraordinary Site Costs (§V(D)(2)(d)) based on supporting documentation submitted by the Applicant. Submitted Waiver Requests should establish whether the proposed development conforms to the Hard Construction Cost (HCC) limits which are published by HUD in the same document as the TDC limits. LHC provides no guarantee that any application which exceeds the TDC/unit limitations will receive a waiver of that limitation, but encourages the submission of applications which exceed the limitations for legitimate reasons related to their inherent costs.

### 9.2. Bond and LIHTC Requirements

All applications must combine CDBG-DR with 4% LIHTCs and bond-financed mortgage proceeds. Accordingly, all applications must conform to the standards and requirements related to these funding sources, as enumerated in the 2018 QAP.

- Permanent Supportive Housing (“PSH”) Set-Aside Requirement
- Requirement that at least 51% of units must be affordable at or below 80% AMI, see §1.5, Eligible Projects
- Optional points for Mixed-Income, Deconcentration. See §3.5, Deconcentration / Project Diversity.
- Optional points for Incremental Affordability. See §3.3, Incremental Affordability.

### 9.3. Examples of Deconcentration Projects

	20%	30%	50%	60%	80%	Market
100 Units	5			35	11	49

The above is acceptable:

- 5% PSH (program requirement);
- 40% of units under 60% AMI (Deconcentration, 6 points);
- $\geq 51\%$  of units  $\leq 80\%$  AMI, (program requirement, no points),
- Note that this property has not elected points for Incremental Affordability; and
- The remainder of the units as unrestricted market units.

	20%	30%	50%	60%	80%	Market
<b>100 Units</b>	5		15	40	0	40

The above is acceptable (see first example for cross references to requirements):

- 5% PSH (program requirement),
- $\leq 60\%$  of units under 60% AMI (Deconcentration, 4 points),
- $> 51\%$  of units  $< 80\%$  AMI (program requirement, no points),
- Note that the ratio of 50% units to 60% units is 15:40 (.375). This exceeds the required minimum ratio of 1:3 (.333) for Incremental Affordability, and this property would earn points for Incremental Affordability (10 points);
- And, the remainder of the units as unrestricted market units.

	20%	30%	50%	60%	80%	Market
<b>100 Units</b>	5		9	36	1	49

The above is acceptable (see first example for cross references to requirements):

- 5% PSH (program requirement),
- 50% of units under 60% AMI (Deconcentration, five points);
- Note that the ratio of 50% units to 60% units is 1:4 (.25). This equals the required ratio of 1:4 (.25) for Incremental Affordability, and this property would earn points for Incremental Affordability (5 points).
- $> 51\%$  of units  $< 80\%$  AMI; Note that this property set aside a single unit to comply with the requirement that no fewer than 51% of units were affordable at or below 80% AMI; and,
- The remainder of the units as unrestricted market units.

#### 9.4. Examples of Non-Mixed-Income / Non-Deconcentration

Note: if the applicant is not seeking points for Deconcentration (see §3.5, Deconcentration / Project Diversity), at least 60% of units must be at or below 60% AMI. This automatically satisfies the program requirement that at least 51% of units be at or below 80% AMI.

	20%	30%	50%	60%	80%	Market
<b>100 Units</b>	5			95		

The above is acceptable:

- 5% PSH (program requirement)
- $\geq 51\%$  of units  $\leq 80\%$  AMI, (program requirement, no points);
- Note that this property has not elected points for Incremental Affordability.

	20%	30%	50%	60%	80%	Market
<b>100 Units</b>	5		25	70		

The above is acceptable:

- 5% PSH (program requirement);
- $\geq 51\%$  of units  $\leq 80\%$  AMI, (program requirement, no points); and,
- Note that the ratio of 50% units to 60% units is 25:70 (35.7%). This exceeds the required ratio of 1:3 (.333) for Incremental Affordability, and this property would earn points for incremental Affordability (10 points).

	20%	30%	50%	60%	80%	Market
<b>100 Units</b>	5		24	71		

The above is acceptable (see first example for cross references to requirements):

- 5% PSH (program requirement);
- $\geq 51\%$  of units  $\leq 80\%$  AMI, (program requirement, no points); and
- Note that the ratio of 50% units to 60% units is 24:71 (33.8%). This exceeds the required ratio of 1:3 (.333) for Incremental Affordability, and this property would earn points for Incremental Affordability (10 points).

	20%	30%	50%	60%	80%	Market
<b>100 Units</b>	5		17	64		14

The above is acceptable (see first example for cross references to requirements):

- 5% PSH (program requirement);
- $\geq 51\%$  of units  $\leq 80\%$  AMI, (program requirement, no points); and
- Note that 14 units are market. However, this does not qualify as a Deconcentration Property, which requires that no more than 60% of units be below 60% of AMI (in the example, 86% of units are below 60% AMI). Nevertheless, properties which are not Deconcentration Properties may have market units.
- Note that the ratio of 50% units to 60% units is 17:64 (26.56%). This exceeds the required ratio of 1:4 (.25) for Incremental Affordability, and this property would earn points for Incremental Affordability (5 points).

## 10. PSH Program Summary

PSH is an “evidenced-based” best practice housing model which provides affordable rental housing units in a non-institutional setting linked with flexible community-based supportive services. This approach leads to reduced utilization of emergency room services and other high-cost health / social service interventions, and to cost savings that outweigh amounts spent to provide the supportive services.

LHC seeks to facilitate the development of permanent supportive housing for the eligible target populations located in the eligible parishes. All properties that receive reservations of 4% LIHTC Credits will agree to make at least 5% of total units available to PSH consumers, who will be supported by appropriate services provided through the Louisiana Department of Health (LDH) and its supportive service provider network. . Additional set-aside PSH units are encouraged as a result of a scoring bonus provided in this NOFA to projects that commit to reserving up to 10% of their units for PSH. The 5% (or greater) set aside for PSH satisfies a portion of the affordability requirements herein.

**Public Purpose:** LHC requires LIHTC applicants/owners to make available to LDH priority consumers at least 5% of the total units in the property available to PSH clients. This will achieve the goal of creating opportunities for LDH priority populations to obtain deeply affordable permanent housing, in a residential setting, with appropriate services available. PSH units within the LIHTC properties will be set aside for members of the LDH eligible population. Applicants of elderly properties who wish to restrict PSH units to elderly PSH clients may do so, wherever such a restriction is otherwise lawful.

**PSH Set-Aside Program Requirements.** Under the PSH Set-Aside Program, LIHTC owners are required to work cooperatively with LDH who will refer potential tenants. LDH through its service provider network will be solely responsible for the development and provision of supportive Service Plans in the PSH Set-Aside Program. The initial PSH Set-Aside agreement will have a term of fifteen years to align with the LIHTC affordability term. The LIHTC owner (and its successors and assigns) shall accept renewals of the PSH Set-Aside agreement, if offered on substantially the same terms, for a term (or terms) not to exceed in the aggregate thirty-five years after the commencement date of the initial PSH Set-Aside Agreement. The PSH Set-Aside Agreement will provide that the LIHTC owner may terminate the Agreement upon 90 days’ advance written notice if, at any point, the LIHTC owner notifies LHC that LDH through its service provider network can no longer provide supportive services to the PSH consumers. However, neither expiration nor termination of the Agreement shall relieve the LIHTC owner of any of its obligations under leases with PSH residents, nor shall it otherwise relieve the owner of the affordability obligations enumerated in the CDBG Regulatory Agreement.

**Referral Process for PSH Set-Aside Units.** Applicants must promptly notify the LDH PSH coordinator whenever an eligible PSH unit becomes available through vacancy (that is, whenever the LIHTC owner has not yet filled its PSH set-aside requirement). If, LDH refers one or more PSH clients within a reasonable period not to exceed one week, the LIHTC owner must accept or decline such PSH consumer prior to considering any other applicant(s) for such unit. The LIHTC owner is not required to hold a unit if the PSH applicant fails to provide

the needed information (for example, verification of income) within a reasonable time in accordance with requirements specified in the PSH Set-Aside Agreement

The LIHTC owner is not obliged to accept a referred PSH applicant unless the potential tenant is acceptable in accordance with the applicant's standard nondiscriminatory resident selection criteria (which must be applied consistently to all applicants for units in the LIHTC property). LIHTC owners may vary the terms of the tenancy (including, specifically, requiring a lease term as short as month-to-month), so long as the applicant's decision is based on nondiscriminatory criteria consistently applied to all applicants for all units in the property. LDH will not refer a tenant to a property unless (a) the potential tenant has affirmatively expressed a desire to live in that specific LIHTC property, (b) the potential tenant has sufficient and sufficiently stable income to afford the rent and utilities (typically affordable at 20% AMI), and (c) the potential tenant is likely to uphold his or her responsibilities under the lease. The potential applicant must be the tenant / lessee on the lease agreement. During the fifteen year Set-Aside Agreement term LDH will offer priority referral of applicants displaced by Hurricanes Katrina or Rita. LHC provides additional guidance to LIHTC owners regarding PSH Set-Aside Program and the details associated with the LDH referral process, resident selection expectation and lease requirements through the PSH Set Aside Agreement.

The units initially identified for PSH must consist of a mix of accessible and non-accessible units and cannot be made up of more than 50% of the accessible units required under Section 504.<sup>13</sup> PSH units must be integrated throughout the entire development and should not be segregated to one area of a building or development.<sup>14</sup> LHC anticipates that PSH applicants (both initially and over time) be able to exercise choice among available units; accordingly it is possible that the physical units used for PSH will change over time.

The eligible target populations for permanent supportive housing will be extremely-low-income individuals and family households (i.e., with incomes at or below 30% of AMI)<sup>15</sup> who have one or more of the following conditions:

- Individuals displaced as a result of the Hurricanes Katrina or Rita in need of Permanent Supportive Housing (as determined by the LDH) living in the homeless shelter system or otherwise in temporary housing.
- The individual/household member has a substantial, long-term disability as determined by the LDH including any of the following:
  - Serious Mental Illness;
  - Addictive Disorder, i.e., individuals in treatment/recovery from substance abuse disorder;

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<sup>13</sup> Unless the actual PSH applicants select a greater percentage of the accessible units

<sup>14</sup> However, the units initially identified for PSH should be selected from those units that are located on accessible routes

<sup>15</sup> Note however that households with PSH vouchers may earn up to 50% AMI.

- Developmental Disability, i.e., mental retardation, autism, or other disability acquired before the age of 22;
  - Physical, sensory, or cognitive disability occurring after the age of 22;
  - Disability caused by chronic illness (e.g., people with HIV/AIDs who are no longer able to work); and
  - Age-related disability (i.e., “frail elderly”).
- The household is homeless, or is determined by the LDH to be (1) most-at-risk of homelessness, and (2) in need of Permanent Supportive Housing. This will include family services clients with a goal of family reunification who are at risk for homelessness.
  - The individual/household member is aging out of the state Foster Care system and is determined by the LDH to be in need of Permanent Supportive Housing.

## **11. Insurance Requirements**

See §6.12, Insurance Requirements. The following is Exhibit D from the State of Louisiana Office of Risk Management Procedures Manual for Insurance Language in Contracts and Indemnification Agreements, Revised December 2015. These requirements will apply to all funded projects.

**EXHIBIT D**

**INSURANCE REQUIREMENTS  
FOR NEW CONSTRUCTION, ADDITIONS AND LARGE RENOVATIONS**

The Contractor shall purchase and maintain without interruption for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors, or anyone employed directly or indirectly by any of them. The duration of the contract shall be from the inception of the contract until the date of final payment.

**A. MINIMUM SCOPE AND LIMITS OF INSURANCE**

**1. Workers Compensation**

Workers Compensation insurance shall be in compliance with the Workers Compensation law of the State of the Contractor's headquarters. Employers Liability is included with a minimum limit of \$1,000,000 per accident/per disease/per employee. If work is to be performed over water and involves maritime exposure, applicable LHWCA, Jones Act, or other maritime law coverage shall be included. A.M. Best's insurance company rating requirement may be waived for workers compensation coverage only.

**2. Commercial General Liability**

a. Commercial General Liability insurance, including Personal and Advertising Injury Liability and Products and Completed Operations Liability, shall have a minimum limit per occurrence based on the project value. The Insurance Services Office (ISO) Commercial General Liability occurrence coverage form CG 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. Claims-made form is unacceptable.

b. The aggregate loss limit must apply to each project. ISO form CG 25 03 (current form approved for use in Louisiana), or equivalent, shall also be submitted. The State project number, including part number, and project name shall be included on this endorsement.

c. COMBINED SINGLE LIMIT (CSL) PER OCCURRENCE

<b><u>Type of Construction</u></b>	<b><u>Projects up to \$1,000,000</u></b>	<b><u>Projects over \$1,000,000 up to \$10,000,000</u></b>	<b><u>Projects over \$10,000,000</u></b>
<b>New Buildings:</b>			
Each Occurrence Minimum Limit	\$1,000,000	\$2,000,000	\$4,000,000
Per Project Aggregate	\$2,000,000	\$4,000,000	\$8,000,000
<b>Renovations:</b>			
	The building(s) value for the Project is \$_____.		
Each Occurrence Minimum Limit	\$1,000,000 **	\$2,000,000 **	\$4,000,000 **
Per Project Aggregate	2 times per occur limit **	2 times per occur limit **	2 times per occur limit **

\*\* While the minimum Combined Single Limit of \$1,000,000 is required for any renovation, the



limit is calculated by taking 10% of the building value and rounding it to the nearest \$1,000,000 to get the insurance limit. Example: Renovation on a \$33,000,000 building would have a calculated \$3,300,000 combined single limit of coverage (33,000,000 times .10 = 3,300,000 and then rounding down to \$3,000,000). If the calculated limit is less than the minimum limit listed in the above chart, then the amount needed is the minimum listed in the chart. Maximum per occurrence limit required is \$10,000,000 regardless of building value. The per project aggregate limit is then calculated as twice the per occurrence limit.

3. **Automobile Liability**

Automobile Liability Insurance shall have a minimum combined single limit per accident of \$1,000,000. ISO form number CA 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. This insurance shall include third-party bodily injury and property damage liability for owned, hired and non-owned automobiles.

4. **Excess Umbrella**

Excess Umbrella insurance may be used to meet the minimum requirements for Commercial General Liability and Automobile Liability only.

5. **Builder's Risk**

a. Builder's Risk Insurance shall be in an amount equal to the amount of the construction contract including any amendments and shall be upon the entire work included in the contract. The policy shall provide coverage equivalent to the ISO form number CP 10 20, Broad Form Causes of Loss (extended, if necessary, to include the perils of wind, earthquake, collapse, vandalism/malicious mischief, and theft, including theft of materials whether or not attached to any structure). The policy must include architects' and engineers' fees necessary to provide plans, specifications and supervision of work for the repair and/or replacement of property damage caused by a covered peril, not to exceed 10% of the cost of the repair and/or replacement.

b. Flood coverage shall be provided by the Contractor on the first floor and below for projects along and north of the Interstate Corridor beginning at the Texas-Louisiana border at Interstate 10, east to the Baton Rouge junction of Interstate 12, east to Slidell junction with Interstate 10 to the Louisiana-Mississippi border. If flood is included in the builder's risk insurance policy, then the sub-limit shall not be less than ten percent (10%) of the total contract cost per occurrence. If flood is purchased as a separate policy, the limit shall be ten percent (10%) of the total contract cost per occurrence (with a max of \$500,000 if NFIP). Coverage for roofing projects shall **not** require flood coverage.

c. On projects south of this corridor, flood coverage shall be provided by the State of Louisiana as the owner. The Contractor will be liable for the \$5,000 policy deductible from the Notice to Proceed date through the date of final payment of the project in the event of a flood loss.

d. A Specialty Contractor may provide an installation floater in lieu of a Builders Risk policy, with the similar coverage as the Builder's Risk policy, upon the system to be installed in an amount equal to the amount of the contract including any amendments. Flood coverage is not required.

e. The policy must include coverage for the Owner, Contractor and any subcontractors as their interests may appear.

6. **Pollution Liability** *(required when asbestos or other hazardous material abatement is included in the contract)*

Pollution Liability insurance, including gradual release as well as sudden and accidental, shall have a minimum limit of not less than \$1,000,000 per claim. A claims-made form will be acceptable.

A policy period inception date of no later than the first day of anticipated work under this contract and an expiration date of no earlier than 30 days after anticipated completion of all work under the contract shall be provided. There shall be an extended reporting period of at least 24 months, with full reinstatement of limits, from the expiration date of the policy if policy is not renewed. The policy shall not be cancelled for any reason, except non-payment of premium.

**B. DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Any deductibles or self-insured retentions must be declared to and accepted by the Agency. The Contractor shall be responsible for all deductibles and self-insured retentions.

**C. OTHER INSURANCE PROVISIONS**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Workers Compensation and Employers Liability Coverage

To the fullest extent allowed by law, the insurer shall agree to waive all rights of subrogation against the Agency, its officers, agents, employees and volunteers for losses arising from work performed by the Contractor for the Agency.

2. Commercial General Liability Coverage

- a. The Agency, its officers, agents, employees and volunteers are to be added as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor, premises owned, occupied or used by the Contractor. ISO Forms CG 20 10 (for ongoing work) AND CG 20 37 (for completed work) (current forms approved for use in Louisiana), or equivalent, are to be used.
- b. The Contractor's insurance shall be primary as respects the Agency, its officers, agents, employees and volunteers for any and all losses that occur under the contract. The coverage shall contain no special limitations on the scope of protection afforded to the Agency, its officers, officials, employees or volunteers. Any insurance or self-insurance maintained by the Agency shall be excess and non-contributory of the Contractor's insurance.

3. Builder's Risk

The policy must include an endorsement providing the following:

In the event of a disagreement regarding a loss covered by this policy which may also be covered by a State of Louisiana self-insurance or commercial property policy through the Office of Risk Management (ORM), Contractor and its insurer agree to follow the following procedure to establish coverage and/or the amount of loss:

Any party to a loss may make written demand for an appraisal of the matter in disagreement. Within 20 days of receipt of written demand, the Contractor's insurer and either ORM or its commercial insurance company shall each select a competent and impartial appraiser and notify the other of the appraiser selected. The two appraisers will select a competent and impartial umpire. The appraisers will then identify the policy or policies under which the loss is insured and, if necessary, state separately the value of the property and the amount of the loss that must be borne by each policy. If the two appraisers fail to agree, they shall submit their differences to the umpire. A written decision by any two shall determine the policy or policies and the amount of the loss. Each insurance company agree that the decision of the appraisers and the umpire if involved will be binding and final and that neither party will resort to litigation. Each of the two parties shall pay its chosen appraiser and bear the cost of the umpire equally.

4. All Coverages

- a. All policies must be endorsed to require 30 days written notice of cancellation to the Agency. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications shall comply with the standard cancellation provisions in the Contractor's policy. In addition, Contractor is required to notify Agency of policy cancellations or reductions in limits.
- b. Neither the acceptance of the completed work nor the payment thereof shall release the Contractor from the obligations of the insurance requirements or indemnification agreement.
- c. The insurance companies issuing the policies shall have no recourse against the Agency for payment of premiums or for assessments under any form of the policies.
- d. Any failure of the Contractor to comply with reporting provisions of the policy shall not affect coverage provided to the Agency, its officers, agents, employees and volunteers.

**D. ACCEPTABILITY OF INSURERS**

- 1. All required insurance shall be provided by a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located. Insurance shall be placed with insurers with an A.M. Best's rating of **A-:VI or higher**. This rating requirement may be waived for workers compensation coverage only.
- 2. If at any time an insurer issuing any such policy does not meet the minimum A.M. Best rating, the Contractor shall obtain a policy with an insurer that meets the A.M. Best rating and shall submit another Certificate of Insurance within 30 days.

**E. VERIFICATION OF COVERAGE**

- 1. Contractor shall furnish the Agency with Certificates of Insurance reflecting proof of required coverage. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Certificates are to be received and approved by the Agency before work commences and upon any contract renewal or insurance policy renewal thereafter.
- 2. The Certificate Holder Shall be listed as follows:
  - State of Louisiana
  - Agency Name, Its Officers, Agents, Employees and Volunteers
  - Address, City, State, Zip
  - Project or Contract #:
- 3. In addition to the Certificates, Contractor shall submit the declarations page and the cancellation provision for each insurance policy. The Agency reserves the right to request complete certified copies of all required insurance policies at any time.
- 4. If the Contractor does not meet the insurance requirements at policy renewal, at the option of the Agency, payment to the Contractor may be withheld until the requirements have been met, OR the Agency may pay the renewal premium and withhold such payment from any monies due the Contractor, OR the contract may be suspended or terminated for cause. Failure of the Contractor to purchase and/or maintain any required insurance shall not relieve the Contractor from any liability or indemnification under the contract.

**F. SUBCONTRACTORS**

1. Contractor shall include all subcontractors as insureds under its policies OR shall be responsible for verifying and maintaining the Certificates provided by each subcontractor. Subcontractors shall be subject to all of the requirements stated herein. The Agency reserves the right to request copies of subcontractor's Certificates at any time.
2. If Contractor does not verify subcontractors' insurance as described above, Agency has the right to withhold payments to the Contractor until the requirements have been met.

#### **G. WORKERS COMPENSATION INDEMNITY**

In the event Contractor is not required to provide or elects not to provide workers compensation coverage, the parties hereby agree that Contractor, its owners, agents and employees will have no cause of action against, and will not assert a claim against, the State of Louisiana, its departments, agencies, agents and employees as an employer, whether pursuant to the Louisiana Workers Compensation Act or otherwise, under any circumstance. The parties also hereby agree that the State of Louisiana, its departments, agencies, agents and employees shall in no circumstance be, or considered as, the employer or statutory employer of Contractor, its owners, agents and employees. The parties further agree that Contractor is a wholly independent Contractor and is exclusively responsible for its employees, owners, and agents. Contractor hereby agrees to protect, defend, indemnify and hold the State of Louisiana, its departments, agencies, agents and employees harmless from any such assertion or claim that may arise from the performance of this contract.

#### **H. INDEMNIFICATION/HOLD HARMLESS AGREEMENT**

1. Contractor agrees to protect, defend, indemnify, save, and hold harmless, the State of Louisiana, all State Departments, Agencies, Boards and Commissions, its officers, agents, servants, employees, and volunteers, from and against any and all claims, damages, expenses, and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur, or in any way grow out of, any act or omission of Contractor, its agents, servants, and employees, or any and all costs, expenses and/or attorney fees incurred by Contractor as a result of any claims, demands, suits or causes of action, except those claims, demands, suits, or causes of action arising out of the negligence of the State of Louisiana, all State Departments, Agencies, Boards, Commissions, its officers, agents, servants, employees and volunteers.
2. Contractor agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, suits, or causes of action at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claims, demands, suits, or causes of action are groundless, false or fraudulent. The State of Louisiana may, but is not required to, consult with the Contractor in the defense of claims, but this shall not affect the Contractor's responsibility for the handling of and expenses for all claims.

**EXHIBIT D**

**INSURANCE REQUIREMENTS  
FOR NEW CONSTRUCTION, ADDITIONS AND LARGE RENOVATIONS**

The Contractor shall purchase and maintain without interruption for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors, or anyone employed directly or indirectly by any of them. The duration of the contract shall be from the inception of the contract until the date of final payment.

**A. MINIMUM SCOPE AND LIMITS OF INSURANCE**

**1. Workers Compensation**

Workers Compensation insurance shall be in compliance with the Workers Compensation law of the State of the Contractor's headquarters. Employers Liability is included with a minimum limit of \$1,000,000 per accident/per disease/per employee. If work is to be performed over water and involves maritime exposure, applicable LHWCA, Jones Act, or other maritime law coverage shall be included. A.M. Best's insurance company rating requirement may be waived for workers compensation coverage only.

**2. Commercial General Liability**

a. Commercial General Liability insurance, including Personal and Advertising Injury Liability and Products and Completed Operations Liability, shall have a minimum limit per occurrence based on the project value. The Insurance Services Office (ISO) Commercial General Liability occurrence coverage form CG 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. Claims-made form is unacceptable.

b. The aggregate loss limit must apply to each project. ISO form CG 25 03 (current form approved for use in Louisiana), or equivalent, shall also be submitted. The State project number, including part number, and project name shall be included on this endorsement.

c. COMBINED SINGLE LIMIT (CSL) PER OCCURRENCE

<b><u>Type of Construction</u></b>	<b><u>Projects up to \$1,000,000</u></b>	<b><u>Projects over \$1,000,000 up to \$10,000,000</u></b>	<b><u>Projects over \$10,000,000</u></b>
<b>New Buildings:</b>			
Each Occurrence Minimum Limit	\$1,000,000	\$2,000,000	\$4,000,000
Per Project Aggregate	\$2,000,000	\$4,000,000	\$8,000,000
<b>Renovations:</b>			
	The building(s) value for the Project is \$_____.		
Each Occurrence Minimum Limit	\$1,000,000 **	\$2,000,000 **	\$4,000,000 **
Per Project Aggregate	2 times per occur limit **	2 times per occur limit **	2 times per occur limit **

\*\* While the minimum Combined Single Limit of \$1,000,000 is required for any renovation, the

limit is calculated by taking 10% of the building value and rounding it to the nearest \$1,000,000 to get the insurance limit. Example: Renovation on a \$33,000,000 building would have a calculated \$3,300,000 combined single limit of coverage (33,000,000 times .10 = 3,300,000 and then rounding down to \$3,000,000). If the calculated limit is less than the minimum limit listed in the above chart, then the amount needed is the minimum listed in the chart. Maximum per occurrence limit required is \$10,000,000 regardless of building value. The per project aggregate limit is then calculated as twice the per occurrence limit.

3. **Automobile Liability**

Automobile Liability Insurance shall have a minimum combined single limit per accident of \$1,000,000. ISO form number CA 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. This insurance shall include third-party bodily injury and property damage liability for owned, hired and non-owned automobiles.

4. **Excess Umbrella**

Excess Umbrella insurance may be used to meet the minimum requirements for Commercial General Liability and Automobile Liability only.

5. **Builder's Risk**

a. Builder's Risk Insurance shall be in an amount equal to the amount of the construction contract including any amendments and shall be upon the entire work included in the contract. The policy shall provide coverage equivalent to the ISO form number CP 10 20, Broad Form Causes of Loss (extended, if necessary, to include the perils of wind, earthquake, collapse, vandalism/malicious mischief, and theft, including theft of materials whether or not attached to any structure). The policy must include architects' and engineers' fees necessary to provide plans, specifications and supervision of work for the repair and/or replacement of property damage caused by a covered peril, not to exceed 10% of the cost of the repair and/or replacement.

b. Flood coverage shall be provided by the Contractor on the first floor and below for projects along and north of the Interstate Corridor beginning at the Texas-Louisiana border at Interstate 10, east to the Baton Rouge junction of Interstate 12, east to Slidell junction with Interstate 10 to the Louisiana-Mississippi border. If flood is included in the builder's risk insurance policy, then the sub-limit shall not be less than ten percent (10%) of the total contract cost per occurrence. If flood is purchased as a separate policy, the limit shall be ten percent (10%) of the total contract cost per occurrence (with a max of \$500,000 if NFIP). Coverage for roofing projects shall **not** require flood coverage.

c. On projects south of this corridor, flood coverage shall be provided by the State of Louisiana as the owner. The Contractor will be liable for the \$5,000 policy deductible from the Notice to Proceed date through the date of final payment of the project in the event of a flood loss.

d. A Specialty Contractor may provide an installation floater in lieu of a Builders Risk policy, with the similar coverage as the Builder's Risk policy, upon the system to be installed in an amount equal to the amount of the contract including any amendments. Flood coverage is not required.

e. The policy must include coverage for the Owner, Contractor and any subcontractors as their interests may appear.

6. **Pollution Liability** *(required when asbestos or other hazardous material abatement is included in the contract)*

Pollution Liability insurance, including gradual release as well as sudden and accidental, shall have a minimum limit of not less than \$1,000,000 per claim. A claims-made form will be acceptable.

A policy period inception date of no later than the first day of anticipated work under this contract and an expiration date of no earlier than 30 days after anticipated completion of all work under the contract shall be provided. There shall be an extended reporting period of at least 24 months, with full reinstatement of limits, from the expiration date of the policy if policy is not renewed. The policy shall not be cancelled for any reason, except non-payment of premium.

**B. DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Any deductibles or self-insured retentions must be declared to and accepted by the Agency. The Contractor shall be responsible for all deductibles and self-insured retentions.

**C. OTHER INSURANCE PROVISIONS**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Workers Compensation and Employers Liability Coverage

To the fullest extent allowed by law, the insurer shall agree to waive all rights of subrogation against the Agency, its officers, agents, employees and volunteers for losses arising from work performed by the Contractor for the Agency.

2. Commercial General Liability Coverage

- a. The Agency, its officers, agents, employees and volunteers are to be added as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor, premises owned, occupied or used by the Contractor. ISO Forms CG 20 10 (for ongoing work) AND CG 20 37 (for completed work) (current forms approved for use in Louisiana), or equivalent, are to be used.
- b. The Contractor's insurance shall be primary as respects the Agency, its officers, agents, employees and volunteers for any and all losses that occur under the contract. The coverage shall contain no special limitations on the scope of protection afforded to the Agency, its officers, officials, employees or volunteers. Any insurance or self-insurance maintained by the Agency shall be excess and non-contributory of the Contractor's insurance.

3. Builder's Risk

The policy must include an endorsement providing the following:

In the event of a disagreement regarding a loss covered by this policy which may also be covered by a State of Louisiana self-insurance or commercial property policy through the Office of Risk Management (ORM), Contractor and its insurer agree to follow the following procedure to establish coverage and/or the amount of loss:

Any party to a loss may make written demand for an appraisal of the matter in disagreement. Within 20 days of receipt of written demand, the Contractor's insurer and either ORM or its commercial insurance company shall each select a competent and impartial appraiser and notify the other of the appraiser selected. The two appraisers will select a competent and impartial umpire. The appraisers will then identify the policy or policies under which the loss is insured and, if necessary, state separately the value of the property and the amount of the loss that must be borne by each policy. If the two appraisers fail to agree, they shall submit their differences to the umpire. A written decision by any two shall determine the policy or policies and the amount of the loss. Each insurance company agree that the decision of the appraisers and the umpire if involved will be binding and final and that neither party will resort to litigation. Each of the two parties shall pay its chosen appraiser and bear the cost of the umpire equally.

4. All Coverages

- a. All policies must be endorsed to require 30 days written notice of cancellation to the Agency. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications shall comply with the standard cancellation provisions in the Contractor's policy. In addition, Contractor is required to notify Agency of policy cancellations or reductions in limits.
- b. Neither the acceptance of the completed work nor the payment thereof shall release the Contractor from the obligations of the insurance requirements or indemnification agreement.
- c. The insurance companies issuing the policies shall have no recourse against the Agency for payment of premiums or for assessments under any form of the policies.
- d. Any failure of the Contractor to comply with reporting provisions of the policy shall not affect coverage provided to the Agency, its officers, agents, employees and volunteers.

**D. ACCEPTABILITY OF INSURERS**

- 1. All required insurance shall be provided by a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located. Insurance shall be placed with insurers with an A.M. Best's rating of **A-:VI or higher**. This rating requirement may be waived for workers compensation coverage only.
- 2. If at any time an insurer issuing any such policy does not meet the minimum A.M. Best rating, the Contractor shall obtain a policy with an insurer that meets the A.M. Best rating and shall submit another Certificate of Insurance within 30 days.

**E. VERIFICATION OF COVERAGE**

- 1. Contractor shall furnish the Agency with Certificates of Insurance reflecting proof of required coverage. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Certificates are to be received and approved by the Agency before work commences and upon any contract renewal or insurance policy renewal thereafter.
- 2. The Certificate Holder Shall be listed as follows:
  - State of Louisiana
  - Agency Name, Its Officers, Agents, Employees and Volunteers
  - Address, City, State, Zip
  - Project or Contract #:
- 3. In addition to the Certificates, Contractor shall submit the declarations page and the cancellation provision for each insurance policy. The Agency reserves the right to request complete certified copies of all required insurance policies at any time.
- 4. If the Contractor does not meet the insurance requirements at policy renewal, at the option of the Agency, payment to the Contractor may be withheld until the requirements have been met, OR the Agency may pay the renewal premium and withhold such payment from any monies due the Contractor, OR the contract may be suspended or terminated for cause. Failure of the Contractor to purchase and/or maintain any required insurance shall not relieve the Contractor from any liability or indemnification under the contract.

**F. SUBCONTRACTORS**



1. Contractor shall include all subcontractors as insureds under its policies OR shall be responsible for verifying and maintaining the Certificates provided by each subcontractor. Subcontractors shall be subject to all of the requirements stated herein. The Agency reserves the right to request copies of subcontractor's Certificates at any time.
2. If Contractor does not verify subcontractors' insurance as described above, Agency has the right to withhold payments to the Contractor until the requirements have been met.

#### **G. WORKERS COMPENSATION INDEMNITY**

In the event Contractor is not required to provide or elects not to provide workers compensation coverage, the parties hereby agree that Contractor, its owners, agents and employees will have no cause of action against, and will not assert a claim against, the State of Louisiana, its departments, agencies, agents and employees as an employer, whether pursuant to the Louisiana Workers Compensation Act or otherwise, under any circumstance. The parties also hereby agree that the State of Louisiana, its departments, agencies, agents and employees shall in no circumstance be, or considered as, the employer or statutory employer of Contractor, its owners, agents and employees. The parties further agree that Contractor is a wholly independent Contractor and is exclusively responsible for its employees, owners, and agents. Contractor hereby agrees to protect, defend, indemnify and hold the State of Louisiana, its departments, agencies, agents and employees harmless from any such assertion or claim that may arise from the performance of this contract.

#### **H. INDEMNIFICATION/HOLD HARMLESS AGREEMENT**

1. Contractor agrees to protect, defend, indemnify, save, and hold harmless, the State of Louisiana, all State Departments, Agencies, Boards and Commissions, its officers, agents, servants, employees, and volunteers, from and against any and all claims, damages, expenses, and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur, or in any way grow out of, any act or omission of Contractor, its agents, servants, and employees, or any and all costs, expenses and/or attorney fees incurred by Contractor as a result of any claims, demands, suits or causes of action, except those claims, demands, suits, or causes of action arising out of the negligence of the State of Louisiana, all State Departments, Agencies, Boards, Commissions, its officers, agents, servants, employees and volunteers.
2. Contractor agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, suits, or causes of action at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claims, demands, suits, or causes of action are groundless, false or fraudulent. The State of Louisiana may, but is not required to, consult with the Contractor in the defense of claims, but this shall not affect the Contractor's responsibility for the handling of and expenses for all claims.