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This information is required by Title XII of the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (the "Recovery Act"). This information is used to ensure the maintenance and preservation of the property, compliance with the wage reporting and Recovery Act reporting requirements of the Recovery Act. No assurance of confidentiality is provided.

**Project Name:**

**City, State:**

**REMS ID #:**

**FHA#:**

**PRAC/HAP CONTRACT #**

## **RETROFIT FUNDING AGREEMENT – GREEN RETROFIT PROGRAM**

*Notes to PAEs (remove prior to issuance):*

- Text shown in **green** represents information to be provided by the PAE
- Text shown in **yellow** represents guidance to RA
- No colored text should remain in the agreement when issued

**THIS RETROFIT FUNDING AGREEMENT** (the "RFA") is made, as of **date of the closing**, by and among **name of ownership entity**, a **[name of state] [limited / general partnership / corporation]** (the "Owner"), **name of retrofit administrator**, a **name of state** corporation (the "Retrofit Administrator" or ("RA") and the SECRETARY OF HOUSING AND URBAN DEVELOPMENT (the "Secretary"), acting by and through officials of the Office of Affordable Housing Preservation within the Department of Housing and Urban Development ("HUD").

### **RECITALS:**

- Real Property, Project and Property.** The Owner is the owner of **all of / a leasehold interest in** that certain real property located in the **City / Town / Village of name of town**, in the County of **county**, in the **State / Commonwealth of state** (the "Real Property"), on which is constructed a certain **type of development, ie. rental apartment, assisted living facility** project known as **name of property** (the "Project" and, together with the Real Property, the "Property").
- Green Retrofit Commitment Plan.** The Owner and the Secretary have entered into that certain Green Retrofit Commitment Plan dated **date of Commitment Plan**, as amended through the date hereof (the "Commitment Plan"), as a condition to and in consideration for

the Owner's participation in the Green Retrofit Program (“GRP”). The GRP is authorized by the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (“Recovery Act”). The Commitment Plan provides, among other things, that the Owner shall cause certain retrofits, repairs and/or improvements to be made to the Project which shall be funded in accordance with the terms and conditions set forth in this RFA.

**NOW, THEREFORE,** in consideration of the foregoing premises, the sum of Ten Dollars (\$10.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves and for their respective successors and assigns, agree as follows:

1. **Incorporation of Recitals and Green Retrofit Commitment Plan.** The foregoing recitals and the Commitment Plan, with its terms, conditions and undertakings, are hereby incorporated by reference as if fully set forth herein. Capitalized terms not defined herein shall have the meaning ascribed to them in the Commitment Plan.
2. **Actions of the Secretary.** Any action or decision under this RFA that may or must be taken or made by the Secretary may be taken or made by any duly authorized representative of the Secretary.
3. **Energy Retrofits and Green Improvements.** The energy retrofits and green improvements authorized under the Recovery Act that will be made to the Project, and which are specified as required work under the Commitment Plan (the “Improvements”), to be completed pursuant to this RFA, are set forth in Exhibit A attached hereto and made a part hereof. Exhibit A comprises the complete list and scope of work for the Improvements.
4. **Retrofit Administrator (“RA”) and Retrofit Disbursement Account.**
  - A. **Establishment of Depository Account.** The RA shall assist the Owner in establishing one non-interest bearing account known as the “Retrofit Disbursement Account” in a federally insured bank, savings and loan, or credit union title to which will be jointly held by the Owner and the RA “for the benefit of the Secretary of HUD.” If the amount of Funds in such account ever exceeds \$250,000 or the then-current FDIC deposit insurance limit, the RA shall maintain evidence, updated not less than quarterly, that the depository institution meets or exceeds minimally acceptable ratings standards published from time to time by Ginnie Mae for depositories of custodial escrow accounts.
  - B. **Retrofit Administrator.** The RA shall administer the Funds generally described in the Sources and Uses Statement attached to the Commitment Plan, in accordance with this RFA. The RA may not delegate or assign any of its duties under the RFA to any party other than as provided herein except with the advance written permission of the Secretary.
  - C. **Assignment.** By execution of this RFA, the owner agrees to assign all authority to make disbursements from the Retrofit Disbursement Account to the RA/Secretary and to

permit the flow of Funds to be managed by the RA pursuant to this RFA including actions associated with the final closeout of the Retrofit Disbursement Account.

**D. Retrofit Disbursement Account.** When the owner is receiving both a GRP loan (“GRP Loan”) and a GRP grant (“GRP Grant”), if deemed necessary by HUD to establish a separate account to receive the GRP Grant Funds, the RA will assist the Owner in establishing an additional Retrofit Disbursement Account in accordance with subsection A above. In such case, two Retrofit Disbursement Accounts will be established for the Transaction. The first will be referred to as the “GRP Loan Retrofit Disbursement Account,” and will receive funds from all sources other than the GRP Grant award. The second Retrofit Disbursement Account for the Transaction will be called the “GRP Grant Retrofit Disbursement Account,” and will be the repository for the GRP Grant funding only.

**E. Security Interest.** To secure the Owner’s performance of the covenants and agreements under the Commitment Plan and Closing Documents, the Owner hereby grants to the Secretary a security interest in each Retrofit Disbursement Account, together with all interest that may be earned thereon and proceeds therefrom. Owner covenants and agrees to take promptly such reasonable actions as may be directed by the Secretary from time to time to attach and/or perfect, or maintain, such security interests.

**5. Funding for Improvements.**

- A. General.** GRP transactions are funded by either:
- i. a GRP Grant; or
  - ii. the combination of a GRP Grant, for the owner incentives, together with the proceeds from a GRP Loan; and
  - iii. any required contributions from owner.

Such Funds are provided for the estimated cost of the Improvements, including contingency allowance(s), utility consumption report(s), and RA fees. GRP Grant Funds are disbursed in increments, as needed and pursuant to the terms and conditions of this RFA, through HUD’s Line of Credit Control System (“LOCCS”) into the Retrofit Disbursement Account. GRP Loans are fully funded at closing and loan proceeds are placed in the Retrofit Disbursement Account under the administration of the RA pursuant to this RFA. Some GRP transactions require an additional contribution from the Owner and in such instances, that contribution is placed in the Retrofit Disbursement Account.

**B. Sources of Funds:**

- i. The Funds for this GRP transaction include a GRP Grant in the amount of \$ **grant amount** and a GRP Loan in the amount of \$ **loan amount or N/A** and an Owner contribution in the amount of \$ **total Owner contribution or N/A**, for a total of Funds in the amount of \$ **total amount of GRP funding**. **Any required initial owner contribution must be provided to the RA three (3)**

business days prior to the Closing Date, and deposited into the Retrofit Disbursement Account.

- ii. **Additional Owner Contribution.** If at any time the RA determines, with HUD's concurrence, that the remaining Funds may be insufficient to complete the Improvements, the Owner hereby agrees to deposit into the Retrofit Disbursement Account such additional amounts. The Owner shall make such additional deposit within ten (10) days of the RA's written request. Without limiting HUD's rights and remedies that may arise in the event the Owner fails to deposit such additional amounts, until the Owner makes such deposit, the RA may withhold action for the further release of Funds from the Retrofit Disbursement Account.
- iii. **Additional Source of Funds Outside of this RFA (Low-Income Housing Tax Credits, HOME Grants, etc), if applicable.** The Improvements may be undertaken at the same time as additional rehabilitation or improvements are being made to the Project from other funding sources, in the amount of \$ amount of other funds or N/A , which additional rehabilitation or improvements will be funded by NAME OF SOURCE. Any such rehabilitation or improvements to be made outside the terms and conditions of this RFA shall be scheduled so as to not interfere or impede completion of the Improvements within the prescribed time for such completion.

C. **Uses of Funds.** All amounts deposited into the Retrofit Disbursement Account from every source, together with all amounts obligated and/or released pursuant to Paragraph 5, are considered part of the Funds. Without regard to their original source, Funds are considered available for disbursement first to pay for the cost of Improvements and inspections, then any incentives earned, then additional repairs if approved by the Secretary. Funds remaining after all disbursements for these uses have been made are "Surplus Funds" as described in Paragraph 14.B. infra. The individual components of this RFA on the Closing Date are comprised of: complete each applicable line item. Where not applicable, indicate N/A.

- i. **Green Retrofits.** Amount
- ii. **Contingency.** Amount
- iii. **GRP Pre-Development Incentive.** Amount
- iv. **GRP Efficiency Incentive.** Amount
- v. **Targeted Low-Income Job Creation Incentive.** Amount
- vi. **Retrofit Administration Fee.** Amount
- vii. **Inspection Cost Estimate.** Amount for each inspection
- viii. **Utility Consumption Report Fees.** Amount
- ix. **Initial Owner Contribution** Amount
- x. **Supplemental Owner Contribution** TBD
- xi. **Other (describe)** Amount

6. **The GRP Grant.** The requirements particular to administration of the GRP Grant include:

- A. **Owner Assignment.** Owner/grantee hereby irrevocably appoints the RA as attorney in fact for all transactions to be managed via the HUD's LOCCS system and all other administrative actions related to the RA's administration of the GRP Grant Funds arising pursuant to or necessitated by this RFA. The RA may authorize the incremental releases of the GRP Grant Funds, using the LOCCS system, only after all conditions for such releases have been met as described in Paragraph 13 infra. Funds released through LOCCS will be wired to the Retrofit Disbursement Account for immediate disbursement by the RA.
  - B. **Initial Deposit.** The initial deposit to the Retrofit Disbursement Account for a grant transaction will consist of GRP Pre-Development Incentive, RA administration fees and initial owner contributions, if any.
  - C. **Management of Funds.** The RA shall, in accordance with this RFA, receive the Funds from LOCCS in the form of a deposit to the Retrofit Disbursement Account, and promptly disburse the Funds. These Funds must be deposited in a non-interest bearing Retrofit Disbursement Account.
  - D. **Holdback Amounts.** See paragraph 12.E.ii and iii for determining holdback amounts on GRP Grant transactions.
7. **The GRP Loan/Grant.** The requirements particular to administration of the GRP Loan with a GRP Grant include:
  - A. **Initial Deposit.** The initial deposit to the Retrofit Disbursement Account for a GRP Loan and Grant transaction will consist of all loan proceeds, the GRP Pre-Development Incentive from the GRP Grant and initial Owner contribution, if any. If required by HUD, two accounts will be established in accordance with section 4 of this RFA.
  - B. **Management of Funds.** The RA shall, in accordance with this RFA, deposit the Funds that are loan proceeds at the closing of the GRP transaction in an interest-bearing Retrofit Disbursement Account(s), and disburse the Funds.
8. **Administration and Inspection.** It should be noted that if two Retrofit Disbursement Accounts are required for this transaction, all administrative and inspections costs will be disbursed from the GRP Loan Retrofit Disbursement Account. General references to Retrofit Disbursement Account below incorporate this requirement.
  - A. **Fees.** Total compensation to the RA for performance of all of the duties required herein is represented by the RA's Administration Fee and the Inspection Fees. The RA is entitled to withdraw the full amount of its Administration Fee upon establishing the Retrofit Disbursement Account(s) at or immediately after closing. The RA may withdraw the actual cost of each inspection simultaneously with the disbursement of the Owner's approved withdrawal request for the Improvements that were inspected

and deemed to be satisfactory. If the cumulative actual costs of inspections exceed the allocation for such inspections, with the approval of the Secretary, such actual costs shall be payable from the Funds, to ensure the RA is reimbursed for the actual cost of each such inspection. The cost of such additional inspections may result in a reduction of the amounts available for the Improvements, for contingencies or for any Efficiency Incentive or Low-Income Job Creation Incentive. Any unearned inspection fees shall become part of the Funds, and are subject to disbursement/de-obligation as described in the Commitment Plan.

**B. Inspections.**

- i. All inspections shall be made by an inspector who has been selected by the RA. The inspector must meet the qualification requirements specified for Physical Condition Assessment Contractors in the attached Statement of Inspector Qualifications, or other alternative qualification requirements issued in writing by the Secretary.
- ii. Except as expressly provided otherwise herein, no Funds shall be requested from LOCCS or released from the Retrofit Disbursement Account until and unless:
  1. the inspector has performed an inspection and certified to the RA that the Improvements for which payment is sought have been completed in accordance with Exhibit A, to the satisfaction of the inspector; and
  2. all other conditions for release have been satisfied; and
  3. The inspector delivers records of interviews with laborers and employees of contractors conducted while on site, using Form HUD-11 to record the results thereof, to the RA for further delivery to the appropriate HUD Labor Relations Specialist. Over the course of construction, the minimum required number of such records of interviews is twice the number of inspections. Further, at least one such record of interview must accompany each of the first two inspections. (To the extent feasible, inspections will be scheduled at times when laborers and construction workers can be expected to be on site. The purpose of the interviews is to test the accuracy of payroll report data. Inspectors should use their judgment in determining which and how many trades, and how many workers to interview. The best guide is a representative sampling. In addition, if the inspector suspects that there may be wage violations, HUD expects that the inspector will focus interviews to validate or rebut those suspicions. )
- iii. OPTIONAL. If desired, for improvements requiring in-process inspections. The following Improvement items will require one or more periodic Inspections prior to completion: describe.
- iv. OPTIONAL. If desired, for improvements that can be paid without pre-inspection (e.g., the PAE may decide that replacement of appliances can be reimbursed without the need for an on-site inspection in advance of reimbursement). Also can be used to provide for a pre-completion installment payment (e.g., to cover cost of materials). The RA may approve

payment for the following Improvement items prior to inspection, based upon receipt of the following evidence, satisfactory to the RA: describe. For materials advances, suggest RA require items such as, but not limited to, evidence of insurance against fire, theft, damage, etc; evidence that secured storage will be used until installation is completed, invoices or other evidence of delivery. For post-completion / pre-inspection payments, generally should require evidence of completion, evidence of installation in the project, and evidence of payment. The RA must arrange for inspection on the next regularly scheduled inspection visit. This allows for fewer inspection trips but still assures that the improvements were completed.

- v. OPTIONAL. If desired, for improvements that can be paid over time based on progress toward completion With respect to Improvements that are scheduled to be completed over a period in excess of thirty (30) calendar days, RA and owner agree to allow for progress payments for list the improvements likely to need progress payments, based upon the Inspector's estimated percentage of completion or installation, as applicable, following one or more periodic inspections.
- vi. OPTIONAL. If desired, for improvements that may require advance deposits for materials delivery The RA may approve, in its sole discretion, payment of up-front advances or initial deposits for the List the specific improvements known to require advance payments: ie., boilers, HVAC, appliances, water heaters, water-saving devices, utility monitoring equipment], and other equipment, materials or supplies, as and to the extent required under the applicable contracts for the improvements. To qualify, such contracts must specifically identify the material costs separate from labor or installation, or other suitable evidence must be provided, such as verifiable price quotations, invoices, or subcontracts, that quantify the cost of such materials or equipment that must be pre-paid prior to site delivery. Labor, installation, or other soft costs are not eligible for prepayment.

9. **Owner's Agreement to Complete Improvements.** The Owner represents and warrants that the amounts set forth in paragraph 5 above are adequate to complete the Improvements. The Owner further covenants and agrees:

- A. **Agreements With Contractors.** To submit to the RA, on or before date within 30 days of closing, contracts or proposed binding agreements for the Improvements, approved by the PAE, with dates no more than six months before the Closing Date. Select one of the following, depending on whether IOI contractors will not (item i) or may (item ii) be allowed.
  - i. **If applicable.** The Owner shall not enter into agreements with any contractors, materialmen, and/or suppliers ("Contractors") that have any "Identity Of Interest" with the Owner (as that term may be defined from time to time by the Secretary), hereinafter "Identity Of Interest Contractors".
  - ii. **If applicable.** If any proposed contractors, materialmen, and/or suppliers ("Contractors") have any "Identity Of Interest" with the Owner (as that term may be defined from time to time by the Secretary), any fees paid to such

parties must be reasonable, as determined by the RA after consulting with the Secretary, not in excess of fees that would be charged by non-identity of interest Contractors for the same or similar work. (For example, the RA could require two or three non-IOI (arms-length) bids. Also, RAs should feel free to reject any IOI proposals with costs that exceed the line-item estimates contained in the Green Retrofit Commitment Plan).

iii. Contracts executed in any amount exceeding \$2,000 must contain the entire text of HUD Form 2554, Supplemental Conditions of the Contract for Construction, Article 1, Part A, B, and C as required by and in compliance with 29 CFR 5.5.

- B. Initiation and Completion of Improvements.** The GRP retrofit is complete when all Improvements listed in Exhibit A have been installed or replaced, certified by a qualified inspector to have been installed or replaced in a good and workmanlike manner and determined to be satisfactory by HUD. The Owner is required to begin work on the Improvements within 60 days after the Closing Date, and to complete the Improvements as set forth in Exhibit A , attached hereto and made a part hereof, to the satisfaction of the inspector and the Secretary. All Improvements shall be made in a good and workmanlike manner, in strict conformity with the drawings and/or specifications contained in Exhibit A , shall be completed free and clear of any mechanics' or materialmen's liens and encumbrances, and shall be made strictly in accordance with all applicable ordinances and statutes and in accordance with the requirements of all regulatory authorities and any rating or inspection organization, bureau, association or office having jurisdiction over the Project.
- C. Completion by Date Certain.** To complete the Improvements and request all appropriate reimbursement from the Funds no later than **date not to exceed 12 months after closing except as approved by the Secretary,** and otherwise in accordance with any timelines specified in Exhibit A (collectively, the "Schedule").
- D. Extension of Schedule Requires Consent of the Parties.** That the schedule or any part thereof may be extended only with the prior written consent of the Secretary. In no event may a schedule extend beyond a maximum term of 21 months.
- E. Modification of Improvements List Requires Consent of the Parties.** That Exhibit A may be modified only with the prior written consent of the parties.
- F. Owner Responsible for Permits and Approvals.** That the Owner has obtained or will obtain and pay from owner funds, prior to commencement of any improvements, the cost of any and all necessary permits and approvals from all agencies or authorities as necessary for the commencement and completion of the Improvements.
- G. Owner Responsible for Cost of Improvements.** To pay all costs necessary for completion of the Improvements without regard to the sufficiency of Funds in the Retrofit Disbursement Account.

- H. **Owner Reporting Requirements.** To provide periodic reporting on progress of Improvements and the expenditure of Funds, pursuant to the Commitment Plan or as may be otherwise instructed by the Secretary, from time to time.
- I. **Compliance with Prevailing Wage requirements of 29 CFR 5.5.** To comply with the requirements of the Davis-Bacon Act (as amended). The Recovery Act requires the payment of not less than prevailing wage rates (Davis-Bacon wage rates) to all laborers and mechanics employed on Green Retrofit construction work. Owner agrees to provide to every construction employer bidding on or contracted for installation of the Improvements a copy of the applicable Wage Determination and a copy of Form HUD-2554, Supplementary Conditions of the Contract for Construction, from which Article 1, parts A, B and C must be incorporated into each executed contract and subcontract. Owner will require all construction employers to fully comply with the provisions of the Davis-Bacon Act for each contract or improvement that exceeds \$2,000. If employees of the Project are utilized to complete any of the Improvements with a cumulative value exceeding \$2,000, Owner must fully comply with the provisions of Davis Bacon with respect to said employees.
10. **Energy Retrofit and Green Improvements.** The Owner has agreed to complete certain Improvements utilizing products, building materials, installation methods and/or specifications that conform to “Green” environmental standards. These Improvements are identified in Exhibit A.
- A. **Owner Responsible to Complete Improvements.** The Commitment Plan provides for, and the Owner has obtained, Funds for Improvements. If the Owner is unable or unwilling, or otherwise fails to complete the Improvements to the satisfaction of the RA and in accordance with this RFA, Owner acknowledges that the Secretary, in addition to any other remedies available, may:
- recapture unused Funds,
  - reduce the amount of, or declare a default under, a GRP Grant and/or the GRP Loan, and de-obligate that portion of the Funds, and
  - deny all or part of the Efficiency Incentive Payment, Targeted Low Income Job Creation Incentive, and cancel or suspend payment of GRP Incentive Performance Fees.
- B. **Owner Responsibility for Green Operations.** To ensure compliance and replacement with like products in future years, the Owner will be required to submit a certification to the [select HUD or Rural Development or State Housing Finance Agency] Project Manager with each Replacement Reserve withdrawal request, that the products, building materials, and installation methods utilized to replace Green components continue to meet Green standards.
11. **Incentive Payments.**
- A. **Pre-Development Incentive.** Owner will be eligible to receive a Pre-Development Incentive upon the closing of the Transaction. The Pre-Development Incentive will

be payable to the Owner in the amount of \$(amount from 5.C.iii).

B. **Efficiency Incentive.** Owner may earn an Efficiency Incentive Payment upon successful completion of the Improvements, subject to the following conditions:

i. **Amount.** The maximum GRP Efficiency Incentive amount shall be the lesser of:

a. (Amount from 5.C.iv;) or

b. Funds remaining in the Retrofit Disbursement Account after paying the actual cost of all Improvements, Administration Fees and inspections.

ii. **Potential Reduction Based on Delayed Completion of Improvements.** The actual GRP Efficiency Incentive payable will be a percentage of the maximum incentive as follows:

1. **100% if all Improvements are completed within 12 months after** the closing date or within the term of any approved extension, as verified by the RA. Exhibit A may provide a period longer than 12 months based on exceptional factors such as an extremely short building season. After closing, this 12 month limitation may be extended at the sole discretion of HUD based upon a satisfactory showing that the Owner commenced the Improvements timely and that delays occurred that were beyond the Owner’s reasonable control.
2. The 100% is reduced by 10% for each month or partial month by which the completion of the Improvements exceeds the original or approved extended Schedule.
3. No GRP Efficiency Incentive will be earned or paid if
  - 1) fewer than all Improvements are completed, or
  - 2) any Improvements are not completed within 21 months after the closing, as verified by the RA.

12. **Targeted Incentive for Job Creation. [IF APPLICABLE – Otherwise enter “Intentionally Omitted” ]**The Owner may be entitled to receive a targeted incentive to encourage job creation for low-income and very low-income, subject to the terms and conditions of the Commitment Plan (see chart below). The maximum amount of the Low-Income Job Creation Incentive will be the lesser of :

- \$ (The amount from 5.C.v) or
- The amount calculated by the RA from the schedule below based on evidence of qualifying expenditures provided from the owner; or
- The actual balance of Funds remaining after payment of all allowable Improvements, inspection fees, and other applicable Incentives.

Amount of Green Retrofit Grant or Loan	% of Total Paid to Eligible Residents and/or Eligible Business Concerns
Up to \$600,000	4.0% of total
\$600,001-\$800,000	3.5% of total

\$800,001-\$1 million	3.0% of total
Above \$1 million	2.5% of total

13. **Withdrawals from Retrofit Disbursement Account.**

- A. **Timing of Applications for Withdrawals.** The Owner may make written applications to the RA for withdrawals of Funds no more frequently than once in each calendar month, further limited by the Schedule contained in Exhibit A. Each application shall be made at least **PAE to insert number of days; Time frame needs to allow time to order the inspection, complete the inspection, receive the inspection report, review and cure deficiencies, and approve and issue checks. This process routinely takes twenty to thirty days** business days prior to the date the withdrawal is desired.
- B. **Amount Withdrawn.** The Owner shall be entitled to only such amounts as may be approved in writing by the RA in accordance with the provisions hereof.
- C. **Default.** Upon receipt of notice of the occurrence of an action or omission giving rise to a default under this RFA, the RA shall issue no further approvals for disbursements of Funds, and shall make no further disbursements until and unless, and as may be otherwise, instructed by the Secretary.
- D. **Supporting documentation for Requests for Disbursement.** The disbursement request package must include:
  - i. If requested by the RA, evidence satisfactory to the RA that the lien waivers submitted pursuant to this RFA are legally enforceable. The RA may rely on a combination of legal opinions, title updates or title insurance endorsements in order to confirm the foregoing. **OAHP expects that RAs will not need this unless they have not recently administered a RFA or M2M Rehabilitation Escrow in the same jurisdiction.**
  - ii. A request signed by the Owner seeking disbursement from the Retrofit Disbursement Account of specified amounts for designated Contractors.
  - iii. Owner’s signed statement that no action or omission giving rise to a default under this RFA has occurred, and that no event that, with the passage of time, the giving of notice, or both, will give rise to a default, has occurred.
  - iv. Owner’s sworn statement. Each such statement shall list, for each contract and in total, the amount paid to date, amount currently requested, and remaining balance. Each such statement shall include a listing of the various contracts entered into by the Owner and setting forth the names of Contractors, their addresses, type of work or materials to be furnished, and amounts of the contracts, and identifying any Identity of Interest Contractors. Each such

statement must also include certification that owner received all required weekly wage certifications from all applicable contractors, and/or prepared all appropriate weekly wage statements for Project employees used to complete any Improvements in excess of \$2,000 and delivered the wage certifications to the appropriate HUD Labor Relations personnel. Construction employers are encouraged to use optional Payroll form WH-347. This form and instructions are available online at: [www.dol.gov/esa/whd/forms/wh347instr.htm](http://www.dol.gov/esa/whd/forms/wh347instr.htm).

- v. Supporting waivers, affidavits, releases of liens and material waivers (if applicable) for Improvements made and/or materials provided since the last withdrawal and paid for from funds other than the Retrofit Disbursement Account.
- vi. An acknowledgment of payment and release of lien from each Contractor for work performed and/or materials provided since the date of the prior withdrawal of Funds. Such acknowledgement and release shall be prepared in the form required by local lien laws and shall cover all work done, labor performed and materials (including equipment and fixtures) furnished for the Project. In addition, if the filing, in the public records of the county in which the Project is located, of this RFA and/or the construction contracts or subcontracts under which the Improvements are to be completed will relieve the Project from mechanics' and materialmen's liens, the Owner shall cause such instrument(s) to be so filed and certified copies evidencing such filing to be provided to the RA prior to any request for disbursement of Funds from the Retrofit Disbursement Account.
- vii. A certification in form acceptable to the Secretary from each Construction Employer, that it has complied with all applicable Davis-Bacon requirements, including but not limited to proper posting of all required Davis-Bacon notices and Wage Determinations on site, and delivery to owner of required weekly wage certifications, properly prepared. Owner must make this same certification on behalf of the Project as a construction employer, for each withdrawal request involving Improvements completed by Project employees.

**E. Disbursements.**

- i. In accordance with 8.B.ii, disbursements for Improvements shall not be made from the Retrofit Disbursement Account, unless such Improvements have been inspected and appropriate lien releases and waivers obtained.
- ii. The Funds shall be disbursed from the Retrofit Disbursement Account based on the actual invoices of Contractors for materials and equipment or services actually provided, less a ten percent (10%) holdback (the "Holdback Amount"). This paragraph shall not apply to initial advances or deposits made pursuant to Paragraph 6.B. and 7.B.

- iii. The Holdback Amount originating from GRP Loan Funds shall be held in the Retrofit Disbursement Account until all of the Improvements have been completed to the satisfaction of the RA pursuant to the terms of this RFA and either:
  - a. the RA has received final and enforceable lien waivers from all parties who supplied materials or labor pursuant to this RFA; or
  - b. the time for the filing of any liens resulting from the Improvements has passed and no liens or notices thereof have been filed. The RA may rely on a combination of legal opinions, title updates or title insurance endorsements (to be provided by the Owner at the Owner's sole cost and expense) in order to confirm the foregoing; or
  - c. the time for filing of any liens would extend beyond twenty four (24) months from the closing date, in which case the RA will proceed according to written instructions from the Secretary .
- iv. Holdback Amounts originating from GRP Grant Funds must be calculated and deducted from the amounts actually released from the GRP Grant Funds through LOCCS until such time as the RA releases the full amount of accumulated Holdback concurrent with the final disbursement.
- v. The RA shall make all checks issued from the Retrofit Disbursement Account payable as follows:
  - 1. **RA Fee and actual cost of inspections:** to the Retrofit Administrator;
  - 2. **Improvements and Utility Consumption Report:**
    - i. To the Owner, but only if the Owner has provided to the RA acceptable proof that the Owner has paid the respective Contractor to whom payment is due.
    - ii. Otherwise, jointly to the Owner and the respective Contractor to whom payment is due.
  - 3. **Incentives:** To the Owner.
  - 4. **Surplus Funds:** As directed by the Secretary.
- vi. Owner must submit a satisfactory request for release of the Holdback Amount, within forty-five (45) days after completion of the Improvements. If Owner fails to do so, this may result in Funds being applied as a principal reduction to the GRP Loan or a de-obligation of that portion of the GRP Grant.
- vii. The RA shall be reimbursed for the actual cost of each inspection by adding that cost to the amount of the pertinent withdrawal and retaining its inspection cost reimbursement when disbursing the remainder of the withdrawal from the Retrofit Disbursement Account to the owner and/or vendors.

14. **Deficit or Surplus Retrofit Funds.**

- A. **Deficit Funds.** If the cost of completing the Improvements exceeds the amount available in the Funds, the Owner must complete the Improvements using funds from non-project sources.
- B. **Surplus Funds.** Funds that remain after the Improvements are completed and fully reimbursed from the Retrofit Disbursement Account, the RA has been fully reimbursed for actual inspection costs, and the Efficiency Incentive Payment, Targeted Low-Income Job Creation Incentive, and/or Utility Consumption Fee have been paid, if earned, shall be remitted as directed by the Secretary in writing. Such surplus Funds may be returned to the Secretary and de-obligated for the Transaction. Any Funds returned to the Secretary pursuant to this paragraph shall reduce the original principal amount of the Green Retrofit Grant or Green Retrofit Loan. The owner agrees to execute promptly modifications to the Closing Documents as required to amend the original principal amount of the Green Retrofit Grant or Green Retrofit Loan. No Surplus Funds may be disbursed by the Owner or otherwise deposited into a Project account. OAHP will direct the application of surplus funds. No surplus funds may be disbursed to the owner or to the project operating account.
15. **Right of Entry.** The RA, the inspector, the Secretary, and any of their respective agents shall, at any and all reasonable times, have the right to enter the Project to inspect all Improvements, materials, equipment and fixtures furnished, installed or stored in or about the Real Property, and to inspect all books, subcontracts and records of the Owner whether or not located at the Project.
16. **Default.** The Owner is deemed to be in default under this RFA if there is a default under any Closing Document or the Commitment Plan, or if there exists a circumstance which with the giving of notice and/or the passage of time will become a default, and in the event of any of the following:
- A. **Owner Fails to Begin Work or Stops Work.** The Owner fails to begin work on the Improvements within 60 days after the Closing Date, or thereafter abandons, ceases, or otherwise allows work to stop prior to completion for a period of more than insert appropriate time period, based on type and extent of repairs consecutive calendar days, without the written concurrence of the RA; or
- B. **Failure to Complete.** The Owner fails to complete or prosecute the Improvements continually and in good faith in a workmanlike manner and in accordance with the Schedule and the terms of this RFA. The deadline for completion of work may not extend beyond twenty-one (21) months following the closing, so as to allow at least three months for final inspections and reimbursements. Notwithstanding any other provisions of this RFA, beginning twenty-four (24) months following the closing, no further disbursements may be made except to disburse the remaining balance to HUD at the direction of the Secretary as provided for elsewhere in this RFA; or
- C. **Liens or Encumbrances.** The Owner allows a mechanic's or materialman's lien or

other encumbrance to be filed against the Project (unless such mechanic's lien is removed of record or its payment is otherwise assured to the satisfaction of the RA within thirty (30) days after filing); or

- D. **Material Misrepresentation.** The Owner makes a material misrepresentation to one or more parties to the RFA; otherwise fails to comply with the terms of this RFA; or is in default, beyond any applicable cure period, under any agreement between the Owner and the Secretary.
17. **Remedies upon Default.** Without limiting any term and condition contained in this RFA:
- A. **If there is an insured or HUD-held 1<sup>st</sup> mortgage. Property is Subject to an FHA-Insured or HUD-held First Mortgage Regulatory Agreement.** Any default hereunder shall constitute a failure to maintain the Property consistent with the requirements of any Regulatory Agreement between the Owner and the Secretary.
- B. **If there is a Project-based HAP or PRAC. Property is Subject to a Project-based Section 8 HAP or PRAC Contract.** Any default hereunder shall constitute a failure to maintain the property consistent with the requirements of any Section 8 Housing Assistance Payments Contract or Property Rental Assistance Contract between the Owner and the Secretary.
- C. **Property is Subject to a Green Retrofit Note or Green Retrofit Grant Agreement.** Any default hereunder shall constitute a default under the documents that evidence or secure the Green Retrofit Note or Green Retrofit Grant Agreement between the Owner and the Secretary executed pursuant to the Commitment Plan.
- D. **Notice from the Secretary.** If the Secretary so requests in writing, the RA shall, within ten (10) calendar days after receipt of notice from the Secretary, remit all Funds as directed by the Secretary. Any Funds returned to the Secretary pursuant to this paragraph shall be applied so as to reduce the original principal amount of the Green Retrofit Grant or Green Retrofit Loan. The Owner agrees to execute modifications to the closing documents as may be required by the Secretary to document the modification of such original principal amount.
- E. **Efficiency Incentive Payment and Low-Income Job Creation Incentive.** The Efficiency Incentive Payment and Low Income Job Creation Incentive may not be earned by the Owner.
- F. **Completion of Improvements after Default.** If a default occurs, the Secretary shall have the right, but not the obligation, to complete the Improvements in accordance with the drawings and/or specifications and pay the cost thereof from the Funds. For this purpose the Owner hereby grants the Secretary an irrevocable power of attorney and authorizes and empowers the Secretary to do and perform for it, the completion of the Improvements, to apply the Funds to the payment of debts contracted or incurred for Improvements done or for materials furnished, and for all

expenses, costs and charges in connection therewith, and take such other actions in the name of the Owner as HUD may deem appropriate and that are consistent with this RFA. This power of attorney shall be the Secretary's full and sufficient authority, and the orders issued by the Secretary as attorney-in-fact for the Owner shall be good and sufficient for all purposes, including processing vouchers for all payments to be made hereunder. Further, in such event the Owner hereby irrevocably authorizes and empowers the Secretary to take possession of the Property together with all materials and appliances and in the name of the Owner, as attorney-in-fact, to require the Contractors to fulfill the terms of their contracts in accordance with Exhibit A. The Secretary shall in no event be responsible for the completion of the Improvements. This power of attorney is granted with full power of substitution and the Owner specifically agrees that all powers granted to the Secretary hereunder may be assigned by HUD to the RA or others. The RA is not obligated to accept this assignment, or to step in and complete repairs, unless the Secretary and the RA agree on the terms (including compensation) under which the RA would carry out that work.

- G. **Remedies Cumulative and Concurrent.** The rights and remedies of the Secretary as provided in this RFA are cumulative and shall be in addition to any other right or remedy the Secretary may have, at law or in equity, and each may be pursued separately, successively or together against the Owner at the sole discretion of the Secretary. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

18. **Obligations and Liability of Retrofit Administrator.**

- A. The RA shall be entitled to rely on the authenticity, truth and accuracy of all documents transmitted to it in connection with the performance of its duties hereunder and shall not be required to undertake any independent investigation to determine such authenticity, truth or accuracy.
- B. The RA shall have no liability for the performance of its duties hereunder, except with regard to its own willful acts, negligence, or default.
- C. The RA must not fail to process any Owner's request, including but not limited to inspection and reimbursement, in a timely manner.
- D. The RA will provide a monthly online accounting of the progress of Improvements completed, Funds disbursed, and Owner's plans for completing the remaining Improvements, and any other information required under the Commitment Plan from time to time, utilizing the OAHP Resource Desk or such other means as directed by the Secretary.
- E. Upon completion of the Improvements, acceptance of the final inspection, and reimbursement of the last invoice, the RA will follow HUD's procedures for closing out the Retrofit Disbursement Account.

- F. To ensure compliance with the Green Retrofit Program and this RFA, OAHP or other authorized parties may conduct file reviews or audits from time to time. Upon written request the RA will make any and all documentation in their files, available for audit (together with all documents contained in the files of their subcontractors performing services pursuant to the requirements of this RFA) whether requested by: OAHP, in support of the internal Quality Control audits (both periodic audits during the Improvement / construction period, as well as a comprehensive audit subsequent to RFA closeout); the Office of the Inspector General; independent third-party auditors contracted by HUD; or other agencies as required or requested by the Secretary.
- G. Upon closing of the Retrofit Disbursement Account, the RA will retain all file materials for two years (the "Retention Period") after the date the Retrofit Disbursement Account closed, in a manner as outlined in OAHP's procedures. At expiration of the Retention Period, the RA will dispose of the file as outlined in OAHP's procedures or as otherwise directed by the Secretary.
19. **Instructions from the Secretary Final.** In the event of any dispute regarding the terms or conditions of this RFA, the RA shall rely upon any written instructions provided by the Secretary, notwithstanding receipt of contradictory instructions from any other party.
20. **Amendment.** This RFA may not be modified except by an instrument in writing executed by each of the parties hereto.
21. **Controlling Provisions.** This RFA shall be governed by all applicable federal laws, the laws of the state in which the Project is located, and all applicable regulations. In the event of a conflict between the terms and conditions of this RFA and applicable law or regulations, the applicable law or regulations shall control.
22. **Severability.** Notwithstanding anything herein contained, if any one or more of the provisions of this RFA shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this RFA, but this RFA shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.
23. **Counterparts.** This RFA may be executed in any number of counterparts, all of which counterparts shall be construed together and shall constitute but one agreement.
24. **Successors and Assigns.** This RFA shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties. The Secretary may assign any or all of its rights and responsibilities under this RFA. The other parties to this RFA may not assign this RFA, unless the Secretary has given prior written approval.
25. **No Third Party Beneficiaries.** The parties agree that there are no third party beneficiaries of the RFA.

26. **Notice to the Parties.** The parties agree that correct address and email information appears below. The parties further agree to notify the remaining parties in the event of a change in the address or email information. The parties further agree that effective notice may be provided to a party upon deposit of written correspondence into the U.S Mail to the address listed below or as updated.
27. **Reporting Required by the Recovery Act.** Without limiting anything contained in the Commitment Plan, and further thereto, recipients of Federal funding under the American Recovery and Reinvestment Act of 2009 (Recovery Act) are required to comply with extensive reporting requirements, which may change from time to time, and to which the Owner agrees to comply.
- A. **Recipients.** The reporting requirements outlined below may be further amended by the Office of Management and Budget (OMB). Recipients are defined as any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan or contract) other than an individual and includes a State that receives Recovery Act funds. See Section 1512 of the Recovery Act.
  - B. **Sub-Contracts and Sub-Awards.** These reporting requirements apply to prime recipients (prime non-Federal entities) and the sub-awards (sub-contracts, sub-awards) made by the prime recipients. Subsequent sub-recipients are not required to submit reports. The reporting requirements apply only to recipients receiving funding from discretionary appropriations as opposed to entitlement or mandatory programs, unless otherwise required by OMB.
  - C. **Combination of Funds.** Recovery Act funds can be combined with other funds to fund or complete projects and activities. However, these reporting requirements must still be met for the Recovery Act funds.
  - D. **Required Reporting.** Each recipient of funds under the Recovery Act is required to submit the following information to the Agency from which it received the funds:
    - i. The total amount of funds received from the Agency.
    - ii. The amount of recovery funds received that were obligated and expended for projects or activities. This reporting will also include de-obligated allotment balances to facilitate reconciliation.
    - iii. A detailed list of all projects or activities for which recovery funds were obligated and expended, including:
      - a. The name of the project or activity;
      - b. A description of the project or activity;
      - c. An evaluation of the completion status of the project or activity;
      - d. An estimate of the number of jobs created and the number of jobs retained by the project or activity;
      - e. For infrastructure investments made by State and local governments, the purpose, total cost and rationale of the agency for funding the

- infrastructure investment with funds made available under the Recovery Act, and name of the person to contact at the Agency if there are concerns with the infrastructure investment.
- f. Detailed information on any subcontracts or sub-grants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of OMB.
  - iv. Reports are deliverable to the responsible party identified by the Agency providing the award. Each quarterly report is due 10 days after the end of each calendar quarter beginning July 10, 2009.

**CONTACT INFORMATION FOR NOTIFICATIONS TO BE DELIVERED UNDER THIS AGREEMENT**

**OWNER:**

Name of ownership entity  
a name of state limited/general partnership or corporation

Address:

Email Address:

**RETROFIT ADMINISTRATOR (“RA”)**

Name of RA entity  
a name of state limited/general partnership or corporation

Address:

Email Address:

**PRESERVATION OFFICE DIRECTOR**

**Name:**

Address:

Email Address:

**REHABILITATION ESCROW ADMINISTRATION MANAGER**

Name:

Address:

Email Address:

**IN WITNESS WHEREOF**, the parties hereto have caused this RFA to be executed and made effective as of the date first above written.

WITNESS:

OWNER:

**Name of ownership entity**  
a **name of state limited/general partnership or corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESS:

RETROFIT ADMINISTRATOR:

**Name of Retrofit Administrator**  
a **name of state corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESS:

DEPUTY ASSISTANT SECRETARY OF  
OFFICE OF AFFORDABLE HOUSING  
PRESERVATION:

By: \_\_\_\_\_

Name: **name of Preservation Office Director**

Title: Preservation Office Director  
Authorized Agent

# Attachment 1 - Green Retrofit Program

## Retrofit Inspector Qualifications

### **Overview:**

The Green Retrofit Program requires certain qualifications of contractors performing Physical Condition Assessment reports. These same qualifications are required of Inspectors performing progress inspections for Retrofit work underway during the post-closing construction of a Green Retrofit Program transaction.

### **1. Qualifications:** The contractor must

- A. Be trained to evaluate building systems, health, and safety conditions, and physical and structural conditions, and to provide cost estimates for maintaining, rehabilitating, or improving deficiencies, using both traditional and Green principles. Must also have environmental expertise, as inspection will include environmental issues as well. Must have any required licenses.
- B. Have the designation of Leadership in Energy and Environmental Design Accredited Professional (LEED AP), in either the United States Green Building Council's LEED New Construction and Major Renovation or the LEED Existing Building Maintenance and Operations examination tracks, or an equivalent designation.
- C. Complete 10-hours of education annually, beginning in calendar year 2008, in the areas Green Building, Sustainability, Energy Efficiency, or Indoor Air Quality.
- D. Have acceptably completed written evaluation reports for similar types of multifamily rental housing projects in similar physical condition and age in the subject market or in similar areas, preferably including two (2) or more buildings that were receiving Section 8 or some other type of housing assistance when the report was prepared.
- E. Not be under suspension or debarment by HUD, or involved as a defendant in criminal or civil action with HUD.
- F. Produce reports that are well regarded in the marketplace in terms of content, timeliness and responsiveness. The contractor should have this personal experience, not just the company.
- G. Have the capacity to complete the project inspection and prepare the report in a time frame acceptable to the Participating Administrative Entity (PAE).

## **EXHIBIT A**

### **INSERT THE NEW EXHIBIT A - EXCEL SPREADSHEET**

#### **DETAILED SCHEDULE OF IMPROVEMENTS**

List Repair items, and estimated costs, in sufficient detail to identify exactly what work is to be done. Experienced PAEs recommend listing cost, contingency, and portion contributed by the owner for each line item, because this helps the RA understand the transaction.

Suggest attaching an Exhibit B, the PCA/PNA pages that outlines and explains the Retrofit work, where it's located, why it is to be done, etc., when the PCA/PNA pages are detailed enough to aid in the administration of the work.

Attach appropriate specifications, drawings and other supporting information. Use Column E for providing the detailed specifications, materials, installation techniques, etc that may apply to complex rehabilitation, such as emerging Green Technology. It is highly recommended that the detailed description also include unit numbers, or building numbers, or specific descriptions of the location of the repairs such that an inspector can immediately locate and inspect same. If maps or drawings will be attached, number them appropriately and reference them in Exhibit A.

Include any additional provisions regarding schedule and timeline. Experienced PAEs recommend asking the owner to propose a timeline, by repair item, showing when inspections will be needed and when draw requests are anticipated to be sent. After approval by the PAE, this timeline can be included in this Exhibit A.

Specify how many draws are anticipated, and at what points inspections and draws are anticipated to occur. PAEs should make owners aware that it will not be cost-effective to increase the number of inspections and draws after the RFA has been executed. OAHF suggests that it is generally reasonable to require that draws be for amounts of at least \$10,000. Note also that the RFA prohibits more than one draw per month.

Show the total for repairs and total for contingency. The sum of these should agree with the amounts in paragraph 5.

