

RESOLUTION 2023-190

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A FUNDING ASSISTANCE AGREEMENT BY AND BETWEEN ST. JOHNS COUNTY AND ABILITY HOUSING, INC. FOR A CAPITAL DISTRIBUTION OF A SUB AWARD FROM THE AMERICAN RESCUE PLAN REVENUE FUND BUDGET.

WHEREAS, St. Johns County is a political subdivision of the State of Florida, hereinafter referred to as “COUNTY”, and **Ability Housing, Inc.** hereinafter referred to as “*ABILITY HOUSING*” is a Florida 501(c)(3) tax exempt organization; and,

WHEREAS, on May 11, 2021, President Biden signed Public Law No. 117-2 (03/11/2021), also referred to as the American Rescue Plan Act of 2021 (“the ARPA”), into law; and

WHEREAS, Section 9901 of the ARPA amended Title VI of the Social Security Act to add Section 603, which establishes the Coronavirus Local Fiscal Recovery Fund to provide support to local government efforts in responding to the impact of and containing, COVID-19; and

WHEREAS, the County received ARPA funds from the U.S. federal government to be used toward seven established expenditure categories of eligible uses: (1) Public Health; (2) Negative Economic Impacts; (3) Public Health-Negative Economic Impacts (4) Premium Pay; (5) Infrastructure; (6) Revenue Replacement; and (7) Administrative; and

WHEREAS, the funding provided to ABILITY HOUSING is expected to support ABILITY HOUSING in achieving a purpose outlined in the ARPA, as more specifically set forth in this Funding Agreement; and

WHEREAS, St Johns County with Resolution 2022-261 approved an Agreement with UNITED WAY OF ST JOHNS COUNTY on July 19, 2022, to administer the Nonprofit Human Services Grant Projects with American Rescue Plan Act funding from the United States Department of the Treasury (the “Grant Agreement”); and

WHEREAS, on November 22, 2022 the UNITED WAY OF ST JOHNS COUNTY held a public hearing and made a final award of Subawards and this item was recommended by the UNITED WAY OF ST JOHNS COUNTY, and

WHEREAS, ABILITY HOUSING acknowledges that it is receiving federal grant funding with specific rules for the funds use and the time in which those funds must be encumbered and spent and acknowledges that the County would be responsible for repayment of

the funds in this agreement to the federal government not eligible under the grant or not spent before December 31, 2026, and

WHEREAS, this award to the ABILITY HOUSING is for the purchase of land and construction of the infrastructure for the project described by the exhibits attached to this agreement before December 31, 2026, the subrecipient makes the additional promise to complete at least 46-unit affordable housing apartment community described in the exhibits prior to December 31, 2026, and

WHEREAS, by this Agreement, the ABILITY HOUSING intends to be bound to comply with the purposes outlined in the ARPA in exchange for the funding received, and

WHEREAS, ABILITY HOUSING requests and the COUNTY agrees, to provide funding to ABILITY HOUSING for an eligible nonprofit grant program for capital improvements under the American Rescue Plan Act, pursuant to the terms and conditions specified herein; and

WHEREAS, staff and the ABILITY HOUSING has negotiated to draft an Agreement, this Agreement is consistent with American Rescue Plan Act guidelines to respond to the public health emergency or its negative economic impacts; and

WHEREAS, ABILITY HOUSING has executed the attached Agreement; and

WHEREAS, upon execution of this Resolution and the Agreement, the County will be approving the distribution of one million, two hundred and seven thousand, one hundred and thirty-four and 00/100 dollars (\$1,207,134.00) of ARPA funding, for ABILITY HOUSING'S capital project.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County, Florida, that:

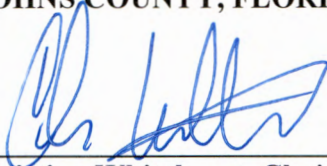
Section 1. The County Administrator is hereby authorized to approve and execute a Contract regarding the FUNDING AGREEMENT American Rescue Plan Act for ABILITY HOUSING by and between St. Johns County and ABILITY HOUSING substantially in the form of that which is attached hereto.

Section 2. Upon acceptance by the County Administrator, the Clerk is instructed to record the agreement in the official records of St. Johns County, Florida.

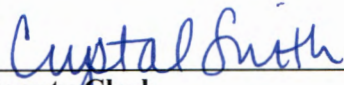
Section 3. To the extent that there are typographical errors that do not change the tone, tenor, or context of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 6th day of June, 2023.

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

By: 
Christian Whitehurst, Chair

ATTEST: Brandon J. Patty, Clerk

By: 
Deputy Clerk

Rendition Date JUN 06 2023



FUNDING AGREEMENT
American Rescue Plan Act

This Funding Agreement (the “Agreement”) is made and entered into on this 5th or 6th day of June, 2023 (the “Effective Date”) by and between the **County of St. Johns, Florida**, a Florida municipal corporation (the “County”), and the **Ability Housing, Inc.**, a Florida 501(c)(3) tax exempt organization (“Subrecipient”), hereinafter, jointly, the “Parties.”

RECITALS

WHEREAS, on May 11, 2021, President Biden signed Public Law No. 117-2 (03/11/2021), also referred to as the American Rescue Plan Act of 2021 (“the ARPA”), into law; and

WHEREAS, Section 9901 of the ARPA amended Title VI of the Social Security Act to add Section 603, which establishes the Coronavirus Local Fiscal Recovery Fund to provide support to local government efforts in responding to the impact of and containing, COVID-19; and

WHEREAS, the County received ARPA funds from the U.S. federal government to be used toward seven established expenditure categories of eligible uses: (1) Public Health; (2) Negative Economic Impacts; (3) Public Health-Negative Economic Impacts (4) Premium Pay; (5) Infrastructure; (6) Revenue Replacement; and (7) Administrative; and

WHEREAS, the funding provided to the Subrecipient is expected to support the Subrecipient in achieving a purpose outlined in the ARPA, as more specifically set forth in this Funding Agreement; and

WHEREAS, St Johns County with Resolution 2022-261 approved a Subrecipient Agreement with UNITED WAY OF ST JOHNS COUNTY on July 19, 2022, to administer the Nonprofit Human Services Grant Projects with American Rescue Plan Act funding from the United States Department of the Treasury (the “Grant Agreement”); and

WHEREAS, on November 22, 2022 the UNITED WAY OF ST JOHNS COUNTY held a public hearing and made a final award of subawards and this item was recommended by the UNITED WAY OF ST JOHNS COUNTY, and

WHEREAS, Subrecipient acknowledges that it is receiving federal grant funding with specific rules for the funds use and the time in which those funds must be encumbered and spent and acknowledges that the County would be responsible for repayment of the funds in this agreement to the federal government not eligible under the grant or not spent before December 31, 2026, and

WHEREAS, this award to the subrecipient is for the purchase of land and construction of the infrastructure for the project described by the exhibits attached to this agreement before December 31, 2026, the subrecipient makes the additional promise to complete at least 46-unit affordable housing apartment community described in the exhibits prior to December 31, 2026, and

WHEREAS, by this Agreement, the Subrecipient intends to be bound to comply with the purposes outlined in the ARPA in exchange for the funding received.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. ARPA Funding; Restrictions and Use.

- a. **Restrictions.** The Subrecipient understands and agrees that it must comply with the eligible use criteria and corresponding reporting responsibilities applicable to the Services the Subrecipient will provide, as established in the ARPA and associated regulations, including the Final Rule, and as set forth in the *Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds* published February 28, 2022 by the U.S. Department of the Treasury (“Treasury”), in addition to any amendments that may subsequently be made to these regulations, guidance or other associated rules. The same shall be true for any third-party Service provider(s) the Subrecipient may retain. No funds shall be authorized to assist with ineligible activities, including, but not limited to, fundraising activities or gratuitous expenses or bonuses. The Subrecipient may use the ARPA funds to cover eligible costs incurred during the period from the effective date of the agreement and ends on December 31, 2024; provided the obligations incurred by December 31, 2024 are expended by December 31, 2026.
- b. **Use.** The Subrecipient requested ARPA funds for the purpose of purchasing land and constructing infrastructure for the Village of New Augustine project. The Subrecipient has provided the County with a list of services and deliverables that will be provided through the project, which are set forth in **Exhibit “A”** (hereinafter, the “Project”). The Subrecipient affirms in good faith that the proposed Project is an eligible use under the “Negative Economic Impacts” expenditure classification identified in the ARPA, specifically, Expenditure Category 2.15 Long Term Housing Security: Affordable Housing.

In accordance with the final rule, **Exhibit “B”** demonstrates how this project meets the requirements of ARPA funding.

2. ARPA Funding Allocation.

- a. The amount of the County’s ARPA Local Fiscal Recovery Fund award that has been legally committed to the Subrecipient by the County for this project is **\$1,207,134.00**. ARPA funds will be distributed in accordance with the budget as indicated in **Exhibit “C”**.

3. Request for Distribution by Subrecipient.

All the funds from this agreement will be placed in escrow along with all of the other financing funds for Ability Housing, prior to closing on the purchase of the subject property. All parties have agreed that the County's ARPA subaward funds (from this agreement) are to be used first in time from the escrow account. County funds from this agreement will not be disbursed from the escrow account without the County's approval on each individual distribution. The County is providing all of the funds to purchase the land and any excess funds from this agreement shall be used for site prep and infrastructure work.

- a. To authorize the land acquisition distribution, Ability Housing will provide a copy of the closing statement, documenting the amount of the purchase price. Once the County approves those land acquisition documents the County will authorize the release of funds from Escrow for the purchase.
- b. If there should be excess funds from this agreement after payment of the land acquisition, they shall be used for site prep and infrastructure work. For each distribution from escrow, Ability Housing will provide a copy of the General Contractor's pay application, documenting the scope of work completed to date and cost of said work. County will review these site prep and infrastructure documents from Ability Housing and will authorize distribution of funds from escrow until the ARPA funding from this agreement is depleted.
- c. At project completion, Ability Housing will provide the County with a final draw schedule, reflecting the County ARPA sources, in addition to all other sources for the project.
- d. The disbursement of ARPA Funds from the escrow for the infrastructure will be contingent upon the following conditions precedent being met prior to each disbursement:
 1. The distribution request is completed.
 2. The distribution being true and correct.
 3. The Subrecipient's compliance with the terms and conditions of the Rules and this Agreement.
 4. The Subrecipient's compliance with the Timeline and Budget.
 5. The Subrecipient providing the County with all documents necessary to verify Subrecipient's compliance with procurement requirements.
 6. The Subrecipient providing the County with all documents necessary to verify Subrecipient's use of the funds requested in compliance with the Rules and this Agreement.

7. The Subrecipient providing Project Expenditure Reports and Performance Reports in compliance with this Agreement and the Rules.
- e. ***Content; Documentation Required.*** Each request for distribution shall include all appropriate backup documentation (which includes, but is not necessarily limited to, itemized invoices, copies of cancelled checks, if feasible, or check numbers, and lien waivers) for the purpose of ensuring that the County can conduct future research related to the distribution made, if and as needed.
 - f. All invoices shall contain a descriptive overview of the Services provided, who provided such Services, as well as the date(s) on which such Services were performed. If any Services were provided by a party other than the Subrecipient, the invoice must also include documentation reflecting the same descriptive information and certification that the third-party has been paid by the Subrecipient or parent organization in the form of a cancelled check or equivalent documentation.
 - g. Each request for distribution shall also include a report of the revenue and expenditures based on the budget that corresponds with the Subrecipient's provision of Services. The Subrecipient agrees to report any anticipated deviations in budgeted expenditure line items that exceed ten percent (10%) and obtain the prior written approval of the County prior to amending its budget.
 - h. ***When Final Request for Distribution Due.*** The Subrecipient shall ensure that it has submitted all requests for distribution from the Project Funds within fifteen (15) days following the last date on which this Agreement requires the Services to be substantially complete.

4. Reimbursement by County.

- a. ***Condition Precedent.*** As a condition precedent to the County's obligation to pay any, or all, of the Project Funds described herein, the Subrecipient shall timely perform the Services and comply with all other duties and obligations required to obtain the Project Funds in relation to the Services provided.
- b. ***Distribution of Funds.*** Upon determining that the Subrecipient's request for reimbursement is complete and the Subrecipient is eligible to receive the Project Funds, the County shall remit the funds to be placed in the escrow account; provided however, that such reimbursement shall not exceed the allocation of Project Funds approved by the Board of County Commissioners.
- c. ***County Discretion.*** Prior to distribution of the Project Funds, the County will fairly and reasonably determine whether the Subrecipient's request for reimbursement is complete and whether the Subrecipient has fully complied with the requirements of this Agreement. If the request for reimbursement is deemed incomplete, or the requirements of this Agreement have not been met, the County may require additional

time to complete the reimbursement process or evaluate whether reimbursement may be made.

- d. **Termination of County Obligation.** All obligations imposed on the County by this Agreement shall terminate upon final reimbursement of all Project Funds owed pursuant hereto.

5. Records and Reports.

- a. **Record Keeping.** The Subrecipient agrees to maintain detailed records, invoices, and receipts related to the Services provided to document the use of Project Funds. The Subrecipient shall make all records required to be maintained pursuant to this paragraph available to the County during the time frame within which Services are provided and until the obligations of this Agreement are fully satisfied; and shall allow the County to conduct a review of internal control and actual expenditures related to the Services twice per calendar year; provided, however, that if the County identifies an issue with the Subrecipient's internal controls additional County review during any particular calendar year will be permitted. Records must be retained for a five-year period following project completion.
- b. **Project Expenditure Reports.** The Subrecipient shall be required to submit information for inclusion in a "Project and Expenditure Report," as required by the Final Rule and as described in Treasury's *Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds* published April 1, 2023, and amendments thereto. The Subrecipient shall provide this information to Denise Radovich, Office of Management and Budget, via email, at dradovich@sjcfl.us by the 15th day of each January, April, July, and October. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is moved to the next business day.
- c. **Annual Performance Reports.** The Subrecipient shall be required to submit an annual "Performance Report" to Denise Radovich, Office of Management and Budget, via email, at dradovich@sjcfl.us, which includes key performance indicators for the project. The key performance indicators and outcome measures will be mutually agreed upon by the parties. Output measures, (for example the number of students enrolled in an early learning program), provide valuable information about the early implementation stages of the project. Outcome measures, (for example the percent of students reading on grade level), provide information about whether a project, service or deliverable is achieving its overall goals. The Subrecipient must include the related outcome goal for its project, service or deliverable and provide updated information on achieving these outcome goals in its annual Performance Report during the month of August each year.
- d. **Contingent Funding.** The County may withhold Project Funds if the Subrecipient fails to comply with record-keeping and reporting requirements; provided, however, that the Subrecipient shall have fifteen (15) calendar days within which to come into

compliance upon receiving notification from the County; and provided further that this subsection shall not be unreasonably applied by the County.

- e. **Compliance with Florida Statute 420.** The Subrecipient shall retain all records pertinent to expenditures incurred under this Agreement for a period of five (5) years after the termination of all activities funded under this Agreement, or after the resolution of all audit findings, whichever is later. The Subrecipient shall maintain real property inventory records that clearly identify properties purchased, improved, or sold.
 - f. **Additional Information.** The Subrecipient shall provide all additional information that the County deems necessary to ensure proper use of the Project Funds or for the County to meet its reporting obligations to the federal and/or state government.
6. **Audit Requirements.** The Subrecipient agrees to comply with the audit requirements of OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," and, if required by the Single Audit Act of 1984 (P.L. 98-502) and the Single Audit Act Amendments of 1996 (P.L. 104-156), the Subrecipient will provide the County with a complete audit of its expenses related to the Services provided under this Agreement for the term of this Agreement. Such audit may be part of a broader Single Audit for the Subrecipient involving this award, as well as other grants received by the Subrecipient. The audit is to be verified by a certified public accountant and delivered to the County by the due date (including extensions) specified by the Office of Management and Budget (OMB). This due date is normally nine (9) months following the closeout of the Subrecipient's fiscal period. The Subrecipient further agrees to make all records concerning expenditures and Services provided available to the County upon reasonable request during the term of this Agreement and for a period extending one hundred and eighty (180) days beyond the term of this Agreement.

The Subrecipient must adhere to all applicable local codes and comply with the applicable federal housing program's requirements related to: Resident income restrictions; the period of affordability and related covenant requirements for assisted units; tenant protections and housing quality standards.

7. **Third Party Service Providers.** The Subrecipient has indicated that third-party service providers will be retained for the building component of the Project. and, simultaneous with the execution of this Agreement, the Subrecipient shall promptly provide the County with information related to all known third party providers retained by the Subrecipient to complete any of the Services, including each such provider's name, address, email, and phone number of each such provider and, if requested by the County, the name of its owner(s), partners, principle(s). The County shall promptly be notified of any changes. If third-party providers are subsequently retained to complete any of the Services, the Subrecipient shall promptly provide the County with the name, address, email, and phone number of each such provider and, if requested by the County, the name of its owner(s), partners, principle(s). The County may, at its sole discretion, reject any third-party provider from completing the Services in the event the third-party provider is disbarred, suspended, or

otherwise prohibited from receiving federal or state funds, or is otherwise unable to comply with requirements that apply to the use of Project Funds.

8. **Insurance.** Full replacement insurance coverage must be provided for such real property purchased with funds from this agreement. The Subrecipient shall furnish the County with certificates of insurance for full replacement of the real property, workers' compensation, professional (errors and omissions), and general liability, in the amounts not less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) aggregate. The policies of insurance shall be in such form and shall be issued by such company or companies as may be satisfactory to the County. The County shall be named as an additional insured with duty of defense on all insurance policies required hereunder. Nothing herein shall be deemed to permit a cause of action against the County for damages or be deemed a waiver of the County's sovereign immunity relative to any claim against the County. The Subrecipient shall ensure that all third-party providers retained to complete the Services comply with the same requirements.

9. **Indemnification; Repayment.**

- a. **Release and Hold Harmless.** The Subrecipient shall hold the County, together with its officers, employees, and agents, harmless and shall indemnify the County and its officers, employees, and agents for all direct injuries, damages, or claims, including any attorneys' fees, arising by virtue of the Subrecipients provision of Services, or any activities described in this Agreement or reasonably contemplable, or related to activities described in this Agreement directly caused by Subrecipient. The Subrecipient covenants and agrees to hold harmless and defend the County, its officers, agents, employees, contractors, and subcontractors from and against any and all direct claims or suits for property loss or damage, and/or personal injury, including death, to any and all persons, of whatsoever kind or character, whether real or asserted, arising out of the provision of Services, or any activities described in this Agreement or reasonably contemplable, or related to activities described in this Agreement directly cause by Subrecipient.
- b. **Indemnification.** The Subrecipient and its successors and assigns shall indemnify and defend the County, its agents, employees and assigns, from and against any and all direct claims directly caused by Subrecipient, whether legal or equitable, damages, causes of action, losses and expenses, , including, but not limited to, attorneys' fees or other professional fees and expenses, arising out of, or resulting from, the County's role or relationship with the Subrecipient, including, but not limited to, the Subrecipient's receipt of Project Funds or the Services provided in association with such ARPA allocation.
- c. **Recapture of Expenses.** Subrecipient understands that the funds being provided are grant funds with Federal grant requirements.

- i. Any funds that are not expended as authorized under this Agreement must be refunded to the COUNTY within fourteen (14) days of receipt of written notice provided by the COUNTY.
- ii. Any funds that are not expended within the anticipated timeframe under this Agreement are subject to recapture. If requested, a refund to the COUNTY must be made within fourteen (14) days of receipt of written notice for a refund provided by the COUNTY.
- iii. The COUNTY'S determination that an expenditure is eligible does not relieve the SUBRECIPIENT of its duty to use all reasonable methods to recapture the funds for the COUNTY for any expenditures that are later determined by the COUNTY or the Federal Government, in each of its sole discretion, to be ineligible expenditures or the discovery of a duplication of benefits.
- iv. If requested by the COUNTY, all refunds, return of improper payments, or repayments due to the COUNTY under this Agreement are to be made payable to St. Johns County and mailed directly to the COUNTY pursuant to Notice section and this Agreement.
- v. The SUBRECIPIENT has responsibility for identifying and recovering grant funds that were expended in error, disallowed, or unused. The SUBRECIPIENT will also report all suspected fraud to the county.

10. ***Repayment of Grant to County:*** The Subrecipient shall repay the County for any Project Funds the Subrecipient has received from the County for the Project if the federal government, for any reason, determines that such funds must be returned, including, but not limited to, a determination that the Project is ineligible to receive ARPA Funds. In the event the Subrecipient does not repay the Project Funds within thirty (30) days of demand for repayment by the County, the Subrecipient shall be in default.

a. ***Deliverables to the County by Subrecipient.***

- i. This grant award is for the infrastructure required for the Scope of Work provided in **Exhibit "A"**. All infrastructure included in the Scope of Work is required to be completed on or before December 31, 2026 or the subrecipient shall repay 100% of the grant award back to the County.
- ii. Because the infrastructure is of little benefit to the County if the apartments are not built, the subrecipient promises to build at least half (1/2) of the total ninety-two (92) apartments, ***forty-six (46) apartments, prior to December 31, 2026.*** Failure to complete building at least forty-six (46) of the apartments prior to December 31, 2026 shall require repayment to the County of a prorated amount of the total award to the County. (*example: 1/46 of \$1,207,134 or \$26,242.04 per apartment not given a certificate of occupancy prior to December 31, 2026*)

11. **Independent Contractor.** Nothing contained in this Agreement is intended, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. The County shall be exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance, and workers' compensation insurance.
12. **Default:** Subrecipient is in default under this agreement upon the happening of any one of the following acts, events or conditions:
- a. default in the payment or performance of any obligation or any covenant or liability contained in or referred to in this agreement or in any evidence of indebtedness of any obligation;
 - b. a representation or warranty by the debtor made to the secured party to induce it to enter into this agreement or to make a loan to debtor which proves to be false or erroneous in any material respect;
 - c. loss, theft, material damage, destruction, sale, or encumbrance of or to the collateral, or the levy, seizure, or attachment by legal process of the collateral;
 - d. death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of the debtor, assignment for the benefit of creditors by, or the commencement of a proceeding under any bankruptcy or insolvency law by or against the debtor or any guarantor or surety for the debtor;
 - e. if any lien is filed against the Property, the Improvements, or any part thereof, or any interest or right made appurtenant thereto;
 - f. the secured party considers itself insecure and thereupon accelerates payment or performance of the obligation immediately due and payable, but the debtor continues in default, [or] secured party in good faith deems itself insecure because the prospect of payment is impaired or the prospect of performance of this agreement or any covenant under it is impaired.
 - g. **Cumulative Rights and Remedies – No Waiver.** Subject to the provisions of this Agreement, all remedies provided for herein are cumulative and shall be in addition to any and all other rights and remedies provided by law, including County's lien and right of offset. The exercise of any right or remedy by County hereunder shall not in any way constitute a cure or waiver of default hereunder or under the lien, nor invalidate any act done pursuant to any notice of default, nor prejudice the County in

exercise of its rights hereunder or under the lien unless, in the exercise of those rights, County realizes all amounts owed in this agreement.

- h. ***Expenses of Disposition of Collateral Upon Default.*** The County shall be entitled to reimbursement for any expense (including reasonable attorney's fees and legal expenses) involved in the retaking, holding, preparing for sale, selling or similar charges, incurred in the connection with the disposition of the collateral upon the default of the Subrecipient.

13. ***Length of Repayment Liability:*** Although 31 CFR Part 35.10, indicates that Treasury may identify any amount used in violation of 31 CFR Part 35.5 or 31 CFR 35.6 at any time prior to December 31, 2026, Part 1 E 2 of the Compliance and Reporting Guidance for SLFRF (Version 3.0), dated February 28, 2022, requires the County to maintain records and financial documents for five (5) years after all funds have been expended or returned to Treasury; provided, however, that Treasury may request transfer of records of long-term value at the end of such period. As such, the Subrecipient and Ability Housing, Inc. will assume repayment liability for a five-year period, through December 31, 2031, unless Treasury requests that the County transfer the records and financial documents associated with the Project and Services prior to January 1, 2032. If such a request is made, the Subrecipient and Ability Housing, Inc. will continue to assume repayment liability for an additional five-year period, through December 31, 2036, after which the Subrecipient and Ability Housing will no longer be liable for any repayment demands or liabilities regarding the Project Funds.

14. Procurement Rules.

- a. ***Procurement Procedures.*** The County has written procurement procedures in place, which are consistent with State and local laws, as well as with the Federal Uniform Guidance, 2 C.F.R. Sections 200.317 through 200.327. In accordance with 2 C.F.R. Section 200.317, the Subrecipient shall comply with procurement procedures set forth in 2 C.F.R. Sections 200.318 through 200.327.
- b. ***Conflict of Interest Policy.*** The Subrecipient must have a written conflict of interest policy as part of its procurement policy, which requires, at a minimum, the following:
 - i. Applies to management and employees; and
 - ii. Prohibits financial interest or "apparent conflict" with vendors; and
 - iii. Prohibits persons with a conflict from participating in selection; and
 - iv. Prohibits management and employees from soliciting or accepting gratuities, favors, or anything of monetary value from contractors or parties to subcontracts; provided, however, that the policy may establish an amount below which such gratuities are considered "de minimis."

15. **Termination.** The County may terminate this Agreement if the Subrecipient fails to comply with the terms and conditions of this Agreement or any applicable federal law or regulations; provided, however, that the Subrecipient shall have thirty (30) calendar days within which to come into compliance upon receiving notification from the County; and provided further that this section shall not be unreasonably applied by the County. If the Agreement is terminated, any reimbursable expenses incurred by the Subrecipient prior to termination of the Agreement may be submitted to the County for reimbursement in accordance with Section 4 above.

16. **Additional Consideration.** Any mandate, obligation or constraint approved or adopted regarding the use of ARPA Funds shall supersede any conflicting or related term stated in the body of this Agreement.

17. Miscellaneous Provisions.

a. ***Bankruptcy, Insolvency, or Winding down of Business.*** In the event the Subrecipient is dissolved or otherwise ceases to exist, declares bankruptcy, or otherwise becomes insolvent, or refuses to perform its duties set forth herein, County shall be noticed of all events and provided a succession plan within three (3) business days.

b. ***Payment of Taxes and Fees.*** The Subrecipient agrees to promptly pay all lawful general taxes, special assessments, excises, license fees, permit fees and utility service charges of whatever nature if applicable, that may be applicable to the Subrecipient and to take out and keep current all licenses, whether municipal, state, or federal, that are required for the conduct of its business or operation. The Subrecipient further covenants and agrees not to permit any of said taxes, assessments, excises, fees, or charges to become delinquent.

c. ***Licenses and Permits.*** The Subrecipient and/or any third-party providers performing the Services shall possess requisite County licenses or permits, if any.

d. ***Compliance with County Code.*** The Subrecipient shall comply with all applicable provisions of the County of St. Johns, Florida Ordinances.

e. ***Changes in ARPA Compliance and Review Regulations.*** The parties to this Agreement understand that there may be changes made after its execution, which will require that amendments be made to ensure compliance with the ARPA. The parties agree that such review shall occur if, and as, necessary.

f. ***Non-Discrimination.*** The Subrecipient will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability, other handicap, age, marital status, or status with regard to public assistance. To the extent Subrecipient has employees, the Subrecipient will take affirmative action to ensure that all employment practices prohibit such discrimination. Such employment practices include, but are not limited to, the

following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, lay-off, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Subrecipient agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- g. **Hatch Act.** The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or any extent engaged in the conduct of political activities in violation of 5 U.S.C. § 1501 et seq. as subsequently amended.
- h. **Time is of the Essence.** Time is of the essence regarding each and every obligation of Contractor under this Contract. Each obligation is deemed material, and a breach of any such obligation (including a breach resulting from untimely performance) is a material breach.
- i. **Authorization to Complete the Services.** The Subrecipient shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Florida. As a condition of this Agreement, the Subrecipient shall require third-party providers to affirm, by sworn affidavit and provision of documentation, each provider's enrollment, and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Subrecipient and each of its third-party providers shall also affirm, by sworn affidavit, that it does not knowingly employ any person who is an unauthorized alien in connection with the Services.
- j. **Binding Agreement.** This Agreement is binding upon the parties, their successors, assigns, heirs, executors, and administrators.
- k. **Sovereign Immunity.** Nothing in this Agreement shall be construed in any way to waive the sovereign immunity of the County.
- l. **Applicable Law and Jurisdiction.** The rights and remedies of the County and the Subrecipient shall be cumulative and in addition to any other rights and remedies provided by law or equity. The laws of the State of Florida shall govern this Agreement. In the event of any dispute or controversy between the parties, each party agrees that the Circuit Court of St. Johns County, Florida, shall have exclusive jurisdiction to determine all issues between them.
- m. **Public Records.** SUBRECIPIENT shall comply with the requirements of Florida's Public Records Act, Chapter 119, Florida Statutes. To the extent required by Section 119.0701, Florida Statutes, SUBRECIPIENT shall:
 - i. keep and maintain public records required by the County to perform the service under the Agreement;

- ii.* upon request from the County’s custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for under Florida’s Public Records law;
- iii.* ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the SUBRECIPIENT does not transfer the records to the County; and
- iv.* upon completion of the contract, transfer, at no cost to the County, all public records in possession of the Subrecipient. Upon transfer, the Subrecipient shall destroy any duplicate public records that are exempt or confidential and exempt from public records requirements.

All records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. All documentation produced as part of this Agreement will become the property of the County. This paragraph shall survive the expiration or termination of this Agreement.

IF THE SUBRECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUBRECIPIENT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

St. Johns County – Office of the County Attorney
Attention: *Public Records Custodian*
500 San Sebastian View
St. Augustine, Florida 32084
904-209-0805
publicrecords@sjcfl.us

Under Florida law, a **SUBRECIPIENT WHO FAILS TO PROVIDE THE PUBLIC RECORDS TO THE COUNTY** within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes, and such non-compliance will constitute a breach of the Agreement and may serve as grounds for termination of this Agreement.

- n. ***Applicable Legal Requirements.*** In no event shall this Agreement be deemed a waiver of any legal or code requirement otherwise applicable to the Services for which Project Funds are provided pursuant to this Agreement.

- o. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.
- p. **Severance.** The invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other provision of this Agreement.
- q. **Notice.** All notices required or permitted by this Agreement shall be deemed given when either (i) delivered to the addresses below or (ii) deposited in the United States mail, postage prepaid and certified, addressed to the following:

If to the Subrecipient: *Ability Housing, Inc.*
Attn: Executive Director
3740 Beach Blvd
Suite 304
Jacksonville, FL 32207

If to the County: *St. Johns County*
Attn: Denise Radovich, Office of Management and Budget
500 Sebastian View
St. Augustine, Florida 32084
904-209-0566
dradovich@sjcfl.us

18. **Amendments.** This Agreement may be amended, in writing, by mutual agreement of the parties; provided all such amendments made are in full compliance with any updated federal law or technical guidance applicable at the time made.

- a. **Entire Agreement.** The parties to this Agreement declare that the terms of this Agreement have been completely read and are fully understood and voluntarily accepted. This Agreement contains the entire agreement between the parties hereto and the terms of this Agreement are contractual and not a mere recital. All exhibit references as “Exhibits” in this Agreement and in the recitals to this Agreement shall be deemed incorporated herein by reference.

{The remainder of this page was intentionally left blank. Signatures to follow.}

IN WITNESS WHEREOF, the Subrecipient and the County have caused this Agreement to be executed pursuant to due and legal action authorizing same to be done, on the date first above written.

Ability Housing, Inc.
("SUBRECIPIENT")

COUNTY OF ST. JOHNS, FLORIDA
("COUNTY")

By: _____

By: _____
Hunter Conrad, County Administrator

Its: _____

APPROVED AS TO FORM:

ATTEST

By: _____
Brandon J. Patty, County Clerk

EXHIBIT “A” -- Project Description

Project Scope

Ability Housing, Inc. is a not-for-profit affordable housing provider currently serving Northeast and Central Florida. As a nonprofit, Ability Housing’s objective is to own and manage each of its properties for the long-term benefit of the community. Each property is operated to a triple bottom line: maintain the physical asset, meet financial objectives and improve the quality of life for residents and the community. Ability Housing has successfully operated apartment communities that are 100% affordable housing for fifteen (15) years. Each property has been well maintained, has received capital improvements according to plan, and has financially supported itself.

Villages of New Augustine is a 92-unit new construction affordable housing apartment community to be constructed at the intersection of North Volusia Street and Chapin Street in the West Augustine neighborhood. In addition to four (4) apartment buildings, the community will include a community center with onsite leasing offices, a computer lab, library, community space, and space for workshops and training. Some of the training will include adult literacy, employment assistance, and financial management. The community will also include a playground and dedicated walking trail. Ability Housing, Inc. will be the sole member of the managing member of Ability VNA, LLC and will be responsible for daily operations.

Unit Mix:

1-bedroom 20 apartments
2-bedroom 36 apartments
3-bedroom 36 apartments

Income Mix:

33% AMI 10 apartments
50% AMI 9 apartments
60% AMI 73 apartments

The total project cost is \$24,894,969. The ARPA funds of \$1,207,134 will be used for acquisition and sitework. The primary funding source for the development is \$14,867,263 of Low-Income Housing Tax Credit equity, syndicated by National Equity Fund (NEF) on behalf of Bank of America (BoFA). Both NEF and BoFA are underwriting the project to ensure long-term sustainability. Villages of New Augustine is also being financed with a private placement debt from Churchill State. In addition, the project will receive funds from St Johns County Housing funds and the Housing Finance Corporation approved an award of Low-Income Housing Tax Credits for development of the project.

The project should begin no later than September 30, 2023 and completed by March 31, 2025.

EXHIBIT “B” -- WRITTEN JUSTIFICATION

Justification

One of the eligible uses under the American Rescue Plan Act is promoting long-term housing security: Providing for Affordable Housing and Services for Unhoused Persons. These programs are responsive to the negative economic impacts of the pandemic. Treasury has determined that supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless, and the development of affordable housing to increase supply of affordable and high-quality living units are responsive to the needs to impacted populations.

Villages of New Augustine meets the eligible use under two presumptions. Treasury presumes a project that is eligible to be funded under certain federal housing programs is an eligible use of ARPA funds as a response to the negative economic impacts of the pandemic. One of the programs is Home Investment Partnerships Program (HOME) administered by HUD. This project would be eligible under the HOME program. In addition, the Villages of New Augustine meets the presumptive program eligibility because the residents will all earn 60% or less of the Area Median Income; Treasury’s guidance provides for programs serving households earning up to 65% of Area Median Income as presumptively eligible.

For Capital expenditures greater than \$1 million, a written justification must be completed including the following components:

**Description of the harm or need to be addressed. Recipients should provide a description of the specific harm or need to be addressed and why the harm was exacerbated or caused by the public health emergency. Recipients may provide quantitative information on the extent and the type of harm, such as the number of individuals or entities affected.*

Treasury has strongly encouraged the use of SLFRF for affordable housing. “It is clear that the ongoing pandemic and resulting economic crisis are having a profound, long-term negative effect on the preexisting affordable housing crisis facing low-income households. The combination of a large number of higher-income households who have weathered the pandemic without significant income losses, low interest rates, and housing supply constraints exacerbated by the pandemic, have driven a sharp increase in the sale price of homes. Meanwhile, many low-income renters and homeowners are struggling with lost employment and income and are behind on their housing payments.” This is a direct passage from Treasury’s final rule implementing the Coronavirus State and Local Fiscal Recovery Fund program. Villages of New Augustine is a 92-unit new construction apartment community to be constructed in the West Augustine neighborhood that will provide below market rents to serve the St. Johns County’s struggling low-income residents and provide them with improved access to healthcare, health foods, educational opportunities and employment prospects. The housing is located within a Qualified Census Tract.

**Explanation of why a capital expenditure is appropriate. For example, recipients should include an explanation of why existing equipment and facilities, or policy changes or additional funding to pertinent programs or services, would be inadequate.*

The COVID-19 pandemic has produced a unique set of public health challenges. But the pandemic has exacerbated national crises that existed long before the coronavirus. Nowhere is this more evident than in the pandemic's influence on homelessness and affordable housing. The pandemic has severely exacerbated the national crisis of affordable housing, putting more low-income families at risk of impending homelessness and impacting their ability to pay for basic necessities such as doctor's visits, healthy foods and basic needs that may harm individuals' health. "The COVID-19 public health crisis and economic collapse of 2020 brought devastating harm to millions of families, and those with low incomes have been disproportionately impacted. Many struggled to remain safely and stably housed, due in large part to a severe shortage of affordable homes for people with the lowest incomes before the pandemic began" (The Gap: A Shortage of Affordable Homes). People experiencing homelessness, overcrowding, or housing instability are at greater risk of COVID-19 because transmission of the virus is more likely in congregate shelters and crowded homes, where people are unable to maintain safe social distancing (Nande et al., 2020; Chapman et al., 2020). The pandemic makes clear that affordable homes are a prerequisite for individual and public health. Data from the University of Florida's Shimberg Center for Housing indicates there are only 28 affordable and available units for every 100 extremely low-income households in Northeast Florida. In the Shimberg Center for Housing Studies 2022 Rental Market Study, St. Johns County is estimated to have 20,298 total renter households of which 4,098 (20%) earn less than 60% of the Area Median Income and spend more than 40% of their household income on housing. According to the Northeast Florida Association of Realtors, St. Johns County is the least affordable county of the eight counties in the Northeast Florida area. According to rent.com, in the past year rents in St Augustine has increased 14-23%, depending on the number of bedrooms. In St. Augustine the average rent for a one-bedroom is \$1,600, \$1,850 for a two bedroom \$1,850, and \$2,050 for a three-bedroom. With these rents, 179,962 St Johns households would have to pay more than 40% of their monthly income to afford a 2-bedroom unit (Shimberg Center, University of Florida). Further, in the 2021-22 school year, the school district identified 650 students as homeless (Council on Homelessness Report).

**Comparison of proposed capital project against at least two alternative capital expenditures and demonstration of why the proposed capital expenditure is superior. Recipients should consider the effectiveness of the capital expenditure in addressing the harm identified and the expected total cost (including pre-development costs) against at least two alternative capital expenditures. Where relevant, recipients should consider the alternatives of improving existing capital assets already owned or leasing other capital assets.*

The Villages of New Augustine location was selected for several reasons. The primary reason being its higher probability for being selected for funding in the highly competitive *Florida Housing Finance Corporation Request for Applications for Housing Credit Financing for Affordable Housing Developments Located in Medium And Small Counties, RFA 2021-201*. Because of the County's multi-year support of the project, this development located on this parcel had a higher probability of being selected for funding than any other site within the

County. Had any other site been submitted to Florida Housing Finance Corporation Request for Applications 2021-201 it would not have been selected for funding. This fact makes Villages of New Augustine the most viable site for securing an award of \$1,625,000 of Low-Income Housing Tax Credits, worth \$14,867,263 in equity to the development.

Additional reasons this site was selected include:

- Development of this housing project is integral to a neighborhood driven revitalization strategy; Ability Housing first began working with the neighborhood on developing the project concept six years ago.
- The site is located close to several community amenities
- Four (4) bus stops within one (1) mile
- A quarter mile from a public school
- Less than a mile and a half from a grocery store
- Less than a mile and a half from a pharmacy
- A health clinic is planned for the parcel across the street
- Land costs in St Johns County have increased significantly and it is an economically viable site to develop in a desirable location. For comparison, recent multifamily land sales in the County sold for more than twice the per unit cost of this site. Ability Housing did assess other locations, within and outside St Johns County. Within St Johns County it was one of a few sites that are zoned multifamily that have a price-point that is not cost prohibitive to the development of affordable housing. And it was the site with the highest probability of being selected for funding by Florida Housing Finance Corporation.

EXHIBIT “C” -- Budget and Reimbursement Schedule

Preliminary Estimate of Development Costs:

Land	\$552,000
General Development Costs-Soft Costs	\$3,057,959
Financing Costs	\$1,338,549
Developer Fee	\$3,288,961
Operating Reserve	<u>\$498,000</u>
<i>Construction-Hard Costs</i>	<i>\$16,159,500</i>

Total Villages f New Augustine ***\$24,894,969***

ARPA Funding **\$1,207,134.00**

All the funds from this agreement will be placed in escrow along with all of the other financing funds for Ability Housing, prior to closing on the purchase of the subject property. All parties have agreed that the County’s ARPA subaward funds (from this agreement) are to be used first in time from the escrow account. County funds from this agreement will not be disbursed from the escrow account without the County’s approval on each individual distribution. The County is providing all of the funds to purchase the land and any excess funds from this agreement shall be used for site prep and infrastructure work.

To authorize the land acquisition distribution, Ability Housing will provide a copy of the closing statement, documenting the amount of the purchase price. Once the County approves those land acquisition documents the County will authorize the release of funds from Escrow for the purchase.

If there should be excess funds from this agreement after payment of the land acquisition, they shall be used for site prep and infrastructure work. For each distribution from escrow, Ability Housing will provide a copy of the General Contractor’s pay application, documenting the scope of work completed to date and cost of said work. County will review these site prep and infrastructure documents from Ability Housing and will authorize distribution of funds from escrow until the ARPA funding from this agreement is depleted.

At project completion, Ability Housing will provide the County with a final draw schedule, reflecting the County ARPA sources, in addition to all other sources for the project.