Collier County
Public Services Department
Community & Human Services Division

July 19, 2019

Marisa Button
Director of Multifamily Allocations
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301

Via Email to: Marisa.Button@floridahousing.org

Re: RFA 2019-102- Public Comments

Dear Ms. Button,

Collier County appreciates the opportunity of providing comments on RFA 2019-102: Community Development Block Grant-Disaster Recovery (CDBG-DR) To Be Used In Conjunction With Tax-Exempt MMRB And Non-Competitive Housing Credits In Counties Deemed Hurricane Recovery Priorities.

Upon reviewing the latest draft RFA dated June 26, 2019, specifically as it relates to the Priority I Applications, there is an inherent conflict with the Joint Venture/Ownership structure between the Local Government and the Single Purpose Legal Entity applicant.

Unfortunately, based on our research, Local Government's are precluded from participating as members or general partners of for-profit joint venture entities. Consequently, Collier County, nor any other county, city, or township would not be able to be eligible under Priority I, despite our ownership of land, and further commitment of that land for affordable housing in perpetuity.

Per our developer Counsel, "the government, a government agency, or a political subdivision is barred from entering into a for-profit JV. This includes being a member of a for-profit partnership. The Florida Constitution limits government subsets from entering into various business relationships with private entities. More specifically, Article VII, section 10 of the Florida Constitution provides that '[n]either the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person.' Therefore barring joint ownerships and pledges to public credit including private companies and the government. This legislative proceeding and replaced legislation that specifically noted that '[t]he Legislature shall not authorize any

county, city, borough, township or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual.' Fla. Const. art. IX, § 10 (1885). The purpose of the statutory framework, as echoed in Bailey v. City of Tampa and Jackson-Shaw Co. v. Jacksonville Aviation Authority, is "to protect public funds and resources from being exploited in assisting or promoting private ventures when the public would be at most only incidentally benefited."

When evaluating whether a business relationship between the government, or a government subset, and a private entity is unconstitutional as per Article VII Section 10 of the Florida Constitution, the Florida Supreme Court has determined that it is imperative to examine if a joint venture exists. As per precedent, a joint venture contains all of the following elements: 1) a community of interest in the performance of the common purpose; (2) joint control or right of control; (3) a joint proprietary interest in the subject matter; (4) a right to share in the profits; and (5) a duty to share in any losses which may be sustained. Therefore, if each of the previously mentioned elements are present between the government, or a government subset, and a private entity the business venture is unconstitutional."

We agree and applauded FHFC's intent to include Local Governments as party to a joint venture ownership of a proposed development. However, due the constitutional limitations we would like consideration to utilize other means of demonstrating a joint venture relationship with a Local Government. Land leases often include terms and conditions governing the design, demographic, affordability, timeline, and other material partnership terms.

Therefore, we respectfully request FHFC's consideration to permit Local Governments who meet the Priority I Ownership of Land criteria of the RFA to meet the Applicant Structure criteria under Section 3.a(2)(a)(ii) by providing a long-term land lease to the Applicant in lieu of a joint-venture operating agreement.

Feel free to contact me if you have any questions or would like to discuss this issue in more detail.

Sincerely, Cormac Giblin

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