Best Practices for
Drafting Funding Agreements

by Lisa Hoffmeyer

*T*he agreements between local governments and nonprofit funding recipients set out the responsibilities, expectations and processes for publicly-funded projects and programs. When funding agreements are unclear or incomplete, projects can be delayed, program delivery can be impacted and the relationships between grantor and grantee may deteriorate.

One of the most important and most often overlooked steps in the agreement process is the face-to-face agreement review. This meeting between the local government's contract manager or assigned staff and the grantee should include a section-by-section review of the agreement and attachments to ensure complicated language is explained in layman's terms, outcomes are reviewed and processes clarified. Once everyone is on the same page, implementation becomes a much smoother process.

In addition to the required local, state and federal government language, here are some key administrative provisions to include in your agreements:

1. **Timeframe** - What is the beginning and ending date of the contract? Since most contracts are for a one-year period, it is helpful if staff has the authority to authorize an additional one year extension if needed, rather than require full Commission approval. Project timelines should be reviewed to ensure expectations are realistic and that, if leveraging additional funds, the application and commitment processes coincide with the project completion deadline.

2. **Reporting** - Regular reporting is a valuable tool for grantee and grantor to assess progress, address concerns, troubleshoot potential problems, ensure contract compliance, identify potential delays and provide guidance to the grantee. Reports should be generated at least quarterly and be thoroughly reviewed by the contract manager.

3. **Affordability Period** - This should be spelled out in the body of the contract. Samples of the required security agreements (note, mortgage, declaration of restricted covenants) should be attached as contract exhibits so the grantee can review them prior to executing the contract.

4. **Scope of Work** - A brief scope of work is usually provided in the body of the contract and specifies the type of project (development of rental or ownership units) or program (homebuyer counseling, down payment assistance, rehabilitation assistance…), number of units developed or clients served and income limits for beneficiaries. It is recommended that an exhibit to the agreement provide additional details for programs and projects as follows:

   • **Non-construction Programs:** What is the application process? How will the program be advertised? How are potential clients assessed? Where are services delivered? What are the deliverables? How are the deliverables measured or tracked? What are the program milestones?

   • **Homeownership Rehabilitation Programs:** What is the scope of work? What are the methods and materials? How will contractors or subcontractors be selected? How will applicants be selected? Who will do the income certification?

   • **Construction Rental Projects:** What is the detailed scope of work? What are the methods and materials? How will contractors or subcontractors be selected? What are the unit mix, unit size and rents? What amenities will be provided? How will tenants be selected? How will the project be marketed? Who will manage the property? What other funding sources are committed or anticipated? What is the expected profit to the developer as evidenced by the project proforma?

   • **Homeownership Acquisition, Rehabilitation and Resale Projects:** What are the parameters for selecting units (price, location, general scope /cost of work, targeted resale price). How will properties

be acquired? How will contractors be selected? How will potential buyers be selected? How will the program be marketed? Who will prequalify buyers? Who will do the income certifications? Who will provide homebuyer education? What are parameters for first mortgage lenders? How much is the required buyer's contribution? What is the process for reducing price if needed? Is there an exit strategy if the units are not sold or does the agreement require pre-sales?

5. **Developer Fees** - These fees are determined by the funder and must be reasonable and customary for the type of project and location. The fees should be listed in the body of the agreement as well as the project budget.

6. **Budgets** - A detailed project or program budget with a sources and uses chart should be included in the body of the agreement. The process for budget revisions should also be provided. It is helpful if the local government staff has authority for line item budget changes that do not increase the overall budget.

7. **Payments** - How are payments processed? What documents or forms are required? What is the timeframe from submission to payment? Is retainage required for construction projects?

8. **Default Provisions** - Be clear about what happens in the event of default and what constitutes default. For programs that are not compliant, will repayment of expended funds be required? For development projects, will the units be foreclosed if the terms of the agreement are not met? Will the grantee be required to repay funds? For both projects and programs, what opportunities will the grantee have to correct deficiencies before any adverse action is taken?

Crafting good agreements can oftentimes be the key to timely completion and project success. The NSP Help website *www.hudnsphelpinfo.gov* has additional resources on funding agreements. Information on upcoming HOME Effective Written Agreements training classes can be found at the new HOME Technical Assistance website: *www.hometa.info.*

Please contact the Florida Housing Coalition technical assistance team if you have questions or would like training with writing good agreements. And please understand that these agreements are legal contracts, so the very best practice is to have your agreement reviewed by legal counsel, BEFORE you sign it.

Email *info@flhousing.org* or call 850-878-4219 if you have questions. **HNN**

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