### **REQUEST FOR PROPOSALS 2010-04**

### TAX CREDIT EXCHANGE PROGRAM (EXCHANGE) FUNDING FOR APPLICANTS THAT SUBMITTED AN ORIGINAL APPLICATION THAT HAS AN ACTIVE AWARD OF NINE PERCENT HOUSING CREDITS

for

## FLORIDA HOUSING FINANCE CORPORATION

February 26, 2010

## SECTION ONE INTRODUCTION

This Request for Proposal is open to Applicants that submitted an Original Application that has an Active Award of nine percent Housing Credits, as defined herein.

Florida Housing is soliciting sealed proposals from qualified Applicants that commit to provide housing in accordance with the terms and conditions of this RFP, applicable laws, rules, and regulations, and Florida Housing's generally applicable construction and financial standards.

Florida Housing anticipates approximately \$150,000,000 in Exchange funding will be available under this RFP. Any Exchange funding that remains after funding all eligible Proposals under this RFP shall be offered to 2009 Universal Cycle Applicants that receive an award of Housing Credits as a result of a final order issued on or before June 18, 2010 that (i) were included in the Eligible Unfunded Applications section of the 2009 Universal Application Cycle Ranked Order list approved by the Board on February 26, 2010 for which the invitation to enter credit underwriting has been accepted as of the due date stated in the invitation, provided sufficient time exists for such recipients to meet the prescribed Florida Housing and Treasury expenditure timeframes or (ii) filed a petition for hearing as of December 28, 2009 which was addressed in a formal proceeding at the Division of Administrative Hearings and were included in the Failed Threshold section of the 2009 Universal Application Cycle Ranked Order list approved by the Board on February 26, 2010, for which the invitation to enter credit underwriting has been accepted as of the due date stated in the invitation, provided sufficient time exists for such recipients to meet the prescribed Florida Housing and Treasury expenditure timeframes. If funds still remain, such funds may be distributed under a separate RFP upon approval of the Board.

### SECTION TWO DEFINITIONS

For purposes of this document, the terms reflected below shall be defined as set out below. Unless otherwise defined below, the definitions included in Rule 67-48.002, F.A.C., or applicable federal regulations apply.

"Active Award" An allocation of nine percent Housing Credits, awarded to eligible Applicants by the Board on February 26, 2010, for which the invitation to enter credit underwriting has been accepted as of the due date stated in the invitation.
"Applicant" Any person or legally formed entity that is eligible to (i) seek Exchange funding from Florida Housing by responding to this request for proposal or (ii) be offered Exchange funding as a result of a final order issued on or before June 18, 2010, as outlined in Section One above.

"ARRA"	The American Recovery and Reinvestment Act of 2009.
"Award of HC"	The effective date of the award of HC shall be the date of the invitation to Applicant to enter credit underwriting. The invitation to enter credit underwriting also serves the purpose of informing the Applicant in writing that it has been awarded Housing Credits by the Board of Directors.
"Committee"	The review committee composed only of employees of Florida Housing that is established pursuant to Rule 67-49.007, F.A.C.
"Days"	Calendar days, unless otherwise specified. For computing any period of time allowed under this RFP, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.
"EUA" or Extended Use Agreement	An agreement which sets forth the set-aside requirements and other Development requirements under a Corporation program.
"Exchange" or "Exchange Program"	The Tax Credit Exchange Program authorized under Section 1602 of the American Recovery and Reinvestment Act of 2009.
"Exchange Extended Use Period"	With respect to any building that is included in a Development funded through the Exchange Program, the period that begins on the first day of the Compliance Period in which such building is part of the Development and ends on the later of: (i) the date specified by Florida Housing in the EUA or (ii) the date that is the fifteenth anniversary of the last day of the Compliance Period, unless earlier terminated as provided in Section 42(h)(6) of the IRC.
"Florida Housing"	Florida Housing Finance Corporation, a public corporation and public body corporate and politic created by Section 420.504, Fla. Stat.
"Good Faith Effort"	The Applicant's demonstration prior to completion of credit underwriting that it has attempted to obtain an investment commitment for its Housing Credit allocation, but was unable to secure a tentative price that made it a viable transaction without additional gap financing.

"Interested Party"	A person or entity that requests a copy of this Request for Proposals from Florida Housing.
"Original Application"	The Application for which the Applicant (i) has an Active Award of nine percent Housing Credits or (ii) has received an award of nine percent Housing Credits as a result of a final order issued on or before June 18, 2010, as outlined in Section One above.
"Proposal"	A written submission by an Applicant that responds to this Request for Proposals.
"Proposed Development"	The Development proposed within the Applicant's Original Application and this RFP.
"RFP"	This Request for Proposals, including all exhibits referenced in this document and all other documents incorporated by reference.
"Subaward"	That certain funding award made under the provisions of the Exchange Program.
"Threshold Item"	A mandatory requirement of the RFP.
"Website"	The Florida Housing Finance Corporation website, the home address of which is <u>www.floridahousing.org</u> .

### SECTION THREE PROCEDURES AND PROVISIONS

A. An Applicant must submit one (1) original and four (4) copies of the Proposal in a sealed envelope marked "RFP 2010-04". Each envelope or package containing Proposals must clearly state the name of the Applicant. The Proposal that is the original must clearly indicate "Original" on that Proposal. Florida Housing shall not accept a faxed or e-mailed Proposal. Florida Housing must receive any Proposal on or before 2:00 p.m., Eastern Time, on March 12, 2010. Proposals shall be opened at that time and consecutively numbered. A Lottery number will then be assigned to each Proposal by having Florida Housing's internal auditors run the total number of Proposals through a random number generator program. Proposals must be addressed to:

> Sherry Green Contracts Administrator Florida Housing Finance Corporation 227 N. Bronough Street, Suite 5000 Tallahassee, FL 32301 850-488-4197

B. This RFP does not commit Florida Housing to award any funding to any Applicant or to pay any costs incurred in the preparation or mailing of a Proposal.

- C. Florida Housing reserves the right to:
  - 1. Waive minor deficiencies and informalities;
  - 2. Accept or reject any or all Proposals received as a result of this RFP;
  - 3. Obtain information concerning any or all Applicants from any source;
  - 4. To select for award of Proposal based on evaluation standards described in this RFP.

D. Any Interested Party may submit any inquiry regarding this RFP in writing via mail, fax or e-mail to Sherry Green at the address given in Section Three, paragraph A. All inquiries are due by 5:00 p.m., Eastern Time, on March 3, 2010. Phone calls will not be accepted. Florida Housing expects to respond to all inquiries by 5:00 p.m., Eastern Time, on March 5, 2010. Florida Housing will post a copy of all inquiries received, and their answers, on Florida Housing's Website at:

http://apps.floridahousing.org/StandAlone/FHFC\_ECM/AppPage\_LegalRFPs.aspx . Florida Housing will also send a copy of those inquiries and answers in writing to any Interested Party that requests a copy. Florida Housing will determine the method of sending its answers, which may include regular United States mail, overnight delivery, fax, e-mail, or any combination of the above. Only written responses from Sherry Green, or her designee, to inquiries raised by Interested Parties that are posted on Florida Housing's Website or sent to Interested Parties shall bind Florida Housing. No other means of communication, whether oral or written, shall be construed as an official response or statement from Florida Housing.

E. Any person who wishes to protest the specifications of this RFP must file a protest in compliance with Section 120.57(3), Fla. Stat., and Rule Chapter 28-110, F.A.C. Failure to file a protest within the time prescribed in Section 120.57(3), Fla. Stat., shall constitute a waiver of proceedings under Chapter 120, Fla. Stat.

F. Florida Housing expects to select one or more Applicants to award the funding contemplated by this RFP. Any such Applicants will be selected through Florida Housing's review of each Proposal, considering the factors identified in this RFP.

# SECTION FOUR OBJECTIVES AND SCOPE OF SERVICES

By submitting this Proposal, each Applicant agrees to the following terms and conditions.

A. The Applicant affirms that the information and commitments made by the Applicant in its Original Application are still in effect, subject to Rule Chapter 67-48, F.A.C., effective August 6, 2009.

B. If awarded funding under this RFP, the Applicant understands and agrees that any withdrawal or return of the Applicant's nine percent Housing Credits award from the 2009 Universal Application Cycle means the automatic withdrawal and return of any Exchange funding awarded under this RFP.

- C. Funding Eligibility:
  - 1. This Request for Proposal is open to any Applicant that submitted an Original Application that has an Active Award of nine percent Housing Credits.
  - 2. A Proposal will not be considered if, as of the due date for this RFP, the Applicant has withdrawn the Original Application that had the Active Award of Housing Credits.
- D. Fees:
  - 1. Asset Management Fees:

A separate asset management fee of \$3,000 will be charged by Florida Housing for its asset management activities.

Note: This fee is provided for estimation purposes only and is not the fee that will actually be charged. The actual fee will be determined based on the current contract for services between Florida Housing and the Servicer(s).

- 2. Construction Inspection Fees:
  - a. On-site construction inspection \$155 per hour, not to exceed \$1,549 per inspection.
  - b. In-house reviews \$155 per hour, not to exceed \$1,906 per review.
  - c. Extraordinary services \$155 per hour

Note: This fee is provided for estimation purposes only and is not the fee that will actually be charged. The actual fee will be determined based on the current contract for services between Florida Housing and the Servicer(s).

- 3. Permanent Loan Servicing Fees (only for services that relate to asset management activities as determined by Florida Housing):
  - a. An annual fee of 25 basis points on the outstanding balance of the Exchange loan, with an annual minimum fee of \$2,228 and an annual maximum fee not to exceed \$8,910.

b. Extraordinary services - \$155 per hour.

Note: This fee is provided for estimation purposes only and is not the fee that will actually be charged. The actual fee will be determined based on the current contract for services between Florida Housing and the Servicer(s).

4. Additional Fees:

Funding recipients will be responsible for all fees associated with Florida Housing's legal counsel related to the Exchange Program.

### SECTION FIVE CERTIFICATION

By inclusion and execution of Exhibit A each Applicant certifies that:

A. Any material submitted in response to this RFP is a public record pursuant to Chapter 119, Fla. Stat., and subject to examination upon request, after Florida Housing provides a notice of decision pursuant to Section 120.57(3), Fla. Stat., or within 10 Days after the Proposal is opened, whichever is earlier.

B. Noninterference. At no time during the review and evaluation process, commencing with filing the Proposal and continuing until the Board renders a final decision on the RFP, may Applicants or their representatives contact Board members or Florida Housing staff concerning their own or any other Applicant's response to the RFP. If an Applicant or its representative does contact a Board or staff member in violation of this section, the Board shall, upon a determination that such contact was made in an attempt to influence the selection process, disqualify the Proposal.

C. Proposed Developments funded with Exchange will be subject to the credit underwriting and Housing Credit Program requirements of Rule Chapter 67-48, F.A.C., the Compliance requirements of Rule Chapter 67-53, F.A.C., this RFP, Section 42 of the IRC, and the Tax Credit Exchange Program provisions.

- 1. Credit Underwriting Review, Carryover Allocation Agreement, and Terms and Conditions of the Exchange Grant
  - a. Upon Board approval of the selected Proposals, the Applicants will be invited to enter credit underwriting for the Exchange funding. The invitations must be executed and returned within seven (7) Days of the date of the invitation letter, along with any additional credit underwriting fee referenced in the invitation letter.

- b. Upon issuance of a positive preliminary recommendation letter by the Credit Underwriter, Florida Housing will issue the Carryover Allocation Agreement for (i) the nine percent Housing Credits awarded pursuant to the Applicant's Original Application and the Exchange funding awarded pursuant to this RFP or (ii) the nine percent Housing Credits and any Exchange funding awarded as a result of a final order issued on or before June 18, 2010, as outlined in Section One above.
- c. Florida Housing shall hold periodic telephonic Board meetings, as necessary, so that completed credit underwriting reports may be submitted for Board approval. The Board's approval at such telephonic meetings shall then be presented for ratification at the next regularly scheduled Board meeting.

The amount of Exchange and nine percent Housing Credits will be reflected in the credit underwriting report submitted to the Board for approval. Upon approval of the credit underwriting report, the firm loan commitment letter for the Exchange funding will be issued and, if necessary, the Carryover Allocation Agreement for the Exchange funding and Housing Credits will be revised.

If the Board does not approve the completed credit underwriting report, the Exchange funding shall be rescinded and returned to Florida Housing.

d. Replacement Reserves (RR) shall be a minimum of \$300/unit with a requirement to maintain a minimum amount of \$1,500 per unit at all times, allowing for an initial period to accumulate this minimum. Allowed uses for RR in order to fall below the minimum amount: life safety, structural and systems as determined by Florida Housing and its Servicers. Traditional RR draws shall be limited to items which can be depreciated. Applicants awarded financing through the pool of funds identified in Section One of this RFP may be requested by Florida Housing to perform capital needs assessments up to once every five (5) years throughout the affordability period, based on standards approved by Florida Housing at the time of each request, at the Applicant's expense, with resulting revisions to replacement reserves as necessary. These assessments will be performed by a firm acceptable to Florida Housing and/or its Servicer.

- e. Any amount of Exchange funding to be awarded will be sized during credit underwriting. The following parameters shall be used:
  - (1) For any Homeless Development, the amount of the Developer fee shall be 21 percent of eligible costs with an amount equal to 5 percent being set-aside in an operating reserve.
  - (2)Proposed Development will be limited to an Exchange amount of up to the lesser of (a) the amount requested in the response to this RFP; (b) \$5,000,000 per Development, (c) \$50,000 per unit, (d) the amount calculated by taking Total Development Costs and deducting the Housing Credit equity, the first mortgage, any other Florida Housing resources, the deferred Developer fee, any Local Government subsidy funds, and any other committed resources, subject to maximum limitations provided herein, or (e) 85 percent of the amount of the Development's eligible basis as determined at the end of the first year of the credit period (as defined in Section 42(f)(1) of the Internal Revenue Code) and which shall be estimated during credit underwriting. Eligible basis, for this purpose, includes any increase for buildings located in high cost areas under Section 42(d)(5)(B).
- f. An analysis of the Sponsor shall be completed with more in-depth consideration to key topics than typically completed by Florida Housing, including liquidity, net worth, unrestricted assets, and contingent liabilities.
- g. An analysis of the credit worthiness of the Developer shall be completed with more in-depth review than typically considered, including areas of past performance, default history, failed conversions, guarantor performance, and outstanding contingencies.
- h. Exchange funds shall be a Subaward grant, to be used to fill the financing gap for costs that are included in the eligible costs of a Proposed Development, and are subject to the Housing Credit rent, income, use restrictions and compliance monitoring requirements, all as required under Section 42 of the IRC and Rule Chapter 67-53, F.A.C. The grant will be in the form of a forgivable loan.

i. Timely expenditure shall be mandated for the Exchange funding. Treasury requires that the subawardee has, by December 31, 2010, paid or incurred at least 30 percent of its total adjusted basis in land and depreciable property that is reasonably expected to be part of the low-income housing project.

> If timely expenditure cannot be met, Florida Housing may withdraw any future Exchange funding, based on the facts and circumstances as presented to staff. Unless the Treasury changes their current ruling, Florida Housing cannot request any Exchange funding from the Treasury past December 31, 2011.

- j. Exchange Documentation shall include a Carryover Allocation Agreement, Extended Use Agreement, Final Cost Certification Allocation, and the standard closing documentation, including, but not limited to, a Promissory Note, Mortgage and Security Agreement, Compliance, Financial Monitoring and Servicing Agreement, Construction Loan Agreement, Completion and Operating Deficit Guaranty, Continuing, Absolute and Unconditional Guaranty of Recourse Obligations, and Environmental Indemnity Agreement.
- k. All Proposed Developments must have a minimum of six (6) months Debt Service and Operating Expenses Reserves, with no releases during the 15 year federal compliance period. Any reserves required in excess of the minimum of six (6) months shall be allocated as a sub-set of the Developer fee.
- 1. The Applicant requesting Exchange funds must demonstrate a Good Faith Effort to obtain investment commitments for its HC Allocation during the credit underwriting process.
- m. Florida Housing shall require the Applicant to certify that it owns the land on which the Proposed Development is to be built or that the Applicant is the Lessee under a lease of the land on which the Proposed Development is to be built and which has a term that does not expire prior to the expiration of the Extended Use Period. Such certification must be demonstrated on or before November 1, 2010.
- n. Florida Housing shall require the Applicant to certify that it has incurred at least 10 percent of the reasonably expected basis (10 percent test) of the Proposed Development. Such certification must be demonstrated on or before November 1, 2010.

- o. Florida Housing shall require the Applicant to acknowledge and agree to commence construction and close on its tax credit partnership on or before November 1, 2010. As proof of construction commencement and closure of the tax credit partnership agreement, the Applicant shall deliver to Florida Housing (i) a copy of the recorded Notice of Commencement from the Official Records of the applicable jurisdiction(s) relative to the Proposed Development and (ii) a copy of the closed and executed partnership agreement.
- p. Florida Housing shall require the Applicant to acknowledge and agree to close on the Exchange funding by November 1, 2010.
- 2. Exchange Funding Reporting
  - a. Quarterly Progress Report

No later than seven (7) Days following the receipt of the firm loan commitment letter, each Applicant awarded Exchange funding must submit the Section 1602 Quarterly Progress Report along with the signed Acceptance of Commitment. Any quarterly report that is not received by the due date will be assessed a late fee of \$1,000, with no grace period.

To provide the following information, Applicants must use the Exchange Quarterly Reporting form found on the Website at

http://apps.floridahousing.org/StandAlone/FHFC\_ECM/Cont entPage.aspx?PAGE=0042.

- (1) Name of the recipient entity
- (2) Name of the Development
- (3) Brief description of the Development
- (4) Location of the Development: city/county, State, zip code
- (5) Number of construction jobs created
- (6) Number of construction jobs retained
- (7) Number of non-construction jobs created
- (8) Number of non-construction jobs retained
- (9) Number of total housing units newly constructed
- (10) Number of total housing units rehabilitated
- (11) Number of low-income housing units newly constructed
- (12) Number of low-income housing units rehabilitated

As part of its acceptance of the Exchange funding, the Applicant agrees to provide any additional information which the Treasury deems necessary to comply with Section 1602 of the Act and American Recovery and Reinvestment Act guidance.

b. Bimonthly Progress Report

Every two (2) months through completion of construction, each Applicant awarded Exchange funds under this RFP will be required to submit to Florida Housing a written progress report evidencing the progress of the Development. To provide the required information, Applicants must use the HC Bimonthly Reporting form found on the Website at http://apps.floridahousing.org/StandAlone/FHFC\_ECM/Cont entPage.aspx?PAGE=0042.

3. Federal Requirements

Exchange funds are subject to Fair Housing Act and other federal requirements that apply to Developments funded under the Housing Credit Program.

- 4. Compliance and Asset Management
  - a. Asset Management

Florida Housing shall perform asset management functions so as to ensure compliance with Section 42 of the IRC and the regulations there under (including Title 26 Code of Federal Regulations section 1.42.9), and the long-term viability of the buildings funded by an Exchange Subaward under the Act in accordance with Section 1602 (c)(3) of the Act.

b. Compliance

All Applicants receiving an award of Exchange funding will be required to comply with the compliance requirements of Rule Chapter 67-53, F.A.C.

5. Recapture of Exchange Funds

Each EUA will include a requirement providing for recapture to assure that the building remains a qualified low-income building during the 15-year federal compliance period. As part of its acceptance of the Exchange funding, the Subaward Applicant understands that any amount subject to recapture becomes a debt owed to the United States payable to the General Fund of the Treasury and enforceable by all available means against any assets of the Subaward Applicant.

6. Written Agreements (EUA) and Disbursement of Exchange Funding

All Applicants must execute a legally binding EUA with Florida Housing, which shall be recorded in the county where the Proposed Development is located and be binding on all owners and successors, e.g., a covenant.

The EUA will set forth all Exchange Program requirements, including the requirements of Section 42 of the IRC applicable to the Subaward, and shall impose conditions or restrictions, including a requirement providing for recapture, so as to assure that the qualified low-income building remains a qualified low-income building during the 15-year federal compliance period.

The EUA shall also include a requirement for the Subawardee to provide sufficient information to Florida Housing to report on the use of the Exchange funds as required by Treasury.

The EUA must be signed and dated by the Applicant and Florida Housing before any Exchange funds can be disbursed to the Subawardee.

# SECTION SIX INFORMATION TO BE PROVIDED IN PROPOSAL

The Applicant must provide a completed and executed Exhibit A to RFP 2010-04, which includes the following information:

- A. Threshold Items:
  - 1. Name of Proposed Development.
  - 2. Application Number of the Original Application.
  - 3. Amount of Exchange Funding Requested. The Exchange funding amount stated in the Applicant's Proposal may be different from the ARRA funding amount stated in the Applicant's Original Application.

If the information stated by the Applicant at Question No. 1 on Exhibit A is inconsistent with the information stated by the Applicant at Question No. 2

on Exhibit A, Florida Housing reserves the right to verify the information during the scoring of this RFP.

The amount of Exchange funding awarded to an Applicant will be limited as outlined in Section Five, C.1.e. of this RFP. If the amount of Exchange funding requested at Question No. 3 on Exhibit A exceeds this limit, the Applicant's Proposal will still be eligible for funding and the Exchange amount will be adjusted during credit underwriting. However, the Exchange funding requested at Question No. 3 on Exhibit A will be used for leveraging purposes of this RFP.

- B. Ranking Preference
  - 1. Leveraging

The Proposals will be listed in ascending order beginning with the Proposal that has requested the lowest amount of Exchange funding per set-aside unit and ending with the Proposal that has requested the highest amount of Exchange funding per set-aside unit. The total number of set-aside units for each Proposal will be computed by multiplying the total number of units stated at Part III.A.6. of the Original Application by the highest Total Set-Aside Percentage the Applicant committed to as stated in the last row of the set-aside breakdown chart at Part III.E.1.b.(3)(a) of the Original Application. Results that are not a whole number will be rounded up to the next whole number. Proposals with a lower amount of Exchange funding per set-aside unit will receive preference over Proposals with a higher amount of Exchange funding per set-aside unit.

2. Tie-Breaker

In the event that two (2) or more Proposals have the same amount of Exchange funding per set-aside unit, preference will be given to the Proposal with the lowest lottery number.

### SECTION SEVEN EVALUATION PROCESS

Individual Committee members shall evaluate the Proposals independently. The individual Committee members shall evaluate the Proposals by reviewing the answers to determine if threshold is met for each Proposal. The Committee shall conduct one public meeting during which the Committee may discuss their evaluations, select Applicants most likely to be considered for award, make any adjustments deemed necessary to best serve the interests of Florida Housing's mission, and develop a recommendation or series of recommendations to the Board. The Committee will then rank the Proposals deemed eligible for funding in order of the Applicant's requested Exchange funding per set-aside unit, with preference given to Proposals that are requesting the lower amount of Exchange

funding per set-aside unit, applying the lottery tie-breaker as needed. The Board may use the Proposals, the Committee's scoring, any other information or recommendation provided by the Committee or Staff, and any other information the Board deems relevant in its selection of Applicants to whom to award funding.

# SECTION EIGHT AWARD PROCESS

Florida Housing shall provide notice of its decision, or intended decision, for this RFP on Florida Housing's Website the next business day after the applicable Board vote. After posting, an unsuccessful Applicant may file a notice of protest and a formal written protest in accordance with Section 120.57(3), Fla. Stat., et. al. Failure to file a protest within the time prescribed in Section 120.57(3), Fla. Stat., et. al. or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Fla. Stat.

# Exhibit A to RFP 2010-04 - Request for Exchange Funding

1. Name of Proposed Development : \_\_\_\_\_

2. Original Application No.: 2009-\_\_\_\_\_

3. Amount of Exchange Funding requested: \$\_\_\_\_\_

The undersigned agrees to abide by all conditions of RFP 2010-04 and certifies that (i) all information provided in this Proposal is true and correct, (ii) that I am authorized to sign this Proposal for the Applicant, and (iii) that the Applicant is in compliance with all requirements of the RFP.

Signature of Applicant

Name (typed or printed)

Title (typed or printed)