

CONTRACT, LEASE, AGREEMENT CONTROL FORM

Date: 10/26/2020

Contract/Lease Control #: C21-3006-BCC

Procurement#: NA

Contract/Lease Type: AGREEMENT

Award To/Lessee: TOWN OF CINCO BAYOU

Owner/Lessor: OKALOOSA COUNTY

Effective Date: 10/23/2020

Expiration Date: 12/30/2020

Description of: CARE ACT SUBRECIPIENT SUBAGREEMENT

Department: BCC

Department Monitor: HOFSTAD

Monitor's Telephone #: 850-651-7105

Monitor's FAX # or E-mail: JHOFSTAD@MYOKALOOSA.COM

Closed:

Cc: BCC RECORDS

DeRita Mason

From: Parsons, Kerry <KParsons@ngn-tally.com>
Sent: Friday, October 23, 2020 1:54 PM
To: Jessica Darr
Cc: Lynn Hoshihara; DeRita Mason
Subject: RE: New Contract # For Cinco Bayou Cares Agreement

This is approved for legal purposes.

Kerry A. Parsons, Esq.

**Nabors
Giblin &
Nickerson**
ATTORNEYS AT LAW

1500 Mahan Dr. Ste. 200
Tallahassee, FL 32308
T. (850) 224-4070
kparsons@ngn-tally.com

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From: Jessica Darr
Sent: Friday, October 23, 2020 2:23 PM
To: Parsons, Kerry
Cc: Lynn Hoshihara ; DeRita Mason ; Jessica Darr
Subject: RE: New Contract # For Cinco Bayou Cares Agreement

Kerry,

Good Afternoon!

Please see the attached CARES Act agreement with the Town of Cinco Bayou for approval. I'm not sure if this needs legal approval, or not, so I'm sending for review and approval to be on the safe side.

I know that Mr. Hofstad will be signing the agreement soon.

Thank you!

Respectfully,

Jesica

CONTRACT#: C21-3006-BCC
TOWN OF CINCO BAYOU
CARES ACT SUBRECIPIENT AGREEMENT
EXPIRES: 12/30/2020

Town of Cinco Bayou, Florida

Subaward

**CARES ACT SUBRECIPIENT AGREEMENT BETWEEN OKALOOSA COUNTY AND
TOWN OF CINCO BAYOU, FLORIDA**

1. Subrecipient name (which must match the registered name in DUNS): Town of Cinco Bayou.
2. Subrecipient's DUNS number (see 2 C.F.R. § 200.32 "Data Universal Numbering System (DUNS) number"): 025062902
3. Federal Award Identification Number (FAIN): SLT0050
4. Federal Award Date (see 2 C.F.R. § 200.39 "Federal award date"): on or about April 17, 2020.

Commented [PK1]: Insert your municipalities DUNS number.

Subaward Period of Performance:

Effective Date: Date Subrecipient Agreement is fully executed
Termination Date: December 30, 2020

6. Amount of Federal Funds Obligated by this action: up to \$ 77,649.00
(note: the Phase 2 allocations are contingent upon the County entering into an agreement with FDEM for the remainder 75% allocation. FDEM as of 8.18.2020 has not notified the counties as to how Phase 2 will be distributed or allocated. It is anticipated that FDEM may debut the program around 9.1.2020).
7. Total Amount of Federal Funds Obligated to the Subrecipient: up to \$ 77,649.00
8. Total Amount of the Federal Award Subject to this Agreement: see above
9. Federal award project description: Coronavirus Aid, Relief, and Economic Security Act (CARES Act) must be used for necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) between March 1, 2020, to December 30, 2020.
10. Name of Federal awarding agency, pass-through entity and contact information for awarding official:

Federal Awarding Agency – The Department of the Treasury
Pass Through Entity – Florida Division of Emergency Management then Okaloosa County, Florida
Contact Information for Awarding Official of Pass-Through Entity-
John Hofstad, County Administrator
1250 North Eglin Parkway, Suite 102
Shalimar, FL 32579
managerinfo@myokaloosa.com
850-651-7515

Town of Cinco Bayou, Florida

Subaward

11. CFDA Number and Name: 21.019 Coronavirus Relief Fund; Note: funding is considered "Other Financial Assistance".
12. Identification of whether the award is for research and development (R&D): No
13. Indirect cost rate for the Federal award (including whether the de minimis rate is charged per 2 C.F.R. § 200.414 "Indirect (F&A) costs"): Not applicable

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Town of Cinco Bayou, Florida

Subaward

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Town of Cinco Bayou, Florida

Subaward

**CARES ACT SUBRECIPIENT AGREEMENT BETWEEN OKALOOSA COUNTY AND
TOWN OF CINCO BAYOU, FLORIDA**

THIS CARES ACT SUBRECIPIENT AGREEMENT (hereinafter referred to as "Agreement") is entered into by and between **OKALOOSA COUNTY**, a political subdivision of the State of Florida, whose primary address is 1250 North Eglin Parkway, Suite 102, Shalimar, FL 32579 (hereinafter referred to as the "County") and **TOWN OF CINCO BAYOU**, whose address is 10 Yacht Club Drive, Cinco Bayou, FL 32548 (hereinafter referred to as "Subrecipient"), to provide for the sub-award of financial assistance to Subrecipient made available through certain CARES Act Funding Agreements between the County and the State of Florida Division of Emergency Management (hereinafter referred to as "FDEM"). Collectively, the County and the Subrecipient shall be referred to as "Parties" or individually as a "Party."

WHEREAS, the Coronavirus Disease 2019 ("COVID-19") is an infectious acute respiratory illness capable of spreading rapidly among humans and capable of causing severe illness and death; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a pandemic; and

WHEREAS, on or about March 27, 2020, the President of the United States signed into law the *Coronavirus Aid, Relief, and Economic Security Act*, Public Law 116-136, (hereinafter referred to as the "CARES Act") to facilitate the provision of federal assistance and relief in response to the COVID-19 pandemic; and

WHEREAS, Title V of the CARES ACT established the "Coronavirus Relief Fund" and appropriated \$150 billion in such fund for Fiscal Year 2020 to provide direct assistance to state, tribal, territorial, and local governments to fund certain necessary and allowable expenses incurred due to the public health emergency with respect to COVID-19; and

WHEREAS, utilizing a population-based formula described in the CARES Act, the State of Florida was allocated \$8.328 billion, of which amount 55% (\$4.58 billion) was reserved for the state and 45% (\$3.747 billion) was reserved for direct payments to eligible local government jurisdictions that exceed 500,000 in population; and

WHEREAS, on June 10, 2020, the Governor of the State of Florida announced that the State would disburse up to \$1.275 billion in Coronavirus Relief Funds to counties with a population below 500,000 using a phased approach through FDEM; and

WHEREAS, on or about July 7, 2020 the County and FDEM entered into FDEM CARES Act Funding Agreement No. Y2276 providing 25% of the County's total Coronavirus Relief Fund allocation directly to the County and pursuant to which the County may provide for the sub-award of such funds to eligible subrecipients, including Subrecipient; and

WHEREAS, the County anticipates entering into one or more future amendments with FDEM providing for the remainder of the County's Coronavirus Relief Fund allocation to be provided to the County on a reimbursement basis; and

WHEREAS, the purpose of this Agreement is to provide for the sub-award of a portion of the financial assistance obtained by County under FDEM CARES Act Funding Agreement No. Y2276 and which the County anticipates receiving under future amendments with FDEM to assist Subrecipient with funding such necessary expenses incurred due to the COVID-19 public health emergency as are described in this Agreement and the attachments hereto, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises and the mutual benefits to be derived herefrom, the County and the Subrecipient do hereby agree as follows:

SECTION 1. RECITALS.

The above recitals are true and correct and are hereby incorporated herein by reference and made a part of this Agreement.

SECTION 2. GENERAL.

In performing under this Agreement, the Subrecipient does hereby agree to fully comply with the terms and conditions set forth in this Agreement and all attachments and exhibits hereto, FDEM CARES Act Funding Agreement No. 2276, attached hereto as **Attachment A**, and all future amendments and/or agreements entered into between the County and FDEM governing distribution of the remaining 75% of the County's Coronavirus Relief Fund allocation (collectively, such agreements shall hereinafter be referred to as the "FDEM Agreements"), Title V of the CARES Act and all implementing rules, regulations, and guidance related to same, the Subrecipient Expenditure Plan attached hereto as **Attachment B** applicable to Subrecipient's use of funds under Phase 2 of this Agreement as more thoroughly described in Section 5 hereof (hereinafter the "SEP"), and all other applicable federal, state, and local laws, rules, regulations, and guidance.

SECTION 3. TERM.

A. This Agreement shall begin upon execution by both Parties (the "Effective Date") and shall remain in effect until December 30, 2020 (the "Termination Date") unless extended by the County or terminated earlier in accordance with Section 10, except that the provisions contained within Sections 8, 9, 11, 12, 14, and 26 shall survive the termination of this Agreement.

B. The Subrecipient shall be eligible to receive funding for eligible and allowable costs (as defined in Sections 4 and 5 hereof) from the period commencing March 1, 2020, through the Termination Date (the "Covered Period").

C. All references to days herein shall refer to calendar days unless otherwise indicated.

SECTION 4. PHASE 1 ALLOCATION; ELIGIBLE COSTS; SUPPORTING DOCUMENTATION.

A. Phase 1 – Initial 25% Allocation. Subject to the terms and conditions of this Agreement, within fifteen (15) days of the Effective Date of this Agreement, the County shall make a direct cash payment to the Subrecipient of up to \$19,412.00, which funds shall be used by Subrecipient solely to cover eligible and allowable costs that:

1. are necessary expenditures incurred due to the public health emergency with respect to the COVID-19;
2. were not accounted for in the Subrecipient’s budget most recently approved as of March 27, 2020;
3. were incurred during the Covered Period;
4. are described in the Subrecipient Expenditure Plan; and
5. are otherwise in accordance with the terms and conditions of this Agreement, the FDEM Agreements, Title V of the CARES Act, and all other applicable laws, rules, regulations, and guidance.

B. Subrecipient shall expend 100% of the total amount described in paragraph A on or before November 30, 2020, unless the County approves an extension in writing. Subrecipient shall be ineligible to apply for and receive additional funding under Section 5 of this Agreement (“Phase 2”) until all funds disbursed to Subrecipient under this Section 4 have been fully expended, as confirmed to the satisfaction of the County. In the event Subrecipient has not expended 100% of the total amount described in paragraph A above on or before November 30, 2020, Subrecipient shall be required to refund to County all such unexpended funds no later than December 15, 2020.

C. Upon Subrecipient’s expenditure of 100% of the total amount described in paragraph A above, Subrecipient shall submit sufficient supporting documentation to the satisfaction of the County demonstrating that all funds have been expended on eligible and allowable costs consistent with paragraph A above. The minimum requirements regarding such Supporting Documentation are set forth in **Attachment C, Supporting Documentation Requirements**, as may be altered or supplemented by the County through memoranda and other guidance issued to the Subrecipient from time to time. In the event the County determines the Supporting Documentation submitted by the Subrecipient is insufficient to enable it to evaluate the allowability and eligibility of costs, the Subrecipient shall furnish additional Supporting Documentation to the satisfaction of the County. Subrecipient shall also submit a certification, signed by an official who is authorized to legally bind the Subrecipient, that reads as follows:

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal

award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812).

D. In the event the County, in its sole opinion, determines that any amount of the funds disbursed to Subrecipient pursuant to its Phase 1 allocation described in paragraph A above were expended on unallowable or ineligible costs, the County may take one or more of the following actions:

1. Determine that the Subrecipient is ineligible to receive any funding under Phase 2 described in Section 5 hereof;
2. Offset any amounts determined to be unallowable or ineligible against reimbursement requests made by Subrecipient under its Phase 2 allocation described in Section 5 hereof; or
3. Pursue any of the remedies or financial consequences described in Section 11 hereof.

SECTION 5. PHASE 2 ALLOCATION; ELIGIBLE COSTS; SUPPORTING DOCUMENTATION; PROCESSING OF REIMBURSEMENT REQUESTS.

A. **Phase 2 – Remaining 75% Allocation.** Upon Subrecipient’s expenditure of 100% of the total amount of its Phase 1 allocation as described in Section 4 hereof, subject to the terms and conditions of this Agreement, the County shall pay the Subrecipient, on a cost reimbursement basis, up to a maximum of \$58,237.00 (less any funding that is utilized as part of a County, countywide community assistance program), under this Agreement to implement the projects and/or activities described in the SEP. This is contingent upon the County first receiving and executing an agreement/amendment with FDEM that addresses the terms and conditions of use of the remaining 75% allocation of funding. It is understood and agreed that any additional funds necessary in connection with the projects and/or activities described in the SEP above and beyond this amount are the sole responsibility of the Subrecipient. Advance payment of Phase 2 funds to the Subrecipient under this Agreement shall not be permitted. Under Phase 2 of this Agreement as described in this Section, the Subrecipient shall be reimbursed on a cost reimbursement basis for eligible and allowable costs incurred by Subrecipient in the implementation of the projects and/or activities described in the SEP as such costs are incurred. Eligible and allowable costs are defined as costs that:

1. are necessary expenditures incurred due to the public health emergency with respect to the COVID–19;
2. were not accounted for in the Subrecipient’s budget most recently approved as of March 27, 2020;

3. were incurred during the Covered Period;

4. are described in the SEP; and

5. are otherwise in accordance with the terms and conditions of this Agreement, the FDEM Agreements, Title V of the CARES Act, and all other applicable laws, rules, regulations, and guidance.

Costs that do not satisfy all of the above-required conditions shall be ineligible for reimbursement under this Agreement.

B. All reimbursement requests shall be submitted to the County through the County Attorney's office, who will be sending out further instructions as to submittal, as further described in paragraph E below. To be eligible for reimbursement under this Agreement, Subrecipient shall submit sufficient documentation to the satisfaction of the County demonstrating that Subrecipient is legally obligated to pay the costs for which reimbursement is sought. All reimbursement requests must include a certification, signed by an official who is authorized to legally bind the Subrecipient, that reads as follows:

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812).

C. All requests for reimbursement under this Agreement shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. All costs must be incurred on or before November 30, 2020, and a final payment request should be submitted to the County no later than such date to ensure the County and FDEM have adequate time to process the request. For a cost to have been considered "incurred," performance or delivery must occur during the Covered Period but payment of funds need not be made during that time (though payment shall occur within 90 days of a cost being incurred). For instance, in the case of a lease of equipment or other property, irrespective of when payment occurs, the cost of a lease payment shall be considered to have been incurred for the period of the lease that is within the Covered Period, but not otherwise. Furthermore, in all cases it must be necessary that performance or delivery take place during the Covered Period.

D. The County requires detailed documentation of all costs for which reimbursement is sought under this Agreement ("Supporting Documentation"). The minimum requirements regarding such Supporting Documentation are set forth in **Attachment C, Supporting Documentation Requirements**. Each payment request submitted by the Subrecipient shall be accompanied by sufficient Supporting Documentation substantiating all costs incurred and for

which reimbursement is sought, to the satisfaction of the County. In the event the County determines the Supporting Documentation submitted by the Subrecipient is insufficient to enable it to evaluate the allowability and eligibility of costs, the Subrecipient shall furnish additional Supporting Documentation to the satisfaction of the County.

E. Processing of Reimbursement Requests. No more frequently than once every month, the Subrecipient may request reimbursement from the County for costs incurred by Subrecipient under this Agreement for which actual payment has been made. All payment requests shall be submitted using the Payment Request Form made available by the County and shall be accompanied by sufficient Supporting Documentation (collectively the Payment Request Form and any Supporting Documentation shall hereinafter be referred to as the "Payment Request"). Additionally, at the time of each Payment Request, Subrecipient shall submit a "Progress Report" utilizing a form for same made available by the County, which shall describe the nature of the projects and/or activities being funded.

F. Within ten (10) days after receipt of the Payment Request, the County shall, in its sole discretion, determine if the Payment Request, or any portion thereof, is acceptable and in strict compliance with the terms of this Agreement. If it is determined there are any errors in the Payment Request or if additional Supporting Documentation is required, the County shall notify the Subrecipient within fifteen (15) days of receipt of such Payment Request. The Subrecipient shall submit a revised Payment Request within ten (10) days of receipt of notice from the County. The County reserves the right to delay or deny any Payment Request containing errors or lacking sufficient Supporting Documentation until such deficiencies are corrected to the satisfaction of the County.

G. Upon determination by the County that the Payment Request is sufficient, the County shall, in its sole discretion, either: (1) if permitted by FDEM, initiate the reimbursement process through FDEM in accordance with the FDEM Agreements and FDEM's applicable policies and procedures; or (2) reimburse the Subrecipient directly and seek reimbursement through FDEM.

SECTION 6. ACCOUNTING; DUPLICATION OF BENEFIT.

A. Accounting. Subrecipient's accounting and financial management system shall be sufficient to permit the preparation of reports required in connection with this Agreement and the tracing of funds to a level of expenditures adequate to establish that such funds have been used pursuant to the terms of this Agreement. All payments to Subrecipient contemplated under this Agreement may be contingent upon certification of the Subrecipient's financial management system in accordance with this requirement. Subrecipient must ensure that all sub-subrecipients comply with the provisions of this paragraph.

B. Duplication of Benefit. Subrecipient hereby certifies and affirms that the projects and/or activities to be funded under this Agreement shall not result in a prohibited duplication of the benefits obtained by Subrecipient, any sub-sub recipient (as defined in 2 C.F.R. §§ 200.92-93), or any individual or entity that is a beneficiary of such projects and/or activities from other Non-

Title V CARES Act programs, other local, state, or federal funding sources (e.g. the Stafford Disaster Relief and Emergency Assistance Act, etc.), private insurance, or other private organizations. It is Subrecipient's responsibility and obligation to implement processes and procedures to select and subsequently monitor all sub-subrecipients, individuals, and entities receiving funds under this Agreement to ensure compliance with this paragraph. All agreements entered into between Subrecipient and any sub-subrecipient, individual, or entity providing for the subaward or payment of funds under this Agreement shall contain provisions permitting the Subrecipient to recapture funds provided under this Agreement in the event an impermissible duplication of benefit is discovered. Subrecipient acknowledges and agrees that it has an affirmative obligation to promptly identify and report any duplication of benefits to the County. In the event that the Subrecipient recovers costs incurred under this Agreement and reimbursed by the County from another source, the Subrecipient shall reimburse the County for all recovered funds originally provided under this Agreement. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the payment(s) are recovered by the Subrecipient to the date repayment is made to the County by the Subrecipient.

SECTION 7. PAYMENTS TO SUBRECIPIENT SUBJECT TO AVAILABILITY OF FUNDS.

The County's performance and obligation to pay Subrecipient under this Agreement is expressly contingent upon the County's actual receipt of applicable funding from FDEM. Authorization for continuation and completion of the projects and/or activities described in the SEP and payment associated therewith may be rescinded by the County at its discretion, upon proper notice to Subrecipient, if the funding from FDEP contemplated under this Agreement is reduced or eliminated.

SECTION 8. REPORTING REQUIREMENTS.

A. **Financial and Performance Reports.** Reports are due to the County no later than five (5) days after the end of each period listed below:

September 30 due October 5
October 30 due November 5
November 30 due December 5
December 30 due January 5
January 31 due February 5

The report shall appear on subrecipient letterhead and outline progress of items to date. The report should also contain a schedule of total subaward; list request(s) for reimbursements submitted and remaining award. The report should list each cash receipt from the County with date received and receipt number.

B. **Final Project Report.** Within twenty (20) days following the final cash payment to Subrecipient under this Agreement, Subrecipient shall submit a "Final Project Report," in which the Subrecipient shall describe the status of the Subrecipient's implementation of all projects

and/or activities undertaken under this Agreement. The Final Project Report shall further include an accounting of all costs and expenses incurred by Subrecipient and such other information as the County deems necessary to facilitate close out of the FDEM Agreements and permit the County to meet all of its obligations and requirements under same.

C. Funding Accountability and Transparency Act. Because of the federal funds awarded under this Agreement, the County must comply with the Funding Accountability and Transparency Act of 2006 ("FFATA"). FFATA requires that information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, www.USASpending.gov. Grant recipients awarded a new Federal grant greater than or equal to \$25,000 awarded on or after October 1, 2010, are subject to FFATA. The Subrecipient agrees assist the County in providing the information necessary, over the life of this Agreement, for the County to comply with its reporting obligations under FFATA.

D. Nonconsumable and/or nonexpendable personal property or equipment that costs \$1,000 or more purchased by Subrecipient is subject to the requirements set forth in Chapter 274, F.S., Chapter 691-73, F.A.C., and 2 C.F.R. Part 200 (for equipment in excess of \$5,000), as applicable. The Subrecipient shall be responsible for maintaining appropriate property records for any subcontracts that include the purchase of equipment as part of the delivery of services. The Subrecipient shall comply with this requirement and ensure its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.

SECTION 9. INDEMNIFICATION.

To the fullest extent permitted by law, Subrecipient shall indemnify, defend (by counsel reasonably acceptable to the County) protect and hold the County, and its officers, employees, contractors, and agents, free and harmless from and against any and all claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses and expenses (including, without limitation, attorney's fees and costs during negotiation, through litigation and all appeals therefrom), or death of or injury to any person or damage to any property whatsoever, arising out of or resulting from this Agreement or Subrecipient's performance of the projects and/or activities contemplated in the SEP. It is specifically agreed by and between the Parties that, in accordance with section 768.28 Florida Statutes, neither Party waives any defense of sovereign immunity.

SECTION 10. DEFAULT; TERMINATION; FORCE MAJEURE.

A. Termination for Cause.

1. By County. The County may terminate this Agreement for cause at any time if any covenant, warranty, or representation made by Subrecipient in this Agreement, the SEP, or in any application materials for funding submitted to the County in connection with this Agreement shall at any time be false or misleading in any respect, or in the event of the failure of the Subrecipient to comply with the terms and conditions of this Agreement. Prior to termination, the County shall provide fifteen (15) days written notice of its intent to terminate and shall provide the Subrecipient an opportunity to consult with the County regarding the reason(s) for termination.

2. By Subrecipient. Subrecipient may terminate this Agreement for cause at any time if the County fails to fulfill any of its responsibilities or obligations under this Agreement. Prior to termination, Subrecipient shall provide fifteen (15) days written notice of its intent to terminate setting forth the reasons for such termination, and shall provide the County an opportunity to consult with the Subrecipient regarding the reasons for termination.

B. Termination for Convenience. This Agreement may be terminated for convenience by either Party upon providing the non-terminating Party with ten (10) days written notice.

C. Termination due to Unavailability of Funds. In the event the FDEM Agreements are terminated by FDEM or the funding contemplated under the FDEM Agreements is either reduced or eliminated for any reason, this Agreement may be terminated by the County immediately upon providing written notice to the Subrecipient.

D. Force Majeure. If a force majeure event occurs that causes delays or the reasonable likelihood of delay in the fulfillment of the requirements of this Agreement, the Subrecipient shall promptly notify the County in writing of the anticipated length and cause of the delay, the measures taken or to be taken to minimize the delay and the Subrecipient's intended timetable for implementation of such measures. If the Parties agree that the delay or anticipated delay was caused, or will be caused by a force majeure, the County may, at its discretion, extend the time for performance under this Agreement for a period of time equal to the delay resulting from the force majeure upon execution of an amendment to this Agreement. Such agreement shall be evidenced by an Amendment to the Agreement in accordance with Section 24 hereof. For purposes of this Agreement, "force majeure event" shall be defined as shall be an act of God, strike, lockout, or other industrial disturbance, act of the public enemy, war, blockade, public riot, lightning, fire, flood, explosion, failure to receive timely necessary third party approvals through no fault of the Subrecipient, and any other cause, whether of the kind specifically enumerated herein or otherwise, that is not reasonably within the control of the Subrecipient and/or the County. Failure to perform by the Subrecipient's consultant(s) or subcontractor(s) shall not constitute a force majeure event.

E. Effect of Termination. Costs incurred by the Subrecipient after termination of this Agreement shall not be reimbursable unless expressly authorized by the County prior to the effective date of termination.

SECTION 11. REMEDIES; FINANCIAL CONSEQUENCES.

A. In the event that a task, deliverable, or activity to be performed under this Agreement is deemed unsatisfactory by the County, the Subrecipient shall re-perform same, at no additional cost to the County, within twenty (20) days of being notified of the unsatisfactory task, deliverable, or activity, or within such other timeframe as is specified in writing by the County. If such task, deliverable, or activity is not satisfactorily performed within the specified timeframe, the County may, in its sole discretion, terminate this Agreement for cause in accordance with Section 10 hereof.

B. If the Subrecipient materially fails to comply with the terms and conditions of this Agreement, including any federal or state statutes, rules, policies, or regulations, applicable to this Agreement, the County may, in its sole discretion, take one or more of the following actions:

1. Temporarily withhold cash payments to the Subrecipient pending correction of the deficiency by the Subrecipient or more severe enforcement action by the County or FDEM.

2. Disallow (i.e. deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

3. Wholly or partly suspend or terminate this Agreement.

4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 or other applicable federal regulations (or recommend such a proceeding be initiated by FDEM or the Department of the Treasury).

5. Withhold future requests for reimbursement to Subrecipient under this Agreement any other Agreement between the Parties providing for the subaward of funds from the Coronavirus Relief Fund.

6. Demand a refund, either in whole or in part, of the funds provided to the Subrecipient under this Agreement for non-compliance with the material terms of this Agreement. The Subrecipient, upon such written notification from the County shall refund, and shall forthwith pay to the County, the amount of money demanded by the County. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from the County by the Subrecipient to the date repayment is made by the Subrecipient to the County.

7. Take any other remedy that may be available to the County at law or equity.

8. Costs of the Subrecipient resulting from obligations incurred by the Subrecipient during a suspension or after termination of the Agreement are not allowable unless the County expressly authorizes them in the notice of suspension or termination. Other Subrecipient costs during suspension or after termination that are necessary and not reasonably avoidable are allowable if the following apply:

a. The costs result from obligations which were properly incurred by the Subrecipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of termination, are non-cancellable; and

b. The cost would be allowable if the Agreement were not suspended or expired normally at the end of the funding period in which the termination takes place.

C. CARES Act-Specific Remedies for Noncompliance. In addition to the remedies available in the paragraphs above, the Subrecipient is subject to any CARES Act-specific remedies

for noncompliance outlined in the CARES Act and any implementing laws, rules, regulations, and guidance.

D. State and Federal Clawbacks. In the event FDEM, Department of the Treasury, or such other state or federal entity having jurisdiction at any time demands the return of funds paid to Subrecipient pursuant to this Agreement following a state or federal audit or otherwise for any reason, including but not limited to situations where costs paid with such funds were determined to be ineligible or unallowable, Subrecipient shall be solely liable for any such amounts and shall return the full amount of the funds in question to the County promptly upon demand. If Subrecipient fails to comply with its obligation to return funds pursuant to this paragraph, the County may withhold future requests for reimbursement to Subrecipient under this Agreement or any other Agreement between the Parties providing for the subaward of Coronavirus Relief Funds or pursue any other remedy described in paragraph (B) above or available at law or in equity.

E. The Parties acknowledge and agree that the remedies provided in this Section 11 are separate and apart from the indemnification provisions set forth in Section 9 hereof and that sovereign immunity shall not be a defense to any of the contractual obligations imposed on the Parties in this Section.

SECTION 12. AUDITS; MONITORING.

A. In the event that the Subrecipient expends Seven Hundred Fifty Thousand Dollars (\$750,000.00) or more in Federal awards in its fiscal year, the Subrecipient must have a single or program-specific audit conducted within nine (9) months of the end of the Subrecipient's audit period, in accordance with the provisions of 2 C.F.R. Part 200. In determining the Federal awards expended in its fiscal year, the Subrecipient shall consider all sources of Federal awards, including Federal financial assistance received from the County under this Agreement. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 C.F.R. Part 200. An audit of the Subrecipient conducted by the Auditor General in accordance with the provision of 2 C.F.R. Part 200 will meet the requirements of this part.

B. If the Subrecipient expends less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of 2 C.F.R. Part 200, as revised, is not required for that year, except as noted in 2 C.F.R. § 200.503. In the event that the Subrecipient expends less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 C.F.R. Part 200, as revised, the cost of the audit must be paid from non-Federal resources. In accordance with 2 C.F.R. § 200.501(d), records must be available for review or audit by appropriate officials of FDEM, the County, the Department of the Treasury, and the U.S. Government Accountability Office (GAO).

C. Upon completion of the audit required in this Section, Subrecipient shall promptly transmit a copy of the Subrecipient's audit report to the County. Subrecipient's failure to have an audit conducted in accordance with this Section or failure to implement corrective action in response to any audit findings may result in the County's imposition of remedies as provided in Section 10 hereof.

D. In addition to reviews of audits conducted in accordance with 2 C.F.R. Part 200, monitoring procedures under this Agreement may include, but not be limited to, on-site visits by the County and/or FDEM; limited-scope audits as defined by 2 C.F.R. Part 200; submittal and review of financial management statements; and/or other procedures. By entering into this Agreement, the Subrecipient agrees to comply and cooperate with any reasonable monitoring procedures/processes deemed appropriate by the County and/or FDEM. In the event the County determines that a limited-scope audit of the Subrecipient is appropriate, the Subrecipient agrees to comply with any additional instructions provided by the County and/or FDEM to the Subrecipient regarding such audit. The Subrecipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the County and/or FDEM.

SECTION 13. SUBCONTRACTS; PROCUREMENT; SUBAWARDS.

A. In procuring goods and services under this Agreement, the Subrecipient shall use its own documented procurement procedures, provided that such procurements conform to applicable state and federal law.

B. The Subrecipient may subcontract work under this Agreement as necessary without the prior written consent of the County, subject to the any conditions or limitations imposed by applicable state and federal law and Section 22 hereof concerning debarred/suspended contractors. Regardless of any subcontract, the Subrecipient is ultimately responsible for all projects, programs, activities, and services undertaken by subcontractors under this Agreement. The Subrecipient agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the Subrecipient that the County shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract and that the Subrecipient shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

C. Subcontractor Determinations and Monitoring. In selecting and monitoring subcontractors, the Subrecipient shall comply with 2 C.F.R. §§ 200.330-332. The Subrecipient shall monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports maintained by the Subrecipient and supported with documented evidence of follow-up actions taken to correct areas of noncompliance, where applicable. Such summaries and documents shall be submitted to the County upon request.

D. Affirmative Action. The County supports diversity in its procurement program and requires that all subcontracting opportunities afforded by this Agreement embrace and encourage diversity. The Subrecipient's award of subcontracts should reflect the diversity of the citizens of the State of Florida. In accordance with 2 C.F.R. § 200.321, the Subrecipient and its subcontractors must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. The Subrecipient agrees to use affirmative steps, and to require its subcontractors and sub-subrecipients to utilize affirmative steps, to ensure that minority businesses and women's business enterprises are used when possible. Such affirmative steps shall at a minimum include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, or women's business enterprises;
5. Utilizing services and assistance, as appropriate, of such organizations as the Small Business Administration, the Minority Business Development Agency of the Department of the Commerce, the Florida Department of Management Services (Office of Supplier Diversity), the Florida Department of Transportation, Minority Business Development Center, and Local Government M/DBE programs; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above in subparagraphs (1) through (5).
7. As used herein, the term "minority and women business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. Prior to award of any subcontract under this Agreement, Subrecipient shall document its efforts made to comply with the requirements of this paragraph. The Subrecipient shall state that it is an Equal Opportunity or Affirmative-Action employer in all solicitations or advertisements for subcontractors or employees who shall perform work under this Agreement.
8. The requirement outlined in subparagraphs (1) through (5) above does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms. Rather, the requirement only imposes an obligation to carry out and document the six affirmative steps identified above.
9. The requirements described in subparagraphs (1) through (5) above outlines the affirmative steps that the Subrecipient must take; the requirements do not preclude the Subrecipient from undertaking additional steps to involve small and minority businesses and women's business enterprises.
10. The requirement to divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises, does not authorize the Subrecipient to break a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds so as to utilize streamlined acquisition procedures (e.g. "project splitting").

E. Equal Opportunity. During the performance of this Agreement, the Subrecipient agrees as follows:

1. The Subrecipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Subrecipient will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or 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 to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

3. The Subrecipient will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Subrecipient's legal duty to furnish information.

4. The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Subrecipient's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. The Subrecipient will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

6. The Subrecipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7. In the event of the Subrecipient's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Subrecipient may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

8. The Subrecipient shall include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub-subrecipient or vendor. The Subrecipient will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Subrecipient becomes involved in, or is threatened with, litigation with a sub-subrecipient or vendor as a result of such direction, the Subrecipient may request the United States to enter into such litigation to protect the interests of the United States.

F. Sub-Awards. The Subrecipient may enter into subaward agreements to provide for the distribution of funds under this Agreement to eligible sub-subrecipients (as defined in 2 C.F.R. §§ 200.92-93) without the prior written consent of the County. Regardless of any subaward, the Subrecipient is ultimately responsible for all projects, programs, services, and activities undertaken by sub-subrecipients under this Agreement. All such sub-subrecipients shall be subject to the same performance, financial, and reporting requirements as the Subrecipient. In selecting, monitoring, and contracting with sub-subrecipients, the Subrecipient shall comply with 2 C.F.R. §§ 200.330-332. The Subrecipient shall monitor all sub-subrecipients on a regular basis to ensure compliance with this Agreement and all applicable laws, rules, and regulations. Results of monitoring efforts shall be summarized in written reports maintained by the Subrecipient and supported with documented evidence of follow-up actions taken to correct areas of noncompliance, where applicable. Such summaries and documents shall be submitted to the County upon request.

G. Prompt Payment Act. As described in Sections 4 and 5 hereof, Subrecipient agrees and acknowledges that payments made under this Agreement are from federal funds and contingent upon prior approval as to the allowability and eligibility of the costs for which payment is requested by both the County and FDEM. Where applicable, Subrecipient is encouraged to include appropriate provisions regarding its obligations under chapter 218, Part VII, the Local Government Prompt Payment Act, stating that payment to subcontractors is contingent on receipt of federal funds or federal approval.

H. Scrutinized Companies. Subrecipient agrees to observe the requirements of Section 287.135, F.S., for applicable subcontracts and subawards entered into under this Agreement.

SECTION 14. CLOSEOUT.

A. The County will close out this Agreement when it determines that all projects and/or activities and all applicable administrative actions have been completed. Unless an extension is approved by the County, within twenty (20) days after the Termination Date, the Subrecipient must submit any outstanding reports, including the Final Project Report, as well as any required reporting on sub-awards, and must refund to the County any balances of unobligated cash that the County paid in advance or paid and that is not authorized to be retained by the Subrecipient entity for use in other projects. Within thirty (30) days after receipt of all outstanding reports, the County will make upward or downward adjustments to the allowable costs, and then make prompt payments to Subrecipient for remaining allowable reimbursable costs. The closeout of this Agreement does not affect any of the following:

1. The right of the County or FDEM to disallow costs and recover funds on the basis of a later audit or other review;
2. The obligation of the Subrecipient to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments; or
3. The Subrecipient's obligations regarding audits, property management and disposition (if applicable), and records retention.

B. Unless an extension is approved by the County, the Subrecipient must liquidate all obligations incurred under this Agreement within ninety (90) days after the Termination Date.

SECTION 15. LOBBYING PROHIBITION; CONFLICTS OF INTEREST.

The Subrecipient agrees to comply with, and include in subcontracts and subawards, the following provisions:

A. The Subrecipient certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. The Subrecipient certifies that no funds provided under this Agreement have been used or will be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.

C. Pursuant to 2 C.F.R. §200.450 and 2 C.F.R. §200.454(e), the Subrecipient is hereby prohibited from using funds provided by this Agreement for membership dues to any entity or organization engaged in lobbying activities.

D. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a

Town of Cinco Bayou, Florida

Subaward

Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities."

E. Hatch Act. In accordance with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328), no funds provided, nor personnel employed under this Agreement, shall be in any way or any extent engaged in the conduct of political activities.

SECTION 16. COMPLIANCE WITH LAWS.

The Subrecipient shall comply with all applicable federal, state and local laws, rules, and regulations, and County policies and regulations in performing under this Agreement, including but not limited to the federal laws, regulations rules, policies, and executive orders described in **Attachments D-1, D-2, and D-3** hereto. The failure of this Agreement to specifically reference a particular federal or state law or regulation, or policy or regulation shall not excuse Subrecipient from compliance with same to the extent such law, regulation, or policy is applicable to Subrecipient's performance under this Agreement. The Subrecipient further agrees to include this provision in all subcontracts entered into under this Agreement.

SECTION 17. NOTICE.

All notices and written communication between the Parties shall be sent by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt (or when receipt is otherwise acknowledged), a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. Any and all notices required by this Agreement shall be delivered to the Parties' respective contact persons at the addresses identified in Section 18. This Section shall not preclude routine communication by the Parties by other means.

SECTION 18. CONTACTS.

All notices required or permitted under this Agreement shall be directed to the following contact persons:

County

Jane Evans, Grants & RESTORE Manager
1250 North Eglin Parkway, Ste 102
Shalimar, FL 32579
jevans@myokaloosa.com
850-651-7521

Kerry Parsons, Assistant County Attorney
Nabors, Giblin & Nickerson
1500 Mahan Drive, Ste 200

Town of Cinco Bayou, Florida

Subaward

Tallahassee, FL 32308
kparsons@ngnlaw.com

Subrecipient

Project Manager

Town of Cinco Bayou, Florida
Keith Williams, Town Manager
10 Yacht Club Drive
Cinco Bayou, FL 32548
keith@cincobayou.com
(850) 833-3405

Either Party may change the above-described contact information by giving notice of such change to the other party Pursuant to Section 17 hereof.

SECTION 19. REAL PROPERTY; EQUIPMENT.

A. If Subrecipient acquires an interest in real property utilizing funds under this Agreement, Subrecipient acknowledges and shall comply with 2 C.F.R. § 200.311 and other applicable laws, rules, and regulations, including, but not limited to CARES Act guidance issued by the Department of the Treasury. Pursuant to same, except as otherwise expressly authorized by the County, real property acquired under this Agreement must be used for the originally authorized purpose as long as needed for that purpose, during which time the Subrecipient entity must not dispose of or encumber its title or any other interest therein.

B. Subrecipient's acquisition, use, management, and disposition of equipment under this Agreement shall be in compliance with 2 C.F.R. §§ 200.313 and 200.439 and other applicable laws, rules, and regulations, including, but not limited to CARES Act guidance issued by the Department of the Treasury.

SECTION 20. UNAUTHORIZED EMPLOYMENT.

The employment of unauthorized aliens by any Subrecipient/subcontractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Subrecipient/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Subrecipient shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.

SECTION 21. NON-DISCRIMINATION.

A. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in, be denied the proceeds or benefits of, or be otherwise subjected to discrimination in performance of this Agreement. Subrecipient and its subcontractors shall comply with the all federal and state laws, rules, regulations, policies and

executive orders relating to non-discrimination, including but not limited to those contained in **Attachment D-2, Federal Non-Discrimination Provisions.**

B. An entity or affiliate who has been placed on the State of Florida's discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website, https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists.

SECTION 22. DEBARMENT/SUSPENSION.

In accordance with Presidential Executive Order 12549, Debarment and Suspension (2 C.F.R. Part 180), the Subrecipient agrees and certifies that neither it, nor its principals, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency; and, that the Subrecipient shall not enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction.. The Subrecipient is responsible for reviewing the status of all proposed subcontractors and subawardees in the System for Award Management (SAM) at <https://sam.gov/SAM/> before entering into any subcontract or sub-award under this Agreement. The Subrecipient shall include language incorporating the requirements of this Section in all subcontracts or lower tier agreements executed under this Agreement.

SECTION 23. PHYSICAL ACCESS AND INSPECTION.

As applicable, County and FDEM agents and personnel shall be given access to and may observe and inspect projects, activities, and work being performed under this Agreement.

SECTION 24. AMENDMENTS.

All amendments are subject to the mutual agreement of both Parties as evidenced in writing. Any amendments to the SEP shall require the approval of the County in writing.

SECTION 25. PERMITS.

The Subrecipient expressly acknowledges that receipt of the financial assistance provided for under this Agreement does not imply nor guarantee that a federal, state or local permit will be issued for a particular project or activity. Further, the Subrecipient agrees to ensure that all necessary permits are obtained prior to implementation of any activity funded under this Agreement that may fall under applicable federal, state or local laws.

SECTION 26. RECORDS: ACCESS TO RECORDS AND PERSONNEL.

A. Subrecipient shall retain all records generated under this Agreement in accordance with 2 C.F.R. § 200.333.

B. Subrecipient shall comply with the Florida Public Records Law, codified at Chapter 119, F.S. Records made or received in conjunction with this Agreement are public records under Florida law. Subrecipient shall keep and maintain public records generated by the Subrecipient in association with its performance of this Agreement.

C. This Agreement may be unilaterally canceled by the County for refusal by the Subrecipient to either provide to the County upon request, or to allow inspection and copying of, all public records made or received by the Subrecipient in conjunction with this Agreement and subject to disclosure under Chapter 119, F.S.

D. 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 COUNTY'S CUSTODIAN OF PUBLIC RECORDS BY TELEPHONE AT OKALOOSA COUNTY RISK MANAGEMENT DEPARTMENT 302 N. WILSON ST., CRESTVIEW, FL 32536 PHONE: (850) 689-5977 riskinfo@myokaloosa.com.

E. The Subrecipient acknowledges and agrees that the County, FDEM, the U.S. Department of Treasury, the Treasury Office of Inspector General, the Comptroller General of the United States (Government Accountability Office (GAO)), or their authorized representatives, shall have timely and unrestricted access to any pertinent books, documents, papers, and records, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, in order to make audits, inspections, investigations, excerpts, transcripts, or other examinations as authorized by law. This also includes timely and reasonable access to the Subrecipient's personnel for the purpose of interview and discussion related to such documents. In the event any work is subawarded or subcontracted, the Subrecipient shall similarly require each sub-subrecipient and subcontractor to maintain and allow access to such records for audit purposes.

F. The County, FDEM, the U.S. Department of Treasury, the Treasury Office of Inspector General, the Comptroller General of the United States (GAO), or their authorized representatives shall have the right during normal business hours to conduct announced and unannounced onsite and offsite physical visits of the Subrecipient and their subcontractors corresponding to the duration of their records retention obligation for this Agreement.

G. The rights of access in this Section are not limited to the required retention period for the applicable records but last as long as the records are retained.

H. The Subrecipient agrees that if any litigation, claim, or audit is started before the expiration of the record retention period established above, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

SECTION 27. MISCELLANEOUS.

A. Assignment. No assignment, delegation, transfer, or novation of this Agreement, or any part hereof, may be made unless in writing and signed by both Parties.

B. Execution in Counterparts. This Agreement, and any Amendments or Change Orders thereto, may be executed in multiple counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by email delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

C. Interpretation: Severability. This Agreement shall be construed in accordance with the laws of the State of Florida. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

D. Entire Agreement: Joint Preparation. This Agreement represents the entire agreement of the Parties. Any alterations, variations, changes, modifications or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, duly signed by each of the Parties hereto, and attached to the original of this Agreement, unless otherwise provided herein. The Parties represent and agree that they have jointly negotiated this Agreement and have had the opportunity to consult with and be represented by their own competent counsel. This Agreement is therefore deemed to have been jointly prepared by the Parties and no part hereof shall be construed more severely against one of the Parties than the other.

E. Venue. Venue for any litigation arising from this Agreement shall be in Okaloosa County, Florida.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed, the day and year last written below.

OKALOOSA COUNTY

TOWN OF CINCO BAYOU, FLORIDA

By: _____

By: _____

John Hofstad, County Administrator

Keith Williams, Town Manager/Clerk

Town of Cinco Bayou, Florida

Subaward

Print Name and Title

Print Name and Title

Commented [PK2]: Insert name of person signing

Date: 10-23-20

Date: 10/08/2020

Attest:

Attest:

By: [Signature]

By: [Signature]

Roland C. Sims Jr.
Print Name and Title

Linda Barringer Deputy Clerk
Print Name and Title

Executive Assistant

ATTACHMENT A

FEDERAL FINANCIAL ASSISTANCE
See attached CARES ACT FUNDING AGREEMENT
Between Florida Division of Emergency Management and Okaloosa County,
Florida

Y2276
(19 PAGES)

CARES ACT FUNDING AGREEMENT

THIS AGREEMENT is entered into by the State of Florida, Division of Emergency Management, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Division" or "Recipient"), and **Okaloosa County**, (hereinafter referred to as the "County" or "Subrecipient").

This agreement is entered into based on the following representations:

- A. The Subrecipient represents that it is fully qualified and eligible to receive this funding for the purposes identified herein; and
- B. The Division has received these funds from the U.S. Department of Treasury through the State of Florida and has the authority to distribute these funds to the Subrecipient upon the terms and conditions below; and
- C. The Division has statutory authority to disburse the funds under this Agreement.
- D. The CARES Act, section 601(d) of the Social Security Act, created the Coronavirus Relief Fund (CRF) and provided Florida with \$8,328,221,072; 55% of which was allocated to the State of Florida and 45% was allocated to counties.
- E. The United States Department of the Treasury disbursed \$2,472,413,692 of these funds directly to counties with a population in excess of 500,000.
- F. A remaining balance of \$1,275,285,790 was reverted to the State of Florida from the local government allocation, for the State to disburse to counties with populations less than 500,000.

Therefore, the Division and the Subrecipient agree to the following:

(1) LAWS, RULES, REGULATIONS, AND POLICIES

- a. Performance under this Agreement is subject to 2 C.F.R Part 200, entitled "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards."
- b. As required by section 215.971(1), Florida Statutes, this Agreement includes:
 - i. A provision specifying a scope of work that clearly establishes the tasks that the Recipient is required to perform.
 - ii. A provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the Division before payment or reimbursement. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.
 - iii. A provision specifying the financial consequences that apply if the Subrecipient fails to perform the minimum level of service required by the agreement.
 - iv. A provision specifying that the Subrecipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.
 - v. A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the Division.
 - vi. A provision specifying that any funds paid in excess of the amount to which the Recipient is entitled under the terms and conditions of the agreement must be refunded to the Division.
- c. In addition to the foregoing, the Subrecipient and the Division will be governed by all applicable State and Federal laws, rules and regulations, including those identified in Attachment B. Any express reference in this Agreement to a particular statute, rule, or regulation in no way implies that no other statute, rule, or regulation applies.

(2) CONTACT

- a. In accordance with section 215.971(2), Florida Statutes, the Division's Program Manager will be responsible for enforcing performance of this Agreement's terms and conditions and will serve as the Division's liaison with the Subrecipient. As part of his/her duties, the Program Manager for the Division will monitor and document Subrecipient performance.
- b. The Division's Program Manager for this Agreement is:

Wesley Sapp
Division of Emergency Management
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100
Telephone: (850) 815-4431
Email: Wesley.Sapp@em.myflorida.com

- c. The name and address of the representative of the Recipient responsible for the administration of this Agreement is:

Allison McLeary
Division of Emergency Management
2555 Shumard Oak Blvd
Telephone: 850-815-4455
Email: Allison.McLeary@em.myflorida.com

- d. In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative will be provided to the other party.

(3) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the parties.

(4) EXECUTION

This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(5) MODIFICATION

This agreement may not be modified.

(6) PERIOD OF AGREEMENT

This Agreement shall be effective on **March 1, 2020** and shall end on **December 30, 2020**, unless terminated earlier in accordance with the provisions of Paragraph (15) TERMINATION. In accordance with section 215.971(1)(d), Florida Statutes, the Subrecipient may expend funds authorized by this Agreement "only for allowable costs resulting from obligations incurred during the specific agreement period."

(7) FUNDING

- a. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with either Chapter 216, Florida Statutes, and the Florida Constitution.
- b. This is a modified reimbursement agreement. The State, through the Division, will make an initial disbursement to the county of 25% of the total amount allocated to the county according to the United States Department of the Treasury. Any additional amounts will be disbursed on a reimbursement basis.

- c. Subrecipients may use payments for any expenses eligible under section 601(d) of the Social Security Act, specifically the Coronavirus Relief Fund and further outlined in US Treasury Guidance. Payments are not required to be used as the source of funding of last resort.
- d. The Division's Program Manager, as required by section 215.971(2)(c), Florida Statutes, shall reconcile and verify all funds received against all funds expended during the period of agreement and produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the Subrecipient.
- e. For the purposes of this Agreement, the term "improper payment" means or includes:
 - i. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements.
- f. As required by the Reference Guide for State Expenditures, reimbursement for travel must be in accordance with section 112.061, Florida Statutes, which includes submission of the claim on the approved state travel voucher.
- g. Counties should provide funding to municipalities within their jurisdiction upon request for eligible expenditures under the CARES Act. However, counties are responsible for the repayment of funds to the Division for expenditures that the Division or the Federal government determines are ineligible under the CARES Act.
- h. The CARES Act requires that the payments from the Coronavirus Relief Fund only be used to cover expenses that¹—
 - i. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
 - ii. were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
 - iii. were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020. Funds transferred to Subrecipient must qualify as a necessary expenditure incurred due to the public health emergency and meet the other criteria of section 601(d) of the Social Security Act. Such funds would be subject to recoupment by the Treasury Department if the funds have not been used in a manner consistent with section 601(d) of the Social Security Act.
- i. Examples of Eligible Expenses include, but are not limited to:
 - i. Medical expenses
 - ii. Public health expenses
 - iii. Payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.
 - iv. Expenses of actions to facilitate compliance with COVID-19 related public health measures.
 - v. Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency.
 - vi. Any other COVID-19 – related expenses reasonably necessary to the function of government that satisfy the fund's eligibility criteria.

(8) INVOICING

- a. In order to obtain reimbursement for expenditures in excess of the initial 25% disbursement, the Subrecipient must file with the Division Grant Manager its request for reimbursement and any other information required to justify and support the payment request. Payment requests must include a certification, signed by an official who is authorized to legally bind the Subrecipient, which reads as follows:

¹ <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812).

- b. Reimbursements will only be made for expenditures that the Division provisionally determines are eligible under the CARES Act. However, the Division's provisional determination that an expenditure is eligible does not relieve the county of its duty to repay the Division for any expenditures that are later determined by the Division or the Federal government to be ineligible.

(9) RECORDS

- a. As a condition of receiving state or federal financial assistance, and as required by sections 20.055(6)(c) and 215.97(5)(b), Florida Statutes, the Division, the Chief Inspector General of the State of Florida, the Florida Auditor General, or any of their authorized representatives, shall enjoy the right of access to any documents, financial statements, papers, or other records of the Subrecipient which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Subrecipient's personnel for the purpose of interview and discussion related to such documents. For the purposes of this section, the term "Subrecipient" includes employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement.
- b. The Subrecipient shall maintain all records related to this Agreement for the period of time specified in the appropriate retention schedule published by the Florida Department of State. Information regarding retention schedules can be obtained at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>.
- c. Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) provides the citizens of Florida with a right of access to governmental proceedings and mandates three, basic requirements: (1) all meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and, (3) minutes of the meetings must be taken and promptly recorded.
- d. Florida's Public Records Law provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. Unless specifically exempted from disclosure by the Legislature, all materials made or received by a governmental agency (or a private entity acting on behalf of such an agency) in conjunction with official business which are used to perpetuate, communicate, or formalize knowledge qualify as public records subject to public inspection.

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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (850) 815-4156, Records@em.myflorida.com, or 2555 Shumard Oak Boulevard, Tallahassee, FL 32399.

(10) AUDITS

- a. In accounting for the receipt and expenditure of funds under this Agreement, the Subrecipient must follow Generally Accepted Accounting Principles ("GAAP"). As defined by 2 C.F.R. §200.49, "GAAP has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB)."
- b. When conducting an audit of the Subrecipient's performance under this Agreement, the Division must use Generally Accepted Government Auditing Standards ("GAGAS"). As defined by 2 C.F.R. §200.50, "GAGAS, also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits."
- c. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of and strict compliance with this Agreement, the Subrecipient will be held liable for reimbursement to the Division of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty (30) days after the Division has notified the Subrecipient of such non-compliance.
- d. The Subrecipient must have all audits completed by an independent auditor, which is defined in section 215.97(2)(i), Florida Statutes, as "an independent certified public accountant licensed under chapter 473." The independent auditor must state that the audit complied with the applicable provisions noted above. The audits must be received by the Division no later than nine months from the end of the Subrecipient's fiscal year.
- e. The Subrecipient must send copies of reporting packages required under this paragraph directly to each of the following:

i.

The Division of Emergency Management

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General

2555 Shumard Oak Boulevard

Tallahassee, Florida 32399-2100

ii.

The Auditor General

Room 401, Claude Pepper Building

111 West Madison Street

Tallahassee, Florida 32399-1450

- f. Fund payments are considered to be federal financial assistance subject to the Single Audit Act and the related provisions of the Uniform Guidance.

(11) REPORTS

- a. The Subrecipient must provide the Division with quarterly reports and a close-out report. These reports must include the current status and progress of the expenditure of funds under this Agreement, in addition to any other information requested by the Division.

- b. Quarterly reports are due to the Division no later than 15 days after the end of each quarter of the program year and must be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30, and December 31. The first quarterly report due pursuant to this agreement is due for the quarter ending September 30, 2020.
- c. The close-out report is due sixty (60) days after termination of this Agreement or 60 days after completion of the activities contained in this Agreement, whichever occurs first.
- d. If all required reports and copies are not sent to the Division or are not completed in a manner acceptable to the Division, the Division may withhold further payments until they are completed or may take other action as stated in Paragraph (15) REMEDIES. "Acceptable to the Division" means that the work product was completed in accordance with the Budget and Scope of Work.
- e. The Subrecipient must provide additional program updates or information that may be required by the Division.

(12) MONITORING

In addition to reviews of audits conducted in accordance with paragraph (10) AUDITS above, monitoring procedures may include, but not be limited to, on-site visits by Division staff, limited scope audits, or other procedures. The Subrecipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Division. In the event that the Division determines that a limited scope audit of the Subrecipient is appropriate, the Subrecipient agrees to comply with any additional instructions provided by the Division to the Subrecipient regarding such audit. The Subrecipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Florida Chief Financial Officer or Auditor General. In addition, the Division will monitor the performance and financial management by the Subrecipient throughout the period of agreement to ensure timely completion of all tasks.

(13) LIABILITY

Any Subrecipient which is a state agency or subdivision, as defined in section 768.28, Florida Statutes, agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity applies. Nothing herein will be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of this Agreement.

(14) DEFAULT

- a. If any of the following events occur ("Events of Default"), all obligations on the part of the Division to make further payment of funds will, if the Division elects, terminate and the Division has the option to exercise any of its remedies set forth in Paragraph (15) REMEDIES. However, the Division may make payments or partial payments after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment.
- b. If any warranty or representation made by the Subrecipient in this Agreement or any previous agreement with the Division is or becomes false or misleading in any respect, or if the Subrecipient fails to keep or perform any of the obligations, terms or covenants in this

- Agreement or any previous agreement with the Division and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;
- c. If material adverse changes occur in the financial condition of the Subrecipient at any time during the period of agreement, and the Subrecipient fails to cure this adverse change within thirty (30) days from the date written notice is sent by the Division.
 - d. If any reports required by this Agreement have not been submitted to the Division or have been submitted with incorrect, incomplete or insufficient information;
 - e. If the Subrecipient has failed to perform and complete on time any of its obligations under this Agreement.

(15) REMEDIES

If an Event of Default occurs, then the Division may, after thirty (30) calendar days written notice to the Subrecipient and upon the Subrecipient's failure to cure within those thirty (30) days, exercise any one or more of the following remedies, either concurrently or consecutively:

- a. Terminate this Agreement, provided that the Subrecipient is given at least thirty (30) days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in paragraph (2) CONTACT herein;
- b. Begin an appropriate legal or equitable action to enforce performance of this Agreement;
- c. Withhold or suspend payment of all or any part of a request for payment;
- d. Require that the Subrecipient refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.
- e. Exercise any corrective or remedial actions, to include but not be limited to:
 - i. request additional information from the Subrecipient to determine the reasons for or the extent of non-compliance or lack of performance,
 - ii. issue a written warning to advise that more serious measures may be taken if the situation is not corrected,
 - iii. advise the Subrecipient to suspend, discontinue or refrain from incurring costs for any activities in question,
 - iv. require the Subrecipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible, or
 - v. request the Department of Revenue to withhold from any future payment due to the county under the Revenue Sharing Act of 1972 described in Part II of Chapter 218, Florida Statutes, or the Participation in Half Cent Sales Tax Proceeds described in Part IV of Chapter 218, Florida Statutes, an amount equal to any repayment due to the Division under this Agreement.
- f. Exercise any other rights or remedies which may be available under law. Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Subrecipient, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Subrecipient.

(16) TERMINATION

- a. The Division may terminate this Agreement for cause after thirty (30) days written notice. Cause can include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform on time, and refusal by the Subrecipient to permit public access to any document, paper, letter, or other material subject to disclosure under Chapter 119, Florida Division of Emergency Management Statutes, as amended.
- b. The Division may terminate this Agreement for convenience or when it determines, in its sole discretion, that continuing the Agreement would not produce beneficial results in line

with the further expenditure of funds, by providing the Subrecipient with thirty (30) calendar days prior written notice.

- c. The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of this Agreement.
- d. In the event this Agreement is terminated, the Subrecipient will not incur new obligations for the terminated portion of this Agreement after they have received the notification of termination. The Subrecipient will cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Subrecipient will not be relieved of liability to the Division because of any breach of this Agreement by the Subrecipient. The Division may, to the extent authorized by law, withhold payments to the Subrecipient for the purpose of set-off until the exact amount of damages due the Division from the Subrecipient is determined.

(17)ATTACHEMENTS

- a. All attachments to this Agreement are incorporated as if set out fully.
- b. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments will control, but only to the extent of the conflict or inconsistency.

(18)PAYMENTS

- a. The State of Florida, through the Division, will make a disbursement of each County government's allocation as calculated by the United States Department of the Treasury. Funding for **Okaloosa County** is in the amount of **\$9,193,039.00.**

(19)REPAYMENTS

- a. All refunds, return of improper payments, or repayments due to the Division under this Agreement are to be made payable to the order of "Division of Emergency Management," and mailed directly to the following address:

Division of Emergency Management

Cashier

2555 Shumard Oak Boulevard

Tallahassee FL 32399-2100

- b. In accordance with section 215.34(2), Florida Statutes, if a check or other draft is returned to the Division for collection, Subrecipient shall pay the Division a service fee of \$15.00 or 5% of the face amount of the returned check or draft, whichever is greater.

(20)MANDATED CONDITIONS AND OTHER LAWS

- a. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Subrecipient in this Agreement, in any later submission or response to a Division request, or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations, and materials is incorporated by reference. The inaccuracy of the submissions or any material changes will, at the option of the Division and with thirty (30) days written notice to the Subrecipient, cause the termination of this Agreement and the release of the Division from all its obligations to the Subrecipient.
- b. This Agreement must be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement will be in the Circuit Court of Leon County. If any

provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision is null and void to the extent of the conflict, and is severable, but does not invalidate any other provision of this Agreement.

- c. Any power of approval or disapproval granted to the Division under the terms of this Agreement will survive the term of this Agreement.
- d. This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.
- e. The Subrecipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and local government services, and telecommunications.
- f. Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of \$25,000.00 for a period of thirty-six (36) months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.
- g. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with Chapter 216, Florida Statutes, or the Florida Constitution.
- h. All bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.
- i. Any bills for travel expenses must be submitted in accordance with section 112.061, Florida Statutes.
- j. The Division reserves the right to unilaterally cancel this Agreement if the Subrecipient refuses to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, which the Subrecipient created or received under this Agreement.
- k. If the Subrecipient is allowed to temporarily invest any advances of funds under this Agreement, they must use the interest earned or other proceeds of these investments only to cover expenditures incurred in accordance with section 601(d) of the Social Security Act and the Guidance on eligible expenses. If a government deposits CRF payments in a government's general account, it may use those funds to meet immediate cash management needs provided that the full amount of the payment is used to cover necessary expenditures. Fund payments are not subject to the Cash Management Improvement Act of 1990, as amended. The State of Florida will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Division shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Subrecipient of the employment provisions contained in Section 274A(e) of the INA will be grounds for unilateral cancellation of this Agreement by the Division.
- l. The Subrecipient is subject to Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) with respect to the meetings of the Subrecipient's governing board or the meetings of any subcommittee making recommendations to the governing board. All of these meetings must be publicly noticed, open to the public, and the minutes of all the meetings will be public records, available to the public in accordance with Chapter 119, Florida Statutes.

- m. All expenditures of state or federal financial assistance must be in compliance with the laws, rules and regulations applicable to expenditures of State funds, including but not limited to, the Reference Guide for State Expenditures.
- n. This Agreement may be charged only with allowable costs resulting from obligations incurred during the period of agreement.
- o. Any balances of unobligated cash that have been advanced or paid that are not authorized to be retained for direct program costs in a subsequent period must be refunded to the Division.
- p. If the purchase of the asset was consistent with the limitations on the eligible use of funds provided by section 601(d) of the Social Security Act, the Subrecipient may retain the asset. If such assets are disposed of prior to December 30, 2020, the proceeds would be subject to the restrictions on the eligible use of payments from the Fund provided by section 601(d) of the Social Security Act.

(21) LOBBYING PROHIBITION

- a. Section 216.347, Florida Statutes, prohibits "any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency."
- b. No funds or other resources received from the Division under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.
- c. 2 C.F.R. §200.450 prohibits reimbursement for costs associated with certain lobbying activities.
- d. Section 216.347, Florida Statutes, prohibits "any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency."
- e. No funds or other resources received from the Division under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.
 - i. The Subrecipient certifies, by its signature to this Agreement, that to the best of his or her knowledge and belief:
 - ii. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
 - iii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Subrecipient must complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities."
 - iv. The Subrecipient must require that this certification be included in the award documents for all subawards (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipient s shall certify and disclose.
 - v. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed

by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(22) LEGAL AUTHORIZATION

The Subrecipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Subrecipient also certifies that the undersigned person has the authority to legally execute and bind the Subrecipient to the terms of this Agreement.

(23) ASSURANCES

The Subrecipient must comply with any Statement of Assurances incorporated as Attachment C.

(24) EQUAL OPPORTUNITY EMPLOYMENT

- a. In accordance with 41 C.F.R. §60-1.4(b), the Subrecipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

- i. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- ii. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- iii. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- iv. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- v. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- vi. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- vii. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- viii. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(25) COPELAND ANTI-KICKBACK ACT

- a. The Subrecipient hereby agrees that, unless exempt under Federal law, it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, the following clause:
 - i. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
 - ii. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

- iii. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(26) CONTRACT WORK HOURS AND SAFETY STANDARDS

If the Subrecipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$100,000 and involves the employment of mechanics or laborers, then any such contract must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

(27) CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

- a. If the Subrecipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$150,000, then any such contract must include the following provision:
 - i. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

(28) SUSPENSION AND DEBARMENT

- a. If the Subrecipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following provisions:
 - i. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 - ii. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - iii. This certification is a material representation of fact relied upon by the Division. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Division, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - iv. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.


(29) BYRD ANTI-LOBBYING AMENDMENT

- a. If the Subrecipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following clause:
 - i. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Subrecipient.

(30) CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

- a. If the Subrecipient, with the funds authorized by this Agreement, seeks to procure goods or services, then, in accordance with 2 C.F.R. §200.321, the Subrecipient must take the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible:
 - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (i). through v. of this subparagraph.
- b. The requirement outlined in subparagraph a. above, sometimes referred to as "socioeconomic contracting," does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms. Rather, the requirement only imposes an obligation to carry out and document the six affirmative steps identified above.
- c. The "socioeconomic contracting" requirement outlines the affirmative steps that the Subrecipient must take; the requirements do not preclude the Subrecipient from undertaking additional steps to involve small and minority businesses and women's business enterprises.
- d. The requirement to divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises, does not authorize the Subrecipient to break a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds so as to utilize streamlined acquisition procedures (e.g. "project splitting").

SUB-RECIPIENT:

By: 
Name and title: John Hofstad, County Administrator
Date: July 7, 2020
FID# 59-6000765

**STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT**

By: **Allison McLeary**
Digitally signed by Allison McLeary
DN: dc=org, dc=fleoc, ou=DEM, Users,
ou=Recovery, ou=RecoveryCoordination,
cn=Allison McLeary,
email=Allison.McLeary@em.myflorida.com
Date: 2020.07.08 11:16:24 -04'00'
Name and Title

Interim Bureau Chief

Date: 7-8-20

EXHIBIT 1

STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

State Project –

State awarding agency: Florida Division of Emergency Management

Catalog of State Financial Assistance Title:

Catalog of State Financial Assistance Number:

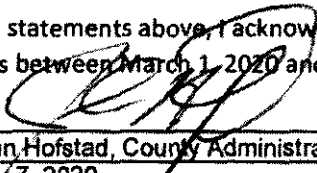
Attachment A

CARES ACT CORONAVIRUS RELIEF FUND ELIGIBILITY CERTIFICATION

I, , am the Authorized Agent of Okaloosa County County ("County") and I certify that:

1. I have the authority on behalf of County to request grant payments from the State of Florida ("State") for federal funds appropriated pursuant to section 601 of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, div. A, Title V (Mar. 27, 2020).
2. I understand that the State will rely on this certification as a material representation in making grant payments to the County.
3. I acknowledge that County should keep records sufficient to demonstrate that the expenditure of funds it has received is in accordance with section 601(d) of the Social Security Act.
4. I acknowledge that all records and expenditures are subject to audit by the United States Department of Treasury's Inspector General, the Florida Division of Emergency Management, and the Florida State Auditor General, or designee.
5. I acknowledge that County has an affirmative obligation to identify and report any duplication of benefits. I understand that the State has an obligation and the authority to deobligate or offset any duplicated benefits.
6. I acknowledge and agree that County shall be liable for any costs disallowed pursuant to financial or compliance audits of funds received.
7. I acknowledge that if County has not used funds it has received to cover costs that were incurred by December 30, 2020, as required by the statute, those funds must be returned to the United States Department of the Treasury.
8. I acknowledge that the County's proposed uses of the funds provided as grant payments from the State by federal appropriation under section 601 of the Social Security Act will be used only to cover those costs that:
 - a. are necessary expenditures incurred due to the public health emergency and governor's disaster declaration on March 13, 2020 with respect to the Coronavirus Disease 2019 (COVID-19);
 - b. were not accounted for in the budget most recently approved as of March 27, 2020, for County; and
 - c. were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020.

In addition to each of the statements above, I acknowledge on submission of this certification that my jurisdiction has incurred eligible expenses between March 1, 2020 and the date noted below.

By: 
Name and title: John Hofstad, County Administrator
Date: July 7, 2020

Attachment A - CERTIFICATION REGARDING LOBBYING

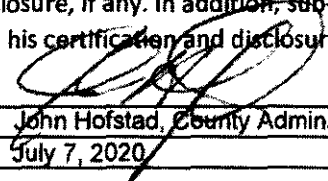
Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned sub-recipient, Okaloosa County, certifies, to the best of his or her knowledge that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence any officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- 3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. Sec. 1352 (as amended by the Lobbying Disclosure Act of 119). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The sub-recipient, Okaloosa County, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, sub-recipient understands and agrees that the provisions of 31 U.S.C. Sec. 3801 *et seq.* apply to his certification and disclosure, if any.

By: 
 Name and title: John Hofstad, County Administrator
 Date: July 7, 2020

STATE OF FLORIDA

DIVISION OF EMERGENCY MANAGEMENT

By: Allison McLeary
 Name and title: _____
 Date: 7-8-20

Digitally signed by Allison McLeary
 DN: dc=org, dc=floc, ou=DEM_Users, ou=Recovery,
 ou=RecoveryCoordination, cn=Allison McLeary,
 email=Allison.McLeary@em.myflorida.com
 Date: 2020.07.08 11:17:04 -04'00'

Interim Bureau Chief

Attachment B

PROGRAM STATUTES AND REGULATIONS

42 USC 601(d) CARES Act	Creation of the Coronavirus Relief Fund (CRF)
Section 215.422, Florida Statutes	Payments, warrants, and invoices; processing time limits; dispute limitation; agency or judicial branch compliance
Section 215.971, Florida Statutes	Agreements funded with federal and state assistance
Section 216.347, Florida Statutes	Disbursement of grant and aids appropriations for lobbying prohibited
CFO MEMORANDUM NO. 04 (2005-06)	Compliance Requirements for Agreements

ATTACHMENT B

Commented [PK3]: Insert City's Plan

SUBRECIPIENT EXPENDITURE PLAN

Project Number 1: Cover Cost Expenses Not Budgeted for in our 2019-2020 Budget.

Project Number 2: Allocate Funds to Okaloosa County to help the Town with Community Public Safety Needs voted on by the Town Council on July 9, 2020.

ATTACHMENT C
SUPPORTING DOCUMENTATION REQUIREMENTS

The subrecipient should prepare a cover page on their letterhead with the date of the reimbursement request and amount with the required certification as noted in this agreement. The cover page should be signed by person authorized to obligate the subrecipient.

An Excel spreadsheet will be provided to the subrecipient to prepare a reimbursement request summary. Each line should have a unique sequence number which will correlate to the supporting documentation. That unique number should appear on the supporting documentation pages.

The minimum documentation should include:

Town of Cinco Bayou, Florida

Subaward

Vendor payments:

Check copy
Invoice copy

Procurement:

Small purchase up to \$250,000.00
Justification of procurement method

Payroll:

Payroll register with check number; check date; employee name and total hours worked; total fringe benefits

Timesheet

Fringe Benefit rate calculation

In-house equipment:

Description of equipment; record of usage; time used; equipment rate
Equipment rate basis

Costs incurred on or before September 30 must be submitted by October 5.

Costs related to Phase 1, the initial 25%, must be on separate reimbursement requests. All Phase 1 costs must be submitted and approved prior to submitting costs under Phase 2.

An updated Excel spreadsheet will be provided to the subrecipient for Phase 2.

ATTACHMENT D-1

FEDERAL PROVISIONS APPLICABLE TO SUBRECIPIENT

The Project subject to this Agreement is fully or partially funded by Federal grants and therefore, the Subrecipient will be required to comply with the following provisions:

1. **Drug Free Workplace Requirements:** All Subrecipients and contractors entering into Federal funded contracts over the simplified acquisition threshold (as defined at 41 U.S.C. § 134) must comply with the Drug Free Workplace Act of 1988 (41 U.S.C. 8102), which requires the Subrecipient to take certain actions to provide a drug-free workplace.

2. **Davis-Bacon Act:** If applicable, the Subrecipient agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. §§ 3141-3144 and 3136-3148), and to require all of its contractors performing work under this Agreement to adhere to same. The Subrecipient and its contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Subrecipient and its contractors are required to pay wages not less than once a week. If the grant award contains Davis Bacon provisions, the Subrecipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in the solicitation documents. The decision to award a contract shall be conditioned upon the acceptance of the wage determination. The Subrecipient shall must report all suspected or reported violations of the Davis-Bacon Act to the County.

3. **Copeland Anti Kick Back Act:** Subrecipient and its contractors shall comply with all the requirements of the Copeland Anti-Kickback Act (18 U.S.C. § 874 and 40 U.S.C. § 3145, as supplemented by Department of Labor regulations at 29 CFR Part 3), which are incorporated by reference to this Agreement. Subrecipient and its contractors are prohibited from inducing by any means any person employed in the construction, completion or repair of public work to give up any part of the compensation to which he or she is otherwise entitled.

4. **Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708):** Where applicable, all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers must be in compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. § 3702 of the Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. **Debarment and Suspension (Executive Orders 12549 and 12689):** A contract award (see 2 CFR 180.220) must not be made under this Agreement to parties listed on the

government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR part 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), Debarment and Suspension. SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The contractor shall certify compliance. The Subrecipient further agrees to include a provision requiring such compliance in its lower tier covered transactions and subcontracts, which shall read as follows:

Applicants or bidders for a lower tier covered transaction (except procurement contracts for goods and services under \$25,000 not requiring the consent of the County and/or the applicable state or federal entity) are subject to 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)." In addition, applicants or bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than \$100,000 of Federal funds at any tier are subject to relevant statutes, including among others, the provisions of 31 U.S.C. 1352, as well as the common rule, "New Restrictions on Lobbying," published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget "Governmentwide Guidance for New Restrictions on Lobbying," and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), 57 FR 1772 (January 15, 1992), and 61 FR 1412 (January 19, 1996)

6. **Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352):** Subrecipients that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. The contractor shall certify compliance.

7. **501(c)(4) Entities.** The Lobbying Disclosure Act of 1995, as amended (2 U.S.C. §1601 *et seq.*), prohibits any organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities, from receiving federal funds, including through an award, grant, and/or subgrant. Subrecipient shall ensure that its contractors and sub-awardees comply with this requirement.

8. **Federal Changes:** Subrecipient shall comply with all applicable Federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of the contract.

Town of Cinco Bayou, Florida

Subaward

9. **Safeguarding Personal Identifiable Information:** Subrecipient and its contractors and subawardees will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable Federal, state and/or local laws regarding privacy and obligations of confidentiality.

10. **Energy Policy and Conservation Act (43 U.S.C. §6201):** Contracts shall comply with mandatory standards and policies relating to energy efficiency, stating in the state energy conservation plan issued in compliance with the Energy Policy and Conservation act. (Pub. L. 94-163, 89 Stat. 871) [53 FR 8078, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19645, Apr. 19, 1995].

11. **Right to Inventions Under Federal Grants.** If applicable, Subrecipient shall comply with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

ATTACHMENT D-2

FEDERAL NON-DISCRIMINATION PROVISIONS

In performing under this Agreement, Subrecipient shall comply with the following federally mandated non-discrimination requirements, as applicable:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.)
2. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.)
3. Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12101 et seq.)
4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794)
5. Revised ADA Standards for Accessible Design for Construction Awards
 - a. Title II of the Americans with Disabilities Act (ADA) (28 C.F.R. part 35; 75 FR 56164, as amended by 76 FR 13285)
 - b. Title III of the ADA (28 C.F.R. part 36; 75 FR 56164, as amended by 76 FR 13286)
6. Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.)
7. Parts II and III of EO 11246, "Equal Employment Opportunity," (30 FR 12319, 1965), as amended by EO 11375 (32 FR 14303, 1967)
8. EO 12086 "Consolidation of contract compliance functions for equal employment opportunity" (43 FR 46501, 1978), requiring federally assisted construction contracts to include the non-discrimination provisions of §§ 202 and 203 of EO 11246 "Equal Employment Opportunity" (41 C.F.R. § 60-1.4(b), 1991)
9. EO 13166 (August 11, 2000), "Improving Access to Services for Persons With Limited English Proficiency"
10. Pilot Program for Enhancement of Employee Whistleblower Protections. The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. No. 112-239, enacted January 2, 2013 and codified at 41 U.S.C. § 4712)

ATTACHMENT D-3

ENVIRONMENTAL COMPLIANCE

In performing under this Agreement, Subrecipient shall comply with all of the federal environmental statutes, regulations, and executive orders listed below, as applicable:

1. The National Environmental Policy Act (42 U.S.C. § 4321 et seq.)
2. The Endangered Species Act (16 U.S.C. § 1531 et seq.)
3. Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 et seq.)
4. Clean Water Act Section 404 (33 U.S.C. § 1344 et seq.)
5. The Migratory Bird Treaty Act (16 U.S.C. §§ 703-712); Bald and Golden Eagle Protection Act (16 U.S.C. § 668 et seq.), and Executive Order No. 13186, Responsibilities of Federal Agencies to Protect Migratory Birds
6. National Historic Preservation Act (54 U.S.C. § 300101 et seq.) and the Advisory Council on Historic Preservation Guidelines (36 CFR part 800)
7. Clean Air Act (42 U.S.C. § 7401 et seq.), Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) (Clean Water Act), and Executive Order 11738 ("Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans")
8. The Flood Disaster Protection Act (42 U.S.C. § 4002 et seq.)
9. Executive Order 11988 ("Floodplain Management") and Executive Order 11990 ("Protection of Wetlands")
10. Executive Order 13112 ("Invasive Species")
11. The Coastal Zone Management Act (16 U.S.C. § 1451 et seq.)
12. The Coastal Barriers Resources Act (16 U.S.C. § 3501 et seq.)
13. The Wild and Scenic Rivers Act (16 U.S.C. § 1271 et seq.)
14. The Safe Drinking Water Act (42 U.S.C. § 300 et seq.)
15. The Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.)
16. The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. § 9601 et seq.)

Town of Cinco Bayou, Florida

Subaward

17. Executive Order 12898 ("Environmental Justice in Minority Populations and Low Income Populations")
18. Rivers and Harbors Act (33 U.S.C. § 407)
19. Marine Protection, Research and Sanctuaries Act (Pub. L. 92-532, as amended), National Marine Sanctuaries Act (16 U.S.C. § 1431 et seq.), and Executive Order 13089 ("Coral Reef Protection")
20. Farmland Protection Policy Act (7 U.S.C. 4201 et seq.)
21. Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.)
22. Pursuant to 2 CFR §200.322, Subrecipient and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Town of Cinco Bayou, Florida

Subaward

ATTACHMENT E

CERTIFICATION REGARDING USE OF FUNDS

I, Keith Williams, in my capacity as Chief Executive for the Subrecipient, hereby certify and affirm that the funds to be provided to Subrecipient under this Agreement, whether directly or on a reimbursement basis, shall only be used to cover those costs that:

(1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);

(2) were not accounted for in the budget most recently approved as of the date of enactment of this section for the Subrecipient; and

(3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020, or such earlier date as may be provided in the Agreement.


TOWN OF CINCO BAYOU, FLORIDA

By: 

Keith Williams Town Manager/Clerk
Print Name and Title

Date: 10/08/2020

Commented [PK4]: Insert name of individual signing on behalf of the City.

Attest:
By: 
Linda Barringer Deputy Clerk
Print Name and Title