

RESOLUTION NO. 23-170

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, APPROVING A LOAN AGREEMENT BETWEEN THE TOWN AND THE STATE OF FLORIDA, DIVISION OF EMERGENCY MANAGEMENT IN THE PRINCIPAL AMOUNT OF \$5,000,000.00 TO FUND HURRICANE IAN RELATED REPAIRS AND RECOVERY FOR WHICH WE WILL BE RECEIVING PUBLIC ASSISTANCE; MAKING CERTAIN CERTIFICATIONS; AGREEING TO CERTAIN TERMS AND CONDITIONS; DESIGNATING OFFICIALS WITH AUTHORITY TO EXECUTE THE LOAN DOCUMENTS; AUTHORIZING THE EXECUTION AND DELIVERY OF THE LOAN DOCUMENTS ATTACHED AS EXHIBIT “A”; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach (“Town”) empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, on September 28, 2022, Hurricane Ian made landfall in Fort Myers Beach as a category four hurricane with 150-mph winds and a storm surge of approximately fifteen feet (15’) causing catastrophic damage to the Town’s beach, beach access facilities, public buildings, public communication systems, public drainage and utility systems, public streets and roads, and commercial and residential buildings and areas; and

WHEREAS, financial assistance from the State of Florida is going to be essential to rebuilding of the Town and to the Town’s ability to provide essential services to its business owners, residents, and visitors; and

WHEREAS, the Town believes it is in the best interest for the health, safety and welfare of the Town’s business owners, residents, and visitors to enter into the Loan Agreement with the State of Florida Division of Emergency Management attached as Exhibit “A” (“Loan Agreement”).

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

Section 1. The above recitals are true and correct, and incorporated herein by this reference and adopted as the legislative and administrative findings of the Town Council; all exhibits referenced and attached are incorporated herein and made a specific part of this Resolution.

Section 2. This Resolution is adopted pursuant to the provisions of the Constitution of the State of Florida, Chapter 166, *Florida Statutes*, as amended and other applicable provisions of law.

Section 3. It is hereby ascertained, determined, and declared that:

(A) It is necessary and desirable for the benefit of its inhabitants and the continued preservation of the economic welfare, and the health, welfare, and safety of the Local Government and its inhabitants, to obtain a loan from the State of Florida Division of Emergency Management through the Hurricane Recovery Grant Program, subject to SB2500 (2300), Item 2676A in the amount of \$5,000,000.00, to provide funds for hurricane repair and recovery related projects.

(B) It is necessary and desirable to provide for the execution and delivery of the Loan Documents to implement and deliver the Loan.

(C) The Local Government shall accept, subject to the terms and conditions of the Loan Documents, the Loan amount, for the purposes described above.

(D) The Loan amount shall bear no interest and shall be payable from the Public Assistance (PA) reimbursements to the Town for the project related eligible expenses, and any remaining balance is to be paid in accordance with a payment plan approved by the Department of Financial Services.

(E) The Local Government will maintain all unexpended Loan funds received from the Department in a bank account separate from its other operating or other special purpose accounts. The Local Government will not commingle the Loan funds with any other funds, projects, or programs. Any interest earned on unexpended Loan funds remain State funds.

(F) The Mayor, Vice Mayor, Town Clerk, Town Manager and Finance Director are hereby authorized to take such further actions and execute and deliver such further documents, certificates and agreements as are necessary to facilitate the purposes of this Resolution.

Section 4. *Limitation of Rights.* With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Resolution or the Loan Documents is intended or shall be construed to give to any person other than the Local Government and the Department any legal or equitable right, remedy, or claim under or with respect to this Resolution, the Loan funds, the Loan Documents, or any covenants, conditions and provisions herein contained; this Resolution and all of the covenants, conditions, and provisions hereof being intended to be and being for the sole and exclusive benefit of the Local Government and the Department.

Section 5. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

Section 6. This resolution shall take effect immediately upon its adoption.

The foregoing Resolution was approved by the Town Council upon a motion by Council Member Veach and seconded by Council Member King, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King, Council Member	Aye
Bill Veach, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 4th day of December 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH


Dan Allers (Dec 10, 2023 19:17 EST)

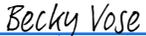
Dan Allers, Mayor

ATTEST:


AMY BAKER (Dec 11, 2023 10:47 EST)

Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:


Becky Vose (Dec 10, 2023 19:25 EST)

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 8th day of December 2023.

Agreement Number:

AGREEMENT FOR 2023/2024 HURRICANE LEGISLATIVE APPROPRIATION PROGRAM

The following Agreement is entered into pursuant to the 2023 Specific Appropriation 2676A pursuant to which the Florida Legislature intends to provide resources to fund gaps in hurricane repairs and recovery to publicly owned facilities damaged in the hurricanes, infrastructure repairs, and loss of local and county revenues within counties designated in the Federal Emergency Management Agency (FEMA) disaster declarations for Hurricane Ian and/or Hurricane Nicole, based on legislative selection, subject to certain requirements.

Recipient's name:	Fort Myers Beach, Town of
Recipient's unique entity identifier (UEI):	J87EFSEEQ884
Recipients FIPS Number:	071-24150-00
State award project description:	Funding for local government entities in eligible counties impacted by Hurricane Ian and/or Hurricane Nicole for gaps in hurricane repairs and recovery, subject to the availability of funds which are allocated based on legislative selection.
Contact information for agreement parties:	Florida Division of Emergency Management Bureau of Recovery 2555 Shumard Oak Blvd Tallahassee, FL 32399-2100

THIS AGREEMENT is entered into by the State of Florida, Division of Emergency Management, with headquarter s in Tallahassee, Florida (hereinafter referred to as the "Division"), and Fort Myers Beach, Town of (hereinafter referred to as the "Recipient").

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING MANDATORY CERTIFICATIONS:

- A. The Recipient certifies that it is an eligible local government, independent special district, or school board, including a charter school, within a county designated in the FEMA disaster declarations for Hurricane Ian and/or Hurricane Nicole respectively.
- B. The Recipient certifies that any funding requested is necessary to maintain services or

infrastructure essential to support health, safety, and welfare functions and to reimburse the local government, independent special district, school board, or charter school (Recipient) for unanticipated expenses related to recovering from Hurricane Ian or Nicole or for the loss of revenues related to the impact of Hurricane Ian or Nicole.

- C. The Recipient certifies that insufficient state funds, federal funds, private funds, or insurance proceeds are available to meet the functions listed above.
- D. The Recipient certifies that should sufficient funds subsequently become available to meet the needs of the original budget amendment, the Recipient agrees to reimburse the State of Florida Division of Emergency Management in the amount of such funds subsequently received.
- E. The Recipient, by its decision to participate in this program, bears the ultimate responsibility for ensuring compliance with all applicable State and Federal laws, regulations, and policies, and bears the ultimate consequences of any adverse decisions rendered by the Division or any other State and Federal agencies with audit, regulatory, or enforcement authority;
- F. This Agreement establishes the relationship between the Division and the Recipient to allow the Division to provide funds to the Recipient;

THEREFORE, the Division and the Recipient agree to the following:

(1) LAWS, RULES, REGULATIONS, AND POLICIES

- A. 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. 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 Recipient fails to perform the minimum level of service required by the agreement.
 - iv. A provision specifying that the Recipient 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.

B. In addition to the foregoing, the Recipient and the Division shall 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 Grant Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the Division's liaison with the Recipient. As part of his/her duties, the Grant Manager for the Division shall:

- i. Monitor and document Recipient performance;
- ii. Review and document all deliverables for which the Recipient requests payment; and
- iii. Have the ability to send all notices reasonably provided for in this agreement, including but not limited to, the notices for default and termination.

B. The Division's Grant Manager for this Agreement is:

Amanda Lambert
2555 Shumard Oak Boulevard
Tallahassee, FL 32399
Telephone: 850-815-4425
Email: amanda.lambert@em.myflorida.com

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

Andrew Hyatt, Town Manager
2525 Estero Blvd.
Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: Andyhyatt@fmbgov.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. Eligibility to receive funding under this Agreement shall be determined utilizing the following categories:

A. Category 1: Public Assistance

This funding category is for a Recipient that has, or will have, a Public Assistance (PA) Project Worksheet (PW) on file. Funding for the following subcategories will be used as an advanced payment or a zero percent loan to get projects started and shall be repaid up to the amount of funds subsequently received:

- i. Subcategory 1A: A PW that has a legislative member project that was introduced during the last legislative session and is associated to the work.
- ii. Subcategory 1B: A PW that is ready to start work but requires funding to get started.

(4) EXECUTION

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

(5) MODIFICATION

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original Agreement.

(6) SCOPE OF WORK

The Recipient shall perform the work in accordance with the Budget and Scope of Work, Attachment A of this Agreement.

(7) PERIOD OF AGREEMENT/PERIOD OF PERFORMANCE

This Agreement survives and remains in effect after termination for the herein referenced State

audit requirements and the referenced required records retention periods. Work may only be performed during the timeframes established and approved by the Division and/or FEMA for each Category of Work type. The Period of this Agreement extends until such time as all loaned funds have been returned to the State General Revenue Fund.

(8) FUNDING

- A. Unless otherwise specified under Terms and Conditions, this is a lump sum loan Agreement subject to the availability of funds.
- B. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an appropriation by the Legislature, and subject to any modification in accordance with either Chapter 216, Florida Statutes, or the Florida Constitution.
- C. The Division will loan funds to the Recipient only for allowable costs to be incurred by the Recipient in the successful completion of each deliverable. The loan amount for each deliverable is outlined in Attachment A of this Agreement ("Budget and Scope of Work").
- D. The Division's Grant 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 Recipient.
- 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; and,
 - ii. Any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.
- F. All funds shall be placed in an interest-bearing account and all unused loan funds and the interest shall be returned to the State's General Revenue Fund. The unused loan funds shall not be paid towards the original loan amount.

(9) ADDED PROVISIONS FOR PUBLIC ASSISTANCE FUNDING

- A. If the Recipient is receiving Public Assistance (PA) funding, once the referenced PA project is obligated instead of payment being initiated traditionally, funds shall be drawn down from the SmartLink account and transferred back to the State General Revenue Fund via offset memo.
- B. The funds and the interest shall be transferred back to the State's General Revenue Account.
- C. In the event all PA projects tied to the loan have had the initial version obligated and the full amount of the loan has not been offset, the Recipient shall repay the balance to the Division in accordance with Paragraph (11) REPAYMENTS.
- D. In the event the cumulative amount of the PA projects tied to the loan obligate at a lesser amount than the amount of the approved loan, the applicant may request loan forgiveness.
- E. Loan forgiveness may only be requested following a determination memo or after the obligation of the final project's closeout version within the funding agreement and shall be requested within 90 days of whichever occurs last.
- F. The Recipient shall abide by all Federal Regulations regulating PA projects.

(10) RECORDS

- A. As a condition of receiving state 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 Recipient 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 Recipient's personnel for the purpose of interview and discussion related to such documents. For the purposes of this section, the term "Recipient" includes employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement.
- B. The Recipient 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. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the open government requirements. However, the Government in the Sunshine Law applies to private entities that provide services to governmental agencies and that act on behalf of those agencies in the agencies' performance of their public duties. If a public agency delegates the performance of its public purpose to a private entity, then, to the extent that private entity is performing that public purpose, the Government in the Sunshine Law applies. For example, if a volunteer fire department provides firefighting services to a governmental entity and uses facilities and equipment purchased with public funds, then the Government in the Sunshine Law applies to board of directors for that volunteer fire department. Thus, to the extent that the Government in the Sunshine Law applies to the Recipient based upon the funds provided under this Agreement, the meetings of the Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board may be subject to open government requirements. These meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with Chapter 119, Florida Statutes.
- 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. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the public record requirements. However, when a public entity delegates a public function to a private entity, the records generated by the private entity's performance of that duty become public records. Thus, the nature and scope of the services provided by a private entity determine whether that entity is acting on behalf of a public agency and is therefore subject to the requirements of Florida's Public Records Law.
- E. The Recipient shall maintain all records for the Recipient and for all subcontractors or

consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Budget and Scope of Work - Attachment A - and all other applicable laws and regulations.

IF THE RECIPIENT/CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, OR AS TO THE RECIPIENT/CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (850) 815-7671, Records@em.myflorida.com, or 2555 Shumard Oak Boulevard, Tallahassee, FL 32399.

(11) REPAYMENTS

- A. Refunds or repayments of obligated funds, if any, may be paid to the Division through check or through a payment plan as approved by the Department of Financial Services. In accordance with Chapter 218, Florida Statutes, the Recipient has thirty (30) days to repay the funds from the issuance of the invoice from the Division.
- B. All refunds or repayments due to the Division under this Agreement are to be made payable to the order of "Division of Emergency Management," and must include the invoice number and the applicable Disaster and Project number(s) that are the subject of the invoice, and be mailed directly to the following address:

Division of Emergency Management Cashier
Attention: Cashier
2555 Shumard Oak Boulevard
Tallahassee FL 32399-2100

- C. In accordance with Section 215.34(2), Florida Statutes, if a check or other draft is returned to the Division for collection, Recipient 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.

(12) AUDITS

- A. In accounting for the receipt and expenditure of funds under this Agreement, the Recipient shall follow Generally Accepted Accounting Principles ("GAAP"). As defined by 2 C.F.R.

§200.1, 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 Recipient’s performance under this Agreement, the Division shall use Generally Accepted Government Auditing Standards (“GAGAS”). As defined by 2 C.F.R. §200.1, 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 this Agreement, the Recipient shall 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 Recipient of such non-compliance.
- D. The Recipient shall 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 shall 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 Recipient’s fiscal year.
- E. The Recipient shall send copies of reporting packages required under this paragraph directly to each of the following:

The Division of Emergency Management
DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

AND

The Auditor General
Room 401, Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

(13) REPORTS

- A. The Recipient shall provide the Division with quarterly reports and a close-out report for their traditional PA projects on their Ian or Nicole profiles in FLPA. These reports shall include the current status and progress by the Recipient in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to any other information requested by the Division.
- B. Reports for the LAPS program on funding agreement status, obligated PA funds, loan payments and offsets will be provided by the Divisions grants managers on a bi-weekly basis or as requested by management and the LAPS program manager.

(14) MONITORING

- A. The Recipient shall monitor its performance under this Agreement, as well as that of its subcontractors and/or consultants who are paid from funds provided under this Agreement, to ensure that time schedules are met, the Schedule of Deliverables and Scope of Work are accomplished within the specified time periods, and other performance goals are achieved. A review shall be done for each function or activity in Attachment A to this Agreement and reported in the quarterly report.
- B. 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 Recipient 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 Recipient is appropriate, the Recipient agrees to comply with any additional instructions provided by the Division to the Recipient regarding such audit. The Recipient 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 Recipient throughout the period of agreement to ensure timely completion of all tasks.

(15) LIABILITY

Any Recipient 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 shall 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.

(16) DEFAULT

If any of the following events occur (“Events of Default”), all obligations on the part of the Division to make further payment of funds shall, if the Division elects, terminate and the Division has the option to exercise any of its remedies set forth in Paragraph (17) 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:

- A. If any warranty or representation made by the Recipient in this Agreement or any previous agreement with the Division is or becomes false or misleading in any respect, or if the Recipient 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;
- B. If material adverse changes occur in the financial condition of the Recipient at any time during the period of agreement, and the Recipient fails to cure this adverse change within thirty (30) days from the date written notice is sent by the Division.
- C. If any reports required by this Agreement have not been submitted to the Division or have been submitted with incorrect, incomplete or insufficient information;
- D. If the Recipient has failed to perform and complete on time any of its obligations under this Agreement.

(17) REMEDIES

If an Event of Default occurs, then the Division shall, after thirty (30) calendar days provide written notice to the Recipient and upon the Recipient’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 Recipient 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 Recipient reimburse 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 Recipient 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 Recipient to suspend, discontinue or refrain from incurring costs for any activities in question; or
 - iv. Require the Recipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible.
- 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 Recipient, 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 Recipient.

(18) CONTRACTS

If the Recipient contracts any of the work required under this Agreement, a copy of the unsigned contract must be forwarded to the Division for review and approval before it is executed by the Recipient. The Recipient agrees to include in the contract that (i) the contractor is bound by the terms of this Agreement, (ii) the contractor is bound by all applicable state and federal laws and regulations, and (iii) the contractor shall hold the Division and Recipient harmless against all claims of whatever nature arising out of the contractor's performance of work under this Agreement, to the extent allowed and required by law. The Recipient shall document in the quarterly report the contractor's progress in performing its work under this Agreement.

For each contract, the Recipient shall provide a written statement to the Division as to whether that contractor is a minority business enterprise, as defined in Section 288.703, Florida Statutes.

(19) ATTACHMENTS

- 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 shall control, but only to the extent of the conflict or inconsistency.

C. This Agreement has the following attachments:

Exhibit 1 – Funding Sources

Attachment A – Budget and Scope of Work

Attachment B – Program Statutes and Regulations

Attachment C – Warranties and Representations

Attachment D – Certification Regarding Debarment

Attachment E – Statement of Assurances

Attachment F – Foreign Country of Concern Affidavit – Personal

Identifying Information Contract

(20) PAYMENTS

A. Any advance payment under this Agreement is subject to Section 216.181(16), Florida Statutes. All advances are required to be held in an interest-bearing account.

B. If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the federal Office of Management and Budgeting, the State Chief Financial Officer or under paragraph 8 of this Agreement, all obligations on the part of the Division to make any further payment of funds shall terminate, and the Recipient shall submit its closeout report within thirty (30) days of receiving notice from the Division.

(21) MANDATED CONDITIONS

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 Recipient 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 shall, at the option of the Division and within thirty (30) days written notice to the Recipient, cause the termination of this Agreement, will release of the Division from all its obligations to the Recipient, and may require mandatory reimbursement of the monies back to the Division or withholding of FEMA PA funds.

B. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall 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 shall be null and void to the extent of the conflict, and shall be severable, but shall 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 shall survive the term of this Agreement.
- D. The Recipient 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.
- E. 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 \$35,000.00 for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.
- F. Any Recipient which is not a local government or state agency, and which receives funds under this Agreement from the state government, certifies, to the best of its knowledge and belief, that it and its principals:
 - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;
 - ii. Have not, within a five-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offenses enumerated in paragraph (21)(f)(ii) of this certification; and

- iv. Have not within a five-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.
 - v. If the Recipient is unable to certify to any of the statements in this certification, then the Recipient shall attach an explanation to this Agreement. In addition, the Recipient shall send to the Division (by email or by facsimile transmission) the completed "Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion" (Attachment D) for each intended subcontractor that Recipient plans to fund under this Agreement. The form must be received by the Division before the Recipient enters into a contract with any subcontractor.
- G. 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.
- H. Any bills for travel expenses shall be submitted in accordance with Section 112.061, Florida Statutes.
- I. The Division reserves the right to unilaterally cancel this Agreement if the Recipient refuses to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, which the Recipient created or received under this Agreement.
- J. If the Recipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to the Division or be applied against the Division's obligation to pay the contract amount.
- K. 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 Recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Division.
- L. The Recipient is subject to Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) with respect to the meetings of the Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board. All of these meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with Chapter 119, Florida Statutes.

- M. All expenditures of state financial assistance shall 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 State.
- P. Section 287.05805, Florida Statutes, requires that any state funds provided for the purchase of or improvements to real property are contingent upon the contractor or political subdivision granting to the state a security interest in the property at least to the amount of state funds provided for at least 5 years from the date of purchase or the completion of the improvements or as further required by law.
- Q. The Recipient may not contract with an entity that submitted a false certification as provided under section 287.135(5), Florida Statutes, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.
- R. The Recipient shall attest in Attachment F of this agreement, it is not an entity owned by the government of a Foreign Country of Concern, no government of a Foreign Country of Concern has a controlling interest in the entity, and the entity has not been organized under the laws of or has its principal place of business in a Foreign Country of Concern pursuant to Section 287.138, Florida Statutes.

(22) 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.

(23) COPYRIGHT, PATENT AND TRADEMARK

Except as provided below, any and all patent rights accruing under or in connection with the performance of this agreement are hereby reserved to the State of Florida. Any and all copyrights accruing under or in connection with the performance of this agreement are hereby transferred by the recipient to the State of Florida.

- A. If the Recipient has a pre-existing patent or copyright, the Recipient shall retain all rights and entitlements to that pre-existing patent or copyright unless this Agreement provides otherwise.
- B. If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with it, the Recipient shall refer the discovery or invention to the Division for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Recipient shall notify the Division. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Recipient to the State of Florida.
- C. Within thirty (30) days of execution of this Agreement, the Recipient shall disclose all intellectual properties relating to the performance of this Agreement that he or she knows or should know could give rise to a patent or copyright. The Recipient shall retain all rights and entitlements to any pre-existing intellectual property that is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under Paragraph (b), have the right to all patents and copyrights that accrue during performance of this Agreement.
- D. If the Recipient qualifies as a state university under Florida law, then, pursuant to section 1004.23, Florida Statutes, any invention conceived exclusively by the employees of the Recipient shall become the sole property of the Recipient. In the case of joint inventions, that is inventions made jointly by one or more employees of both parties hereto, each party shall have an equal, undivided interest in and to such joint inventions. The Division shall retain a perpetual, irrevocable, fully-paid, nonexclusive license, for its use and the use of its contractors of any resulting patented, copyrighted or trademarked work products, developed solely by the Recipient, under this Agreement, for Florida government purposes.

(24) LEGAL AUTHORIZATION

The Recipient 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

Recipient also certifies that the undersigned person has the authority to legally execute and bind Recipient to the terms of this Agreement.

(25) ASSURANCES

The Recipient shall comply with any Statement of Assurances incorporated as Attachment E.

(26) TERMINATION

This Agreement terminates upon the completion of all eligible work and payment of all eligible costs in accordance with the Public Assistance Program requirements. The Division reserves the right to remove any local government from the Legislative Appropriation Program if the Division has reason to believe that the local government is engaged in fraud, waste, abuse, or noncompliance with State and/or Federal laws. This Agreement shall otherwise terminate upon the exhaustion of legislatively appropriated funds. The Division and Recipient agree that all records will be maintained until the conclusion of any record retention period.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

RECIPIENT

By: 
Dan Allers (Dec 10, 2023 19:17 EST)

(Signature)

Name: Dan Allers

Title: Mayor, Town of Fort Myers Beach

Date: December 8, 2023

STATE OF FLORIDA, DIVISION OF EMERGENCY MANAGEMENT

By: _____
Governor's Authorized Representative or
Alternate Governor's Authorized Representative

Date: _____

EXHIBIT – 1

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

SUBJECT TO SB 2500 (2023), ITEM 2676A

State Project-

State awarding agency **Florida Division of Emergency Management**

Amount of State Funding: **\$350,000,000**

2676A LUMP SUM
HURRICANE RECOVERY GRANT PROGRAM
FROM GENERAL REVENUE FUND 350,000,000

Funds in Specific Appropriation 2676A are provided for hurricane repair and recovery related to projects within counties designated in the Federal Emergency Management Agency disaster declarations for Hurricanes Ian and Nicole. The Executive Office of the Governor, Division of Emergency Management is authorized to request budget amendments up to \$350,000,000 requesting release of funds pursuant to chapter 216, Florida Statutes, to provide resources to fund gaps in: mitigation of local and county revenue losses and operating deficits; infrastructure repair and replacement, including road, sewer, and water facilities; beach renourishment; and debris removal. The division is authorized to approve requests for resources by local governments, independent special districts, and school boards, including charter schools. A local government may submit a request for resources to administer infrastructure repair or beach renourishment grants within the jurisdiction of the local government, provided that the grant program requires matching funds by grantees of at least 50 percent of project costs. Requests for the release of funds shall include certification that includes, but is not limited to:

1. That funding requested by the local government, independent special district, and school board, including a charter school, is necessary to maintain services or infrastructure essential to support health, safety, and welfare functions, and to reimburse the local government, independent special district, school board, or charter school for unanticipated expenses related to responding to Hurricane Ian or Nicole or for the loss of revenues related to the impact of Hurricane Ian or Nicole.
2. That insufficient state funds, federal funds, private funds, or insurance proceeds are available and that should sufficient funds subsequently become available to meet the need of the original budget amendment, the local government or entity has agreed to reimburse the state in the amount of such funds subsequently received.

The division shall coordinate with other state agencies and the local government or entity to ensure there is no duplication of benefits between these funds and other funding sources such as insurance proceeds and any other federal or state programs, including Public Assistance requests to the Federal Emergency Management Agency and Community Development Block Grant Disaster Recovery grants. Requests approved by the division for funding that are for projects ineligible for any other funding sources, whether federal or state programs, may be provided as grants. Requests approved by the division for funding that are for projects that are eligible for other funding sources shall be provided as loans which shall be repaid up to the amount of funds subsequently received. Any funds reimbursed to the state shall be deposited in the General Revenue Fund.

Attachment A

Scope of Work

The following Public Assistance program projects will be subject to potential offset following the initial lump-sum payment:

704871 Assessment for an Island wide dredging	706501 Road sign replacement
705370 Town Hall Replacement	706510 Community Pool
705376 Restoration of Stormwater Swale Repair	706971 Mooring Field Repairs
705378 Bay Oaks Recreation	706975 North Pump station
705379 North Pump station repairs	706985 Time Square Repairs
705382 South Pump Station Repairs	706988 A&E services - Beach Access Repairs
706499 Pump Station Replacement	714446 Road Repairs

Individual project Scopes of Work can be found in FloridaPA.org/Grants portal.

Attachment B
Program Statutes and Regulations

Section 215.422, Florida Statutes	Payments, warrants, and invoices; processing time limits; dispute limitation; agency or judicial branch compliance
Section 215.97, Florida Statutes	Florida Single Audit Act
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
Section 216.3475, Florida Statutes	Maximum rate of payment for services funded under General Appropriations Act or awarded on a noncompetitive basis
Section 287.056, Florida Statutes	Purchases from purchasing agreement and state term contract
Section 287.057, Florida Statutes	Procurement of commodities or contractual services
CFO MEMORANDUM NO. 04 (2005-06)	Compliance Requirements for Agreements
Section 553.844, Florida Statutes	Requirements for Roofs and Opening Protection
SB 2500 (2023), ITEM 2676A	Requirements for Hurricane Recovery Grant Program

Attachment C
Warranties and Representations

Financial Management

Recipient's financial management system must include the following:

- (1) Accurate, current and complete disclosure of the financial results of this project or program
- (2) Records that identify the source and use of funds for all activities. These records shall contain information pertaining to grant awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.
- (3) Effective control over and accountability for all funds, property and other assets. Recipient shall safeguard all assets and assure that they are used solely for authorized purposes.
- (4) Comparison of expenditures with budget amounts for each Request For Payment. Whenever appropriate, financial information should be related to performance and unit cost data.
- (5) Written procedures to determine whether costs are allowed and reasonable under the provisions of the applicable OMB cost principles and the terms and conditions of this Agreement.
- (6) Cost accounting records that are supported by backup documentation.

Competition

All procurement transactions shall be done in a manner to provide open and free competition. The Recipient shall be alert to conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure excellent contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the Recipient, considering the price, quality and other factors. Solicitations shall clearly set

forth all requirements that the bidder or offeror must fulfill in order for the bid or offer to be evaluated by the Recipient. Any and all bids or offers may be rejected when it is in the Recipient's interest to do so.

Codes of Conduct.

The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by public grant funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the Recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The standards of conduct shall provide for disciplinary actions to be applied for violations of the standards by officers, employees, or agents of the Recipient.

Business Hours

The Recipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site, from

Licensing and Permitting

All subcontractors or employees hired by the Recipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Recipient.

Attachment D

**Certification Regarding
Debarment, Suspension, Ineligibility
And Voluntary Exclusion**

Subcontractor Covered Transactions

- (1) The prospective subcontractor, _____, of the Recipient certifies, by submission of this document, 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.

- (2) Where the Recipient's subcontractor is unable to certify to the above statement, the prospective subcontractor shall attach an explanation to this form.

SUBCONTRACTOR:

By: _____
Signature

Recipient's Name

Name and Title

DEM Contract Number

Street Address

Project Number

City, State, Zip

Date

Attachment E

Statement of Assurances

To the extent the following provisions apply to this Agreement, the Recipient certifies that:

- (a) It possesses legal authority to enter into this Agreement and to carry out the proposed program;
- (b) Its governing body has duly adopted or passed as an official act of resolution, motion or similar action authorizing the execution of the hazard mitigation agreement with the Division of Emergency Management (DEM), including all understandings and assurances contained in it, and directing and authorizing the Recipient's chief administrative officer or designee to act in connection with the application and to provide such additional information as may be required;
- (c) No member of or delegate to the Congress of the United States, and no Resident Commissioner, shall receive any share or part of this Agreement or any benefit. No member, officer, or employee of the Recipient or its designees or agents, no member of the governing body of the locality in which this program is situated, and no other public official of the locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year after, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds, for work to be performed in connection with the program assisted under this Agreement. The Recipient shall incorporate, in all contracts or subcontracts a provision prohibiting any interest pursuant to the purpose stated above;
- (d) All Recipient contracts for which the State Legislature is in any part a funding source, shall contain language to provide for termination with reasonable costs to be paid by the Recipient for eligible contract work completed prior to the date the notice of suspension of funding was received by the Recipient. Any cost incurred after a notice of suspension or termination is received by the Recipient may not be funded with funds provided under this Agreement unless previously approved in writing by the Division. All Recipient contracts shall contain provisions for termination for cause or convenience and shall provide for the method of payment in such event;
- (e) It will comply with:
 - i) Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327 et seq., requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work week; and
 - ii) Federal Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., requiring that covered employees be paid at least minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed workweek.
- (f) It will comply with
 - (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulations issued pursuant thereto, which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient received Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Recipient, this assurance shall obligate the Recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;

- (2) Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualifies handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973;
- (3) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff/termination, rates of pay or other forms of compensation; and election for training and apprenticeship;
- (g) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties pursuant to Section 112.313 and Section 112.3135, Florida Statutes;
- (h) It will comply with the Anti-Kickback Act of 1986, 41 U.S.C. Section 51 which outlaws and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities;
- (i) It will comply with the provisions of 18 U.S.C. 594, 598, 600-605 (further known as the Hatch Act) which limits the political activities of employees;
- (j) It will comply with the flood insurance purchase and other requirements of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4002-4107, including requirements regarding the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance;

For sites located within Special Flood Hazard Areas (SFHA), the Recipient must include a FEMA Model Acknowledgement of Conditions of Mitigation of Property in a Special Flood Hazard Area with FEMA Grant Funds executed by the title holder with the closeout request verifying that certain SFHA requirements were satisfied on each of the properties. The Model Acknowledgement can be found at www.fema.gov/governmenta/grant/sfha_conditions.shtm

- (k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Agreement to comply with the "Uniform Federal Accessibility Standards," (AS) which is Appendix A to 41 CFR Section 101-19.6 for general type buildings and Appendix A to 24 CFR, Part 40 for residential structures. The Recipient will be responsible for conducting inspections to ensure compliance with these specifications by the contractor;
- (1) It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (U.S.C. 470), Executive Order 11593, 24 CFR, Part 800, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. 469a-l, et seq.) by:
 - (1) Consulting with the State Historic Preservation Office to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR, Section 800.8) by the proposed activity; and
 - (2) Complying with all requirements established by the State to avoid or mitigate adverse effects upon such properties.

- (3) Abiding by the terms and conditions of the "Programmatic Agreement Among the Federal Emergency Management Agency, the Florida State Historic Preservation Office, the Florida Division of Emergency Management and the Advisory Council on Historic Preservation, (PA)" which addresses roles and responsibilities of Federal and State entities in implementing Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(£), and implementing regulations in 36 CFR, Part 800.
- (4) When any of the Recipient's projects funded under this Agreement may affect a historic property, as defined in 36 CFR, Part 800.16 (l)(1), the Federal Emergency Management Agency (FEMA) may require the Recipient to review the eligible scope of work in consultation with the State Historic Preservation Office (SHPO) and suggest methods of repair or construction that will conform with the recommended approaches set out in the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings 1992 (Standards), the Secretary of the Interior's Guidelines for Archeological Documentation (Guidelines) (48 Federal Register 44734-37), or any other applicable Secretary of Interior standards. If FEMA determines that the eligible scope of work will not conform with the Standards, the Recipient agrees to participate in consultations to develop, and after execution by all parties, to abide by, a written agreement that establishes mitigation and recondition measures, including but not limited to, impacts to archeological sites, and the salvage, storage, and reuse of any significant architectural features that may otherwise be demolished.
- (5) The Recipient agrees to notify FEMA and the Division if any project funded under this Agreement will involve ground disturbing activities, including, but not limited to: subsurface disturbance; removal of trees; excavation of footings and foundations, and installation of utilities (such as water, sewer, storm drains, electrical, gas, leach lines and septic tanks) except where these activities are restricted solely to areas previously disturbed by the installation, replacement or maintenance of such utilities. FEMA will request the SHPO's opinion on the potential that archeological properties may be present and be affected by such activities. The SHPO will advise the Recipient on any feasible steps to be accomplished to avoid any National Register eligible archeological property or will make recommendations for the development of a treatment plan for the recovery or archeological data from the property.

If the Recipient is unable to avoid the archeological property, develop, in consultation with SHPO, a treatment plan consistent with the Guidelines and take into account the Advisory Council on Historic Preservation (Council) publication "Treatment of Archeological Properties". The Recipient shall forward information regarding the treatment plan to FEMA, the SHPO and the Council for review. If the SHPO and the Council do not object within fifteen (15) calendar days of receipt of the treatment plan, FEMA may direct the Recipient to implement the treatment plan. If either the Council or the SHPO object, Recipient shall not proceed with the project until the objection is resolved.

- (6) The Recipient shall notify the Division and FEMA as soon as practicable: (a) of any changes in the approved scope of work for a National Register eligible or listed property; (b) of all changes to a project that may result in a supplemental DSR or modify a HMGP project for a National Register eligible or listed property; (c) if it appears that a project funded under this Agreement will affect a previously unidentified property that may be eligible for inclusion in the National Register or affect a known historic property in an unanticipated manner. The Recipient acknowledges that FEMA may require the Recipient to stop construction in the vicinity of the discovery of a previously unidentified property that may eligible for inclusion in the National Register or upon learning that construction may affect a known historic property in an unanticipated manner. The Recipient further acknowledges that FEMA may require the Recipient to take all reasonable measures to

avoid or minimize harm to such property until FEMA concludes consultation with the SHPO. The Recipient also acknowledges that FEMA will require, and the Recipient shall comply with, modifications to the project scope of work necessary to implement recommendations to address the project and the property.

- (7) The Recipient acknowledges that, unless FEMA specifically stipulates otherwise, it shall not receive funding for projects when, with intent to avoid the requirements of the PA or the NHP A, the Recipient intentionally and significantly adversely affects a historic property, or having the legal power to prevent it, allowed such significant adverse effect to occur.
- (m) It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;
 - (n) It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (42 U.S.C. 4521-45-94) relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
 - (o) It will comply with 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
 - (p) It will comply with Lead-Based Paint Poison Prevention Act (42 U.S.C. 4821 et seq.) which prohibits the use of lead-based paint in construction of rehabilitation or residential structures;
 - (q) It will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the State Energy Conservation Plan adopted pursuant thereto;
 - (r) It will comply with the Laboratory Animal Welfare Act of 1966, (7 U.S.C. 2131-2159), pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by an award of assistance under this Agreement;
 - (s) It will comply with Title VIII of the Civil Rights Act of 1968, (42 U.S.C. 2000c and 42 U.S.C. 3601-3619), as amended, relating to non-discrimination in the sale, rental, or financing of housing, and Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin;
 - (t) It will comply with the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7642;
 - (u) It will comply with the Clean Water Act of 1977, as amended, 42 U.S.C. 7419-7626
 - (v) It will comply with the endangered Species Act of 1973, 16 U.S.C. 1531-1544;
 - (w) It will comply with the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4728-4763;
 - (x) It will assist the awarding agency in assuring compliance with the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 270;
 - (y) It will comply with environmental standards which may be prescribed pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347;
 - (z) It will assist the awarding agency in assuring compliance with the Preservation of Archeological and Historical Preservation Act of 1966, 16 U.S.C. 469a, et seq.;
 - (aa) It will comply with the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794, regarding non-discrimination;
 - (bb) It will comply with the environmental standards which may be prescribed pursuant to the Safe Drinking Water Act of 1974, 42 U.S.C. 300f-300j, regarding the protection of underground water sources;
 - (cc) It will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Property Acquisition Policies Act of 1970, 42 U.S.C. 4621-4638, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs;
 - (dd) It will comply with the Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287, related to protecting components or potential components of the national wild and scenic rivers system;

- (ee) It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice);
- (ff) It will comply with the Coastal Barrier Resources Act of 1977, 16 U.S.C. 3510;
- (gg) It will assure project consistency with the approved State program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451-1464; and
- (hh) It will comply with the Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661-666.
- (ii) With respect to demolition activities, it will:
 - (1) Create and make available documentation sufficient to demonstrate that the Recipient and its demolition contractor have sufficient manpower and equipment to comply with the obligations as outlined in this Agreement.
 - (2) Return the property to its natural state as though no improvements had ever been contained thereon.
 - (3) Furnish documentation of all qualified personnel, licenses and all equipment necessary to inspect buildings located in the Recipient's jurisdiction to detect the presence of asbestos and lead in accordance with requirements of the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection and the County Health Department.
 - (4) Provide documentation of the inspection results for each structure to indicate:
 - a. Safety Hazard Present
 - b. Health Hazards Present
 - c. Hazardous Materials Present
 - (5) Provide supervision over contractors or employees employed by the Recipient to remove asbestos and lead from demolished or otherwise applicable structures.
 - (6) Leave the demolished site clean, level and free of debris.
 - (7) Notify the Division promptly of any unusual existing condition which hampers the contractor's work.
 - (8) Obtain all required permits.
 - (9) Provide addresses and marked maps for each site where water wells and septic tanks are to be closed along with the number of wells and septic tanks located on each site. Provide documentation of closures.
 - (10) Comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).
 - (11) Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act (42 U.S.C. 1857h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR, Part 15 and 61). This clause shall be added to any subcontracts.
 - (12) Provide documentation of public notices for demolition activities.

ATTACHMENT F
FOREIGN COUNTRY OF CONCERN AFFIDAVIT –
PERSONAL IDENTIFYING INFORMATION CONTRACT

Section 287.138, Florida Statutes, prohibits a Florida “Governmental entity”¹ from entering into or extending contracts with any other entity whereby such a contract, or extension thereof, could grant the other entity access to an individual’s personal identifying information if that entity is associated with a “Foreign Country of Concern.”² Specifically, section 287.138(2), Florida Statutes, prohibits such contracts with any entity that is owned by the government of a Foreign Country of Concern, any entity in which the government of a Foreign Country of Concern has a “controlling interest,”³ and any entity organized under the laws of or which has its principal place of business in a Foreign Country of Concern.

As the person authorized to sign on behalf of Recipient, I hereby attest that the company identified below in the section entitled “Recipient” is not an entity owned by the government of a Foreign Country of Concern, no government of a Foreign Country of Concern has a controlling interest in the entity, and the entity has not been organized under the laws of or has its principal place of business in a Foreign Country of Concern.

I understand that pursuant to section 287.138, Florida Statutes, I am submitting this affidavit under penalty of perjury.

Recipient Name: _____
Recipient FEIN: _____
Recipient’s Authorized Representative Name and Title: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone Number: _____
Email Address: _____
Certified By: _____
AUTHORIZED SIGNATURE
Print Name and Title: _____
Date: _____

¹ As defined in Section 287.138 (1)(d), Florida Statutes.
² As defined in Section 287.138 (1)(c), Florida Statutes.
³ As defined in Section 287.138 (1)(a), Florida Statutes.