

**CDBG-DR SUBRECIPIENT AGREEMENT**

*The following information is provided pursuant to 2 CFR 200.332(a)(1)*

<b>Federal Award Identification Number (FAIN)/ HUD CDBG-DR Grant No.:</b>	B-23-UN-12-0002
<b>Assistance Listing Number (formerly CFDA #):</b>	14.218 Community Development Block Grants/Entitlement Grants
<b>Federal Register Notice &amp; Public Law:</b>	FR-6393-N-01: PL-117-328
<b>Federal Award (HUD Grant Agreement) Date:</b>	11/20/2023
<b>Agreement No.:</b>	DR10263
<b>Responsible Entity (RE):</b>	Lee County
<b>Lead and Responsible Department:</b>	Office of Strategic Resources and Government Affairs
<b>CDBG-DR Funding Source/Program:</b>	US Department of Housing and Urban Development
<b>Subrecipient Name:</b>	Town of Fort Myers Beach
<b>Subrecipient ID (Unique Entity Identifier via SAM.gov):</b>	J87EFSEEQ884
<b>Subrecipient Period of Performance (Start Date):</b>	1/1/2025
<b>Subrecipient Period of Performance (End Date):</b>	12/30/2028
<b>Total Amount Obligated via Agreement:</b>	\$8,336,753.00
<b>Project/Activity ID(s):</b>	DR10263
<b>Federal Award Program/Project/Activity Description:</b>	CDBG-DR/Public Facilities/Town of Fort Myers Beach/Parks and Recreation Revitalization
<b>Does the Federal award include an Indirect Cost Rate for Subrecipient?</b>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>If Yes, is the Indirect Cost Rate a:</b>	<input type="checkbox"/> Federally Negotiated Rate % <input type="checkbox"/> De Minimis Rate 15%

**Official County Contact for Award:** Jeannie Sutton, Director, Strategic Resources and Government Affairs;  
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**SUBRECIPIENT AGREEMENT BETWEEN**  
**THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS**  
**AND**  
**Town of Fort Myers Beach**

This **AGREEMENT** between Lee County, a political subdivision and charter county of the State of Florida, hereinafter referred to as "**COUNTY**," and Town of Fort Myers Beach, a local government/municipality registered under the laws of Florida Statute, Chapters 165 and 166, hereinafter referred to as "**SUBRECIPIENT**" will become effective upon the date ("Effective Date") signed by the Board of County Commissioners (BOCC).

**SECTION I: RECITALS**

**WHEREAS**, pursuant to Public Law (P.L.) 117-328, the "Department of Housing and Urban Development Appropriations Act, 2023" (hereinafter referred to as the "Appropriation Act"), and the "Allocations for Community Development Block Grant Disaster Recovery and Implementation of the CDBG-DR Consolidated Waivers and Alternative Requirements Notice," 88 Federal Register (FR) 32046 (May 18, 2023); (hereinafter referred to as the "Federal Register Guidance"), the U.S. Department of Housing and Urban Development (hereinafter referred to as "HUD") has awarded \$1,107,881,000 (a \$963,375,000 allocation for unmet disaster recovery needs with an additional \$144,506,000 mitigation set aside) of Community Development Block Grant – Disaster Recovery (CDBG-DR) funds to the **COUNTY** for activities authorized under Title I of the Housing and Community Development Act of 1974 (42 United States Code (U.S.C.) 5301 *et seq.*) and described in the *Lee County Action Plan for CDBG-DR Funds* (hereinafter referred to as the "Action Plan") for the Consolidated Appropriation Act (P.L. 117-328). The **COUNTY** is also hereinafter referred to from time to time as "Grantee."

**WHEREAS**, the **COUNTY** believes it is in the public interest to serve as a pass-through entity by awarding and/or providing CDBG-DR funding for certain activities to **SUBRECIPIENTS** for the benefit of Lee County residents. CDBG-DR funding made available for use by the **SUBRECIPIENT** under this Agreement constitutes a subaward of the Grantee's Federal award, for which the use of the subaward funds must conform to the **COUNTY'S** intent as stated in the applicable Notice of Funding Availability (NOFA) Application, and attachments, and/or exhibits, and all other terms and conditions as specified.

**WHEREAS**, the **COUNTY** has legal authority to disburse funds as a subaward under the Federal award and to enter into this Agreement with the **SUBRECIPIENT**, who by signing this Agreement, represents and warrants to the **COUNTY** that it will comply with all the requirements of the subaward described herein.

**WHEREAS**, the Action Plan has been developed to give the maximum feasible priority to activities that will benefit low- and moderate-income families and the aggregate use of CDBG-DR funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent (or another percentage permitted by HUD in a waiver) of the grant amount is expended for activities that benefit such persons.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, and representations contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, therefore the **COUNTY** and the **SUBRECIPIENT** agree as follows:

**SECTION II: SCOPE OF WORK AND ACTIVITIES**

The **COUNTY** provides the **SUBRECIPIENT** the award under this Agreement to perform project activities under the **COUNTY'S** CDBG-DR Public Facilities Infrastructure Program. Any proposal, application, or exhibit associated with this CDBG-DR funding award are binding and incorporated herein as a part of this **AGREEMENT**.

The **SUBRECIPIENT** shall submit to the **COUNTY** the required information and documentation to complete *Exhibits A (Scope of Work and Activities – Program/Project Activity Overview) & B (Scope of Work and Activities – Project Activity Scope of Work Description)*. If there is a disagreement between the **COUNTY** and **SUBRECIPIENT**, with respect to the formatting and content requirements of the Exhibit, the **COUNTY’S** has sole and absolute discretion; the **COUNTY’S** decisions shall prevail.

The **SUBRECIPIENT** must provide a statement of work, in accordance with 24 CFR 570.503 detailing the work to be performed, a schedule for completing the work, and a budget. The statement of work as prescribed by the **COUNTY** under *Exhibits A and B* must provide sufficient data and detail to provide a sound basis for the **COUNTY** to monitor performance.

The **SUBRECIPIENT** agrees to abide by all applicable state and Federal laws, rules and regulations, including but not necessarily limited to, the Federal laws and regulations set forth at 24 CFR 570, 2 CFR 200, the Federal Register Guidance, and the **COUNTY’S** Action Plan. This includes core CDBG-DR tenets and requirements as stated below:

**SUBSECTION II.A. – MID REQUIREMENT:** The **SUBRECIPIENT** must conduct all activities and expend all CDBG-DR award funds granted by the **COUNTY** in the “most impacted and distressed” (MID) areas resulting from the qualifying major disaster in 2022, which is in response to Hurricane Ian (Federal Emergency Management Agency (FEMA) Disaster No. 4673 – DR). As noted in the Federal Register Guidance (88 FR 32046), the HUD-identified MID area for this disaster allocation is all of Lee County.

**SUBSECTION II.B. – ELIGIBLE ACTIVITIES:** CDBG-DR funds are provided for necessary expenses for activities authorized under Title I of the Housing and Community Development Act of 1974 (HCDA), as amended (42 United States Code (U.S.C.) 5301 et seq.), related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation of related risk. The **SUBRECIPIENT** must utilize CDBG-DR funds, as prescribed under 24 CFR 570 Subpart C – Eligible Activities, and for alternative requirements and waivers as prescribed within the Federal Register Guidance. Furthermore, the **SUBRECIPIENT** shall conduct its project to align with the approved eligible activity(ies) found under the most-recent approved Action Plan for the **COUNTY’S** CDBG-DR Public Facilities Infrastructure Program.

**SUBSECTION II.C. – NATIONAL OBJECTIVE:** The **SUBRECIPIENT** must meet the criteria for one of the CDBG-DR program’s national objectives. For this scope of work, the **SUBRECIPIENT** must adhere to the following national objective type, as defined at 24 CFR 570.208 and alternative requirements under the Federal Register Guidance, and as reflected as an approved national objective type for this CDBG-DR program within the Action Plan:

- Activities designed to meet community development needs having a particular urgency (“Urgent Needs”)

**SUBSECTION II.D. – CDBG-DR MITIGATION SET-ASIDE AND STORM “TIE-BACK”:** The **COUNTY** is responsible for informing the **SUBRECIPIENT** of whether CDBG-DR funding is awarded for an activity(ies) to address an unmet recovery need, a mitigation and resilience measure, or both. Depending on the recovery or mitigation designation by the **COUNTY**, the **SUBRECIPIENT** is responsible for documenting proof of the designation. For recovery activities, the **SUBRECIPIENT** must demonstrate that their activities “tie-back” to the specific disaster and address a specific unmet recovery need for which the CDBG-DR funds were appropriated. For mitigation set-aside activities, the **SUBRECIPIENT** must document how its activity(ies) (1) meet the definition of mitigation activities; (2) address the current and future risks as identified in the **COUNTY’S** mitigation needs assessment in the MID areas under its Action Plan; (3) is a CDBG-DR eligible activity under title I of the HCDA (or otherwise eligible pursuant to a waiver or alternative requirement); and (4) still meets a national objective. In some cases, the

**COUNTY** may require the **SUBRECIPIENT** to provide evidence of the activity meeting both the CDBG-DR “tie-back” and mitigation measures justification. The **COUNTY** will spell out specific requirements for the **SUBRECIPIENT**, its project, and the project’s eligible activity under Exhibit A – Scope of Work and Activities – Program/Project Activity Overview and Exhibit B – Scope of Work and Activities – Project Activity Scope of Work Description.

### **SECTION III: TERM OF AGREEMENT**

This Agreement shall begin on 1/1/2025 (“*the Effective Date*”) and end on 12/30/2028, unless suspended or terminated as specified in SECTION XI. SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION.

The **COUNTY** and the **SUBRECIPIENT** agree that this Agreement shall be electronically signed, and that any electronic signatures appearing on this Agreement shall have the same force and effect as a written signature for the purposes of validity, enforceability, and admissibility. The **COUNTY** and **SUBRECIPIENT** shall maintain this Agreement, including any amendments, in its files.

The **COUNTY** shall not grant any extension of the Agreement unless the **SUBRECIPIENT** provides written justification that is satisfactory to the **COUNTY**, in its sole discretion, and the **COUNTY’S** authorized organizational representative approves such extension in accordance with SECTION IV. AGREEMENT MODIFICATIONS AND AMENDMENTS of this Agreement.

### **SECTION IV: AGREEMENT MODIFICATIONS AND AMENDMENTS**

**SUBRECIPIENT** must submit a written request, via the County’s approved method for submitting such request, for an Agreement amendment which details the nature of and justification for the requested change and the desired effective date of the change(s). The **COUNTY** reserves the right to approve or deny all Agreement amendments on the basis that such approval or denial is in the **COUNTY’S** best interest. An approved amendment shall be documented on the Agreement amendment form and signed by both parties.

The Assistant County Manager over the **COUNTY’S** Office of Strategic Resources and Government Affairs (SRGA), the BoCC, or their designee may approve amendments to the Agreement, in accordance with the **COUNTY’S** *Hurricane Ian CDBG-DR Subrecipient Manual* and *Internal Grant Management Manual*. As noted within the Manual, the **COUNTY** reserves the right to review the request from the **SUBRECIPIENT** and determine whether an amendment is required or whether County Manager or BOCC approval is needed.

The **COUNTY** also affirms that it may unilaterally modify or amend any Manuals referenced throughout this Agreement without prior notification or agreement by the **SUBRECIPIENT**. Additionally, the **COUNTY** affirms that while it will seek agreement with the **SUBRECIPIENT** on proposed amendments to any Exhibits which are referenced throughout this Agreement, the **COUNTY** may unilaterally modify or amend any such Exhibits **COUNTY**, in its sole discretion, deems necessary to comply with federal policies or regulations.

As noted in the **COUNTY’S** Action Plan, substantial amendments to the Action Plan are defined as (1) a change in program benefit or eligibility criteria; (2) the addition or deletion of an activity(ies); (3) the allocation or reallocation of funds which exceeds or is expected to exceed 5 percent of the current total approved budget; (4) a material change occurs which impacts information and analysis on which the Action Plan was based on to fund certain priority activities (e.g., impact on anticipated beneficiaries, project or activity scope, significant demographic changes, or new significant contributing factors on unmet needs in the jurisdiction); and/or upon HUD’s written notification specifying a material change that requires the revision. The **SUBRECIPIENT** understands that requests for Agreement amendments of the nature described herein, and which involve new or alteration of existing activities that will significantly change the scope, location, or objectives of the approved

activity or beneficiaries must first receive HUD approval before consideration by the **COUNTY** to amend the Agreement.

**SECTION V: COMPENSATION AND ALLOWABLE PAYMENTS**

**SUBSECTION V.A. – AGREEMENT PAYMENT:** The **SUBRECIPIENT** agrees to accept as full compensation the total amount not to exceed \$8,336,753. The **COUNTY’S** standard method of payment to the **SUBRECIPIENT** is on a reimbursement basis. Payments under this method will be authorized only for work completed and/or services delivered during the term of the Agreement as stated in SECTION III: TERM OF AGREEMENT and prior to the payment request date. The **COUNTY** reserves the right to consider a written request from the **SUBRECIPIENT** for projects that require advanced payments in accordance with 2 CFR 200.305 and 24 CFR 570.502.

The **SUBRECIPIENT** will provide supporting documentation of eligible expenses as stated within this SUBSECTION and the applicable exhibits, forms, and attachments contained with this Agreement. Payment is subject to the provisions of SUBSECTION V.B. DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS) and SECTION XI. SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION. Funding is contingent upon the availability of CDBG-DR funds and the obligation of said CDBG-DR funds through the **COUNTY’S** annual fiscal year (FY) budget appropriation process.

The **COUNTY** has agreed to reimburse the **SUBRECIPIENT** for approved budget line items listed for the project and its activities under the **COUNTY’S** CDBG-DR Public Facilities Infrastructure Program. The **SUBRECIPIENT** shall expend the allocation as follows:

	Most Impacted and Distressed (MID)
Activity Funds (Direct Project Costs)	\$7,919,916.00
Activity Delivery Funds	\$416,837.00
<b>TOTAL</b>	<b>\$8,336,753.00</b>

Furthermore, “not to exceed” line items and activity budgets under this Agreement shall be identified within the approved budget under the *Project Budget and Expense (Sources and Uses) Worksheet*.

After the **COUNTY** has approved funding and the Office of Strategic Resources and Government Affairs (SRGA) has issued an Agreement related to the funded project, the **SUBRECIPIENT** should sign and return the Agreement within 30 days for execution. In addition, the **SUBRECIPIENT** should begin to draw down funds as agreed upon within the project milestones set out under the *Project Schedule and Milestones* reporting deliverable unless additional time is authorized by the **COUNTY**. Failure to return the signed Agreement or begin spending funds within the agreed upon time frame may result in reduction or forfeiture of funds.

By execution of this Agreement, the **SUBRECIPIENT** attests that necessary written administrative procedures, processes, and fiscal controls are in place for the operation of its CDBG-DR program for which the **SUBRECIPIENT** received funds from the **COUNTY**. These written administrative procedures, processes, and fiscal controls must, at a minimum, comply with applicable state and Federal law, rules, and regulations, Federal Register Guidance, and the terms of this Agreement. The **SUBRECIPIENT** agrees to remedy any deficiencies in its written administrative procedures, processes, and fiscal controls identified by the **COUNTY** or duly authorized CDBG-DR authorities.

The **SUBRECIPIENT** shall request all funds in the manner prescribed by the **COUNTY**, utilizing the Payment Request Form(s) as outlined under SUBSECTION VI.A. REPORTING AND AGREEMENT

DELIVERABLES. Except as set forth herein, or unless otherwise authorized in writing by the **COUNTY**, costs incurred for eligible activities or allowable costs prior to the Effective Date of this Agreement are ineligible for funding with CDBG-DR funds.

If funds are not available to fully execute the project associated with this Agreement because of actions by the United States Congress, the Federal Office of Management and Budget, the **COUNTY** or the provision of SECTION XIII. ASSURANCE, CERTIFICATIONS, AND COMPLIANCE, all obligations on the part of the **COUNTY** to make any further payment of funds will terminate and the **SUBRECIPIENT** shall submit its administrative closeout report within thirty (30) calendar days from the receipt of notice from the **COUNTY**.

**SUBSECTION V.B. – DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS):** The **SUBRECIPIENT** shall expend CDBG-DR funds only for allowable costs and eligible activities which are incurred during the Agreement period, in accordance with federal cost principles at 2 CFR 200 Subpart E and 24 CFR 570 Subpart C, respectively. The **SUBRECIPIENT** shall ensure that its contractors, subcontractors, and consultants only expend funding under this Agreement for allowable costs resulting from the obligations incurred during the Agreement period as specified under SECTION III. TERM OF AGREEMENT.

The **SUBRECIPIENT** shall refund to the **COUNTY** any funds paid in excess of the amount to which the **SUBRECIPIENT** or its contractors, subcontractors, or consultants are entitled under the terms and conditions of this Agreement.

The **SUBRECIPIENT** shall refund to the **COUNTY** any funds received for an activity if the activity does not meet an approved National Objective in accordance with 24 CFR 570.208 and the terms of this Agreement.

The **SUBRECIPIENT** shall refund to the **COUNTY** any funds not spent in accordance with the conditions of this Agreement or applicable law. For the scenarios detailed above, such reimbursement shall be sent to the **COUNTY**, by the **SUBRECIPIENT**, within thirty (30) calendar days from the **SUBRECIPIENT'S** receipt of notification of such noncompliance.

The **COUNTY** may also defer payment to and/or require repayment from the **SUBRECIPIENT** for noncompliance with Agreement deliverables, program performance requirements, or sufficient documentation to meet regulatory and statutory requirements, including cross-cutting requirements. Funds expended for activities that do not meet a HUD national objective will be required to be repaid by the **SUBRECIPIENT** to the **COUNTY**. If, as a result of monitoring or audit, the **COUNTY** determines that submitted costs are not documented, a payment may be deferred. If costs are found to be unallowable and payment has been made, no future payments will be made until the full amount of overpayment is remitted to the **COUNTY** or a repayment agreement is established by the **COUNTY**. If the monitoring or audit occurs after the term of this Agreement, the **SUBRECIPIENT** will be required to remit funds to the **COUNTY** in accordance with the repayment conditions below.

The **SUBRECIPIENT** agrees to return to the **COUNTY** any overpayments due to disallowed cost, pursuant to the terms of this Agreement and/or Federal requirements. Such funds shall be considered **COUNTY** funds and must be refunded to the **COUNTY** within thirty (30) days of receiving notice from the **COUNTY** in writing regarding the overpayment. Should repayment not be made in a timely manner, the **COUNTY** will charge interest of one (1) percent per month compounded on the outstanding balance after forty (40) calendar days after the date of notification or discovery. The **SUBRECIPIENT** will be required to reimburse the **COUNTY** for disallowed costs or fines resulting from acts of noncompliance.

The **COUNTY'S** determination that an expenditure is eligible does not relieve the **SUBRECIPIENT** of its duty to repay the **COUNTY** in full for any expenditures that are later determined by the **COUNTY** or the

Federal Government, in each of its sole discretion, to be an ineligible expenditure or a Duplication of Benefits.

If requested by the **COUNTY**, all refunds, return of improper payments, or repayments due to the **COUNTY** under this Agreement are to be made payable to Lee County and mailed directly to the **COUNTY**, pursuant to SECTION XIX. NOTICES and this Agreement.

The **SUBRECIPIENT** has responsibility for identifying and recovering grant funds that were expended in error, disallowed, or unused. The **COUNTY'S** provision of training, technical assistance, quality assurance and quality control reviews are in no way intended to alleviate the **SUBRECIPIENT** of the responsibility to administer activities in accordance with all federal, state, and local requirements, including the requirements outlined within this Agreement. The **SUBRECIPIENT** acknowledges full responsibility to return funds to the **COUNTY** in the event that HUD or other auditing agency determines that activities or costs are disallowed.

The **SUBRECIPIENT** will report all suspected or verified fraud to the **COUNTY**, regardless of whether the suspected or verified fraud is associated with disallowed cost or other perceived harm to the **SUBRECIPIENT** or the **COUNTY**.

Mandatory Disclosure of Violations: In accordance with the revised 2 CFR 200.113 and the requirements set forth in FAR 73 FR 67064, the **SUBRECIPIENT** must promptly disclose, in writing, to the **COUNTY**, the federal awarding agency, and the Office of Inspector General, any credible evidence of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations, including violations under the False Claims Act. This obligation extends to the **SUBRECIPIENT** and any subgrantees or contractors associated with the federal award. Failure to disclose such violations may result in remedies for non-compliance, including suspension or termination of the award, as outlined in 2 CFR 200.338 and 2 CFR 200.339.

## **SECTION VI:           REPORTS AND EXHIBITS**

**SUBSECTION VI.A – REPORTING AND AGREEMENT DELIVERABLES:** The **SUBRECIPIENT** shall provide the **COUNTY** with all reports and information set forth in the **COUNTY'S** approved system, including monthly performance reports and documentation outlined in all applicable exhibits to enable the Grantee to submit the required reporting to HUD within the Disaster Recovery Grant Reporting (DRGR) system.

The **SUBRECIPIENT'S** monthly reports, include administrative activity, financial activity, and program activity, must include sufficiently detailed summaries of the current status, progress, and completed work. The **SUBRECIPIENT** is responsible for all reporting of work of all contractors, subcontractors, and other entities under contract or agreement related to this Agreement.

At a minimum the following information will be required to be submitted in the system of record by the **SUBRECIPIENT**. Upon request from the **COUNTY**, the **SUBRECIPIENT** shall provide additional program or activity updates and information. If all required reports and copies are not sent to the **COUNTY** within the agreed-upon submission schedule or are otherwise not completed in a manner acceptable to the **COUNTY**, payments may be withheld in accordance with SUBSECTION V.B. DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS) until the reports are completed. If the **COUNTY** withholds such payments, it shall notify the **SUBRECIPIENT** in writing of its decision, reasons for withholding payment, and the remedy for corrective action the **SUBRECIPIENT** must follow. The **COUNTY** may also take other action as stated within this Agreement or allowable by law.

The **SUBRECIPIENT'S** reporting deliverables include, but are not limited to, the following information:

1. **Project Schedule and Milestones:** A table or description of the work task, project start and end dates, other significant milestones (e.g., 50% complete), and timelines for the **SUBRECIPIENT** to submit outputs or deliverables to the **COUNTY**.
2. **Project Budget and Expense (Sources and Uses) Worksheet:** The **SUBRECIPIENT** must provide budget narratives and tables to describe all funding sources and the potential uses of those funding sources for the purposes of completing the project. This narrative will include, but may not be limited to, (a) a description and justification of the proposed costs, (b) a description of project implementation support with **SUBRECIPIENT** or vendor staff, (c) sources of leveraged funds committed by the **SUBRECIPIENT** to the project, and (d) timelines for the projected expenditure of CDBG-DR funds.
3. **Payment Request Form:** The means by which the **COUNTY** and the **SUBRECIPIENT** document project and activity expenses and requests for payment. The **SUBRECIPIENT** shall utilize this form when submitting or requesting any costs for payment and the form must be accompanied by legible supporting documentation to indicate the reasonableness, allowability, and appropriate procurement of the expense(s).

As noted under SECTION III. TERM OF AGREEMENT and SECTION V. COMPENSATION AND ALLOWABLE PAYMENTS, all payments are reimbursements for eligible expenses or services defined as uncompensated expenses rendered during the Agreement term and paid prior to the final payment request due date. Copies of supporting documentation are required as part of the Payment Request for review of grant compliance and before payment will be authorized by the **COUNTY** to the **SUBRECIPIENT**. Reimbursement for eligible expenses will be made after review and authorization of a correct and complete Payment Request Form and required back up documentation. In accordance with the Federal Register Guidance, the **COUNTY** must be payor of last resort, meaning that if services are eligible to be billed to any other entity or funding source, including but not limited to, Medicaid, third party insurance or any other entity or funding source, the **COUNTY** will not pay for that service.

Appropriate back-up/supporting documentation may include cancelled checks, vendor invoices, authorized purchase orders, attendance/service logs, other funder invoices, expenditure spreadsheets or other original documentation, as well as a copy of the **SUBRECIPIENT'S** check issued with authorized signature. For construction contracts, inspection reports from qualified officials should be submitted with the appropriate monthly payment request.

The **SUBRECIPIENT** must submit the *Payment Request Form* with an authorized signature. Cancelled checks, paystubs, payroll reports, bank statements, and/or other documentation from vendors that expenses have been paid or services provided may be verified.

As applicable, processing of payment requests is also subject to the requirements and conditions as set forth within the **COUNTY'S** *Hurricane Ian CDBG-DR Subrecipient Manual*.

4. **Monthly Activity Report:** The **SUBRECIPIENT** must identify information for this report that ties actual, real-time project and expenditure status to the approved activity budget, scope of work, and projected outcomes. Narratives on budget activity, project progress or delays, and performance measures are included within this report.
5. **Demographics and Beneficiary Report:** The **SUBRECIPIENT** must report on data and include documentation, such as maps detailing service areas, number of individual persons benefitting from the project, and other demographic information on households, where applicable, to indicate the public benefit of the project and activity.
6. **Project Amendment Request:** As referenced under SECTION IV. AGREEMENT MODIFICATIONS

AND AMENDMENTS, the **SUBRECIPIENT** must notify the County and provide information on any project or activity changes within a project amendment request for the **COUNTY** to determine whether the request rises to the level of an amendment to the Agreement.

7. **Single Audit Certification Form:** The **SUBRECIPIENT**, if a nonprofit or governmental organization, must complete a form to certify whether it has expended \$750,000 in federal and/or state funding within the **SUBRECIPIENT'S** given Fiscal Year.
8. **Davis-Bacon and Related Acts (DBRA) Labor Standards Reports (as applicable):** When an activity triggers DBRA requirements, the **SUBRECIPIENT** must report and submit information on assigned labor compliance staff, labor compliance review processes and outcomes, bid and contract requirements documentation, work classification and minimum prevailing wage rates, written clearance of labor compliance issue resolutions, file maintenance plans, and payroll review plans.
9. **Section 3 Reports (as applicable):** When an activity triggers Section 3 requirements, the **SUBRECIPIENT** is required to submit data and information on Targeted Section 3 worker labor hours, Section 3 worker labor hours, total worker labor hours, and other qualitative efforts which the **SUBRECIPIENT** and their vendors took in an attempt to reach or achieve Section 3 goals.
10. **Closeout Report:** The **SUBRECIPIENT** must report project completion data and provide documentation of closeout processes in relation to this project and activity(ies).

The **SUBRECIPIENT'S** Agreement deliverables (as identified within "Exhibits"), which the **SUBRECIPIENT** must follow, include, but are not limited to, the following information:

11. **Exhibit A: Scope of Work and Activities – Program/Project Activity Overview:** Brief description on the identified and agreed-upon CDBG-DR Program eligible activity, National Objective to be achieved for the activity and measures, as applicable, the number of individuals benefitting as a result of the project and its activities, and the appropriate CDBG-DR storm tie-back or resilience need being met, in accordance with SECTION II. SCOPE OF WORK AND ACTIVITIES.
12. **Exhibit B: Scope of Work and Activities – Project Activity Scope of Work Description:** Detailed scope of work defining the plan, design, and approach for the activity.
13. **Exhibit C: Financial/Grant Management System Budget Worksheet:** The high level, official budget for the project as approved under SECTION V.A. AGREEMENT PAYMENT. Any adjustments to this budget will require an amendment in accordance with SECTION IV. AGREEMENT MODIFICATIONS AND AMENDMENTS.
14. **Exhibit D: Indirect Cost Rate Allocation Plan (as applicable):** Pursuant to 2 CFR 200.414, the **SUBRECIPIENT** is entitled to apply the 15% de minimis indirect cost rate without requiring further approval from the **COUNTY**. Alternatively, if the **SUBRECIPIENT** has a federally negotiated indirect cost rate, they may elect to use that rate, which shall be accepted by the **COUNTY** without additional negotiation or approval. The terms of this Agreement shall reflect the applicable indirect cost rate as established under this Exhibit.
15. **Exhibit E: Projected Performance Measures and Outcomes Form:** The **COUNTY** will utilize the **SUBRECIPIENT'S** detailed scope of work to establish and project out specific performance metrics which the **SUBRECIPIENT** is required to meet to as a condition of project completion and closeout. The **COUNTY** will select the performance measure based on the eligible activity and proposed scope of work approved within the Notice of Funding Availability (NOFA) Application for the **Public Facilities Infrastructure Program**.

16. **Exhibit F: Application:** The **SUBRECIPIENT'S** approved application is attached to this Agreement for identification and understanding of **SUBRECIPIENT'S** responses to critical project components.
17. **Exhibit G: Certificate(s) of Insurance:** In accordance with SECTION X.B. INSURANCE REQUIREMENTS, the **SUBRECIPIENT** must supply insurance coverage for the implementation of the project. This Exhibit will contain those required insurance coverages of the **SUBRECIPIENT**.
18. **Exhibit H: Certification of CDBG-DR Compliance Provisions:** This Exhibit outlines the compliance provisions which the **SUBRECIPIENT** must follow as a requirement of the federal CDBG-DR funding award. The **SUBRECIPIENT** must certify adherence with these conditions.
19. **Exhibit I: CDBG-DR Special Terms and Conditions:** The **COUNTY** may identify specific conditions, including but not limited to, training, technical assistance, capacity building, and policy development, which the **SUBRECIPIENT** must complete as a condition of receiving the CDBG-DR funding award.
20. **Exhibit J: Subrecipient Staff Organization:** In addition to annual certifications of continued operations, the **SUBRECIPIENT** is required to provide evidence of staff who will be responsible for conducting certain actions during project implementation. This Exhibit contains the contact information of those individual staff members.
21. **Exhibit K: CDBG-DR Program Subrogation Agreement:** As noted under SUBSECTION XIII.E. DUPLICATION OF BENEFITS and the Federal Register Guidance, the **SUBRECIPIENT**, as a recipient of federal assistance, must sign a Subrogation Agreement before the **COUNTY** can disburse CDBG-DR assistance to the **SUBRECIPIENT**.

An electronic signature or a scanned copy of the report with signature is acceptable for all reports or exhibits included above for which signatures are required. The **COUNTY** will instruct the **SUBRECIPIENT** on the approved System of Record under which the **SUBRECIPIENT** is expected to provide this data and information.

The **SUBRECIPIENT** is required to immediately report to the **COUNTY** any incident of suspected criminal misapplication of CDBG-DR funds associated with this Agreement.

The **COUNTY** notates in the *Subrecipient Agreement Document Checklist*, the required forms and reports the **SUBRECIPIENT** must submit. These reports and forms include, but are not limited to, activity performance reports, payment request forms, program information forms, budget analysis reports, closeout reports, and periodic certifications as described above.

The **SUBRECIPIENT** should submit all reports and forms electronically in a computer-readable format using the approved System of Record submission method specified by the **COUNTY**. When required, reports or exhibits must be certified by signature. An electronic signature is acceptable for all reports, forms, and attachments within the *Subrecipient Agreement Checklist*.

The **SUBRECIPIENT** is required to immediately report to the **COUNTY** any incident of suspected criminal misapplication of CDBG-DR funds associated with this Agreement.

**SUBSECTION VI.B. – EXTERNAL REPORTING AND ORGANIZATIONAL DOCUMENT REQUIREMENTS:** The **COUNTY** or its agents may also require the **SUBRECIPIENT** to submit additional non-project related reports, documentation, and information which are beneficial to determine the **SUBRECIPIENT'S** capacity, compliance, and performance related to this this Federal award compliance. The **COUNTY** may request external reports, including but not limited to, prior and current fiscal year audits, other agency monitoring reports or reviews under other funding sources, organizational

documents, and prior grant closeout reports. The **SUBRECIPIENT** agrees to provide such reports, documentation, and information requested by the County or its agents.

## **SECTION VII:           AUDITS, MONITORING, AND RECORDS**

**SUBSECTION VII.A. – AUDITS AND INSPECTIONS:** In accordance with 2 CFR 200.332, 2 CFR 200.337, and 24 CFR 570.508, the **SUBRECIPIENT** will allow the **COUNTY**, Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives right of access to any documents, papers, or other records which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the **SUBRECIPIENT'S** non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

The Clerk of Courts Internal Audit Division, Lee County employees, HUD, or any of their duly authorized representatives have the right of timely and reasonable access to any books, documents, papers, or other records, including electronic storage media, of the **SUBRECIPIENT** or Certified Public Accountant (CPA) that are pertinent to the Agreement, in order to make audits, examinations, excerpts, transcripts and copies of such documents in accordance with 2 CFR 200.332, 2 CFR 200.337, and 24 CFR 570.508.

If noncompliance with this Agreement or material weaknesses in the organization are noted, the **COUNTY** or other authorized representatives have the right to unlimited access to records during an audit or inspection. This includes timely and reasonable access to the **SUBRECIPIENT'S** personnel for the purpose of interview and discussion related to such documents.

**SUBSECTION VII.B. – INDEPENDENT AUDIT REQUIREMENTS:** Under the Single Audit Act and in accordance with the provisions of 2 CFR 200.501, the **SUBRECIPIENT** must conduct a single or program-specific audit if it expends \$1,000,000 or more in Federal awards from all sources during its fiscal year.

The **SUBRECIPIENT** shall also comply with the Federal Audit Clearinghouse (FAC) rules and directives, including but not limited to the pertinent report submission provisions of 2 CFR 200.512, when such provisions are applicable to this Agreement.

For **SUBRECIPIENTS** who are Nonprofit Corporations and do not trigger the Single Audit Act requirements or provisions under 2 CFR 200.501, the **SUBRECIPIENT** must submit an independent certified, audited financial statement of the most recent or immediate prior fiscal year, including the management letter and written response. The **COUNTY** may consider exceptions on an individual basis, to include other supporting audit documents, such as a current CPA's peer review letter or monthly financial statements within the last 60 days, to meet this requirement.

In accordance with 2 CFR 200.514, a complete, independent financial audit of the **SUBRECIPIENT'S** financial accounting statements, in accordance with Generally Accepted Accounting Principles (GAAP) and/or current Generally Accepted Government Auditing Standards (GAGAS), as applicable, is required and must include the following:

1. Auditor's opinion;
2. Requisite reports on internal control and compliance, if required;
3. Management letter addressing internal controls (Note: If there were no items to be addressed, the letter must still be completed and state that no comments were noted);
4. Management's response to such letter;
5. The programs that are funded by this Agreement either in the statement of functional expenses, revenues and expenditures, footnotes, schedule of Federal awards and state financial assistance or as supplemental data in the financial statements. The statement should be consistent with programs

detailed in the corresponding proposal(s), exhibit(s), and attachment(s).

The **SUBRECIPIENT** must submit the audit reports electronically to the **COUNTY** within the earlier of thirty (30) calendar days after receipt of the auditor's report(s), or within nine months after the end of the **SUBRECIPIENT'S** audit period. If applicable, any associated corrective action plan must be submitted. Failure to submit the report within the required time frame can result in the withholding of payment, or termination of the Agreement by the **COUNTY**.

The audit must be conducted by an independent, licensed certified public accountant expressing an unmodified opinion on their current peer review and must be in accordance with the General Accounting Office (GAO) Yellow Book, Generally Accepted Government Auditing Standards, 2 CFR 200 Subpart F – Audit Requirements, as applicable, the Florida Single Audit Act (F.S. 215.97) as applicable, and the Auditor General Rule 10.550 (Government) or 10.650 (Not For Profit) as applicable.

**SUBSECTION VII.C. – SUBRECIPIENT RISK ASSESSMENTS AND MONITORING:** In accordance with 2 CFR 200.332, the **COUNTY**, as HUD's Grantee and a pass-through entity, must evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for the purposes of determining the appropriate subrecipient monitoring. To enable those periodic assessments, the **SUBRECIPIENT** must provide information and documentation as required to the **COUNTY**. The **COUNTY'S** risk assessments results will be used to support the **COUNTY'S** oversight strategies and the level and frequency of monitoring, technical assistance, training to the **SUBRECIPIENT**.

The **SUBRECIPIENT** agrees to permit the **COUNTY** and persons duly authorized by the **COUNTY**, HUD, and other Federal, state, or local agencies, as applicable, or any authorized representatives under these agencies, to have access to and inspect all records, papers, documents, facility's goods and services, and project activity sites of the **SUBRECIPIENT** including interviews of any clients and employees of the **SUBRECIPIENT** to assess satisfactory performance and compliance of the full terms and conditions of this Agreement, in accordance with 2 CFR 200 (specifically 200.332), 24 CFR 570, and the Federal Register Guidance and to the extent permitted by the law, after giving the **SUBRECIPIENT** reasonable notice of such inspection.

The **SUBRECIPIENT** must submit to monitoring of its project activity by the **COUNTY** and persons duly authorized, as necessary, to ensure the CDBG-DR subaward is used for authorized purposes in compliance with Federal statutes, regulations and the terms and conditions of this Agreement.

Monitoring will include: (1) reviewing financial and performance reports required by the Grantee; (2) following up and ensuring that the **SUBRECIPIENT** takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the **SUBRECIPIENT** from the Grantee detected through audits, on-site reviews, and other means; and (3) issuing a management decision for audit findings pertaining to this Federal award provided to the **SUBRECIPIENT** from the Grantee as required by 2 CFR 200.521. Any limited monitoring review scope of the terms and conditions within this Agreement does not relieve the **SUBRECIPIENT** of its obligation to manage the grant in accordance with all applicable rules and sound management practices.

Following such monitoring and in accordance with 2 CFR 200.521, the **COUNTY** will deliver to the **SUBRECIPIENT** a written report regarding management decisions which notate how activities are being conducted and whether corrective action(s) by the **SUBRECIPIENT** need to be taken to address deficiencies. The **SUBRECIPIENT** will rectify all noted deficiencies documented by the **COUNTY** within the specified period of time indicated in the monitoring report or provide the **COUNTY** with a reasonable and acceptable justification for not correcting the noted deficiencies as defined by the **COUNTY**. The **SUBRECIPIENT'S** failure to correct or provide the **COUNTY** with accepted justification for the deficiencies within the time specified by the **COUNTY** may result in withholding of payments or being

deemed in breach or default of this Agreement and may result in the termination of this Agreement.

In response to **SUBRECIPIENT** deficiencies or other instances of capacity concerns prior to this Agreement, the **COUNTY** may also impose additional conditions on the use of the CDBG-DR funds, as noted under *Exhibit I – CDBG-DR Special Terms and Conditions*. This Exhibit ensures future compliance through trainings, technical assistance, and capacity building in an effort to correct or avoid early noncompliance.

**SUBSECTION VII.D. – RECORDKEEPING REQUIREMENTS:** The **SUBRECIPIENT** must comply with the recordkeeping requirements of 24 CFR 570.506, as amended by the Federal Register Guidance's Consolidated Notice waivers and alternative requirements, which describes the types of records which must be kept by the **SUBRECIPIENT** and the **COUNTY** for the Federal CDBG-DR award.

The **SUBRECIPIENT** must comply with the longer of the records retention requirements contained within the Uniform Administrative Requirements (UAR) at 2 CFR 200.334 and State of Florida GS1-SL, except that the **SUBRECIPIENT** must:

1. Retain records for individual CDBG-DR activities for 5 years after the Agreement has ended, as prescribed in State of Florida GS1-SL.
2. Maintain records for individual activities subject to the reversion of assets provisions at 24 CFR 570.503 or change of use provisions at 24 CFR 570.505 for as long as those provisions continue to apply to the activity(ies).
3. Maintain records for individual activities in which there are outstanding loan balances, other receivables, or contingent liabilities until such receivables or liabilities have been satisfied and for 5 years following that satisfaction.

In accordance with 24 CFR 570.506, the **SUBRECIPIENT** shall also maintain books, records and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by the **COUNTY** under this Agreement. The **SUBRECIPIENT** must also retain all financial, client demographics, and programmatic records, supporting documentation, statistical records, and other records, which are necessary to document purchases, expenses, revenue, income, and assets of the **SUBRECIPIENT** by funding source, program, and functional expenses category during the term of this Agreement.

If any litigation, claim, negotiation, audit, or other action involving the records has been initiated before the expiration of the retention period, the records shall be retained by the **SUBRECIPIENT** until all litigation, claims, or audit findings involving the records have been resolved and final action taken in accordance with 2 CFR 200.334. Additional types of records are further described under *Exhibit H – Certification of CDBG-DR Compliance Provisions*.

The records retention period, as described within this Subsection, may be longer depending on other funding sources for activities. It is the **SUBRECIPIENT'S** further obligation to comply with all Federal and State of Florida retention schedules if other schedules shall apply.

The **SUBRECIPIENT**, including all its employees or agents, contractors, subcontractors, and consultants to be paid from CDBG-DR funds provided under this Agreement, shall allow access to its records at reasonable times for audits, inspections and monitoring as described in this Section and Subsections.

The **SUBRECIPIENT** specifically acknowledges its obligations under 2 CFR 200.338 (further detailed within SUBSECTION XIII.K. PERSONALLY IDENTIFIABLE INFORMATION), and to comply with F.S., 119.0701, as amended from time to time, with regard to public records, and shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the **COUNTY**

- in order to perform the services required under this Agreement;
2. Upon request from the **COUNTY'S** custodian of public records, provide the **COUNTY** with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 Florida Statutes or as otherwise provided by law;
  3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
  4. Meet all requirements for retaining public records and transfer, at no cost to the **COUNTY**, all public records in possession of **SUBRECIPIENT** upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the **COUNTY** in a format that is compatible with the information technology system of the **COUNTY**.

**IF THE SUBRECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUBRECIPIENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, <http://www.leegov.com/publicrecords>.**

## **SECTION VIII: CONTRACTOR STATUS**

**SUBSECTION VIII.A. – INDEPENDENT CONTRACTOR:** It is the Parties' intention that the **SUBRECIPIENT** will be an independent contractor and not the **COUNTY'S** employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Florida revenue and taxation law, Florida Worker's Compensation law and Florida Unemployment Insurance Law. The **SUBRECIPIENT** will retain sole and absolute discretion in the judgment of the manner and means of carrying out the **SUBRECIPIENT'S** activities and responsibilities hereunder. The **SUBRECIPIENT** agrees that it is a separate and independent enterprise from the public employer, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the **SUBRECIPIENT** and the **COUNTY**, and the **COUNTY** will not be liable for any obligation incurred by the **SUBRECIPIENT**, including, but not limited to, unpaid minimum wages and/or overtime premiums.

**SUBSECTION VIII.B. – SUBCONTRACTS:** Primary roles and responsibilities of the **SUBRECIPIENT** cannot be subcontracted. It is mutually agreed that any program component that is subcontracted by the **SUBRECIPIENT** must have a written contract. The **SUBRECIPIENT** must provide written notice to the **COUNTY** of all subcontractors, as well as provide copies of all contracts entered into with subcontractors, upon the **COUNTY'S** request. Procurement and/or bidding of non-primary roles and responsibilities must be awarded on a fair and non-collusive basis and must be in compliance with all applicable Lee County, State of Florida, and Federal procurement standards at 2 CFR 200.318-327. The **SUBRECIPIENT** shall not enter into a transaction with a person or affiliate placed on the Florida Department of Management Services' Convicted Vendor List. For projects and services receiving federal funds, the **SUBRECIPIENT** shall also not enter into a transaction with debarred, suspended or ineligible contractors and participants included on the Federal Excluded Parties List, in accordance with 2 CFR 200.214. The **SUBRECIPIENT** must ensure each subcontractor conforms to the terms and conditions of this Agreement, *Exhibit H – Certification of CDBG-DR Compliance Provisions*, and *Exhibit F – Application*, as applicable, and must

be subject to indemnification as stated in SUBSECTION X.A. INDEMNIFICATION AND LIABILITY below.

**SUBSECTION VIII.C. – CONTRACTS AND FEDERAL PROCUREMENT STANDARDS:** If the **SUBRECIPIENT** contracts any of the work required under this Agreement, a copy of the proposed contract template and any proposed amendments, extensions, revisions, or other changes thereto, must be forwarded to the **COUNTY** Program Manager for prior written approval. For each contract, the **SUBRECIPIENT** shall report to the **COUNTY** as to whether that contractor or any subcontractors hired by the contractor, is a minority business and women’s business enterprise, as defined in section 288.703, F.S. and in accordance with 24 CR 570.506, 24 CFR 570.507, and 2 CFR 200.321. The **SUBRECIPIENT** shall comply with the procurement standards at 2 CFR 200.318 - 200.327 and 2 CFR 200.330 when procuring property and services under this Agreement. The **SUBRECIPIENT** shall include the following terms and conditions in any contract pertaining to the work required under this Agreement:

1. The period of performance or date of completion;
2. The performance requirements;
3. That the contractor is bound by the terms of this Agreement;
4. That the contractor is bound by all applicable state and Federal laws, rules, and regulations;
5. That the contractor shall hold the **COUNTY** and the **SUBRECIPIENT** harmless against all claims of whatever nature arising out of the contractor's performance of work under this Agreement;
6. The obligation of the **SUBRECIPIENT** to document in the **SUBRECIPIENT'S** reports the contractor's progress in performing its work under this Agreement;
7. The requirements of Appendix II to 2 CFR 200 - Contract Provision for Non-Federal Entity Contract Under Federal Awards - (refer to *Exhibit H – Certification of CDBG-DR Compliance Provisions*)

The **SUBRECIPIENT** must comply with CDBG regulations regarding debarred or suspended entities (24 CFR 570.609 and 2 CFR 200.214), pursuant to which CDBG funds must not be provided to excluded or disqualified persons and provisions addressing bid, payment, performance bonds, if applicable, and liquidated damages.

The **SUBRECIPIENT** shall maintain oversight of all activities performed under this Agreement and shall ensure that its contractors perform according to the terms and conditions of the procured contracts or agreements and the terms and conditions of this Agreement.

## **SECTION IX: CONFLICTS OF INTEREST**

The **SUBRECIPIENT** agrees that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of activities required under this Agreement. The **SUBRECIPIENT** further agrees that no person having any such interest shall be employed or engaged for said performance. The **SUBRECIPIENT** agrees that no employee, officer, agent of the **SUBRECIPIENT** or its subrecipients shall participate in the selection, award, or administration of a contract or construction bid if a conflict-of-interest, either real or implied, would be involved. The **SUBRECIPIENT** or its subrecipient employees, officers and agents should refrain from accepting gratuities, favors or anything of monetary value from contractors or potential contractors based on the understanding that the receipt of such an item of value would influence any action or judgment of the **SUBRECIPIENT**.

The **SUBRECIPIENT** is subject to the requirements at 24 CFR 570.611 and 2 CFR 200.318, as applicable, which includes developing or maintaining written standards of conduct and a conflict-of-interest policy that complies with the process for promptly identifying and addressing such conflicts.

Any potential conflict of interest shall be reported using the **COUNTY’S** disclosure form.

**SECTION X:**            **RISK MANAGEMENT**

**SUBSECTION X.A. – INDEMNIFICATION AND LIABILITY:** To the fullest extent permitted by applicable law, **SUBRECIPIENT** shall protect, defend, indemnify, save and hold the **COUNTY**, the Board of County Commissioners, its agents, officials, and employees harmless from and against any and all claims, demands, fines, loss or destruction of property, liabilities, damages, for claims based on the negligence, misconduct, or omissions of the **SUBRECIPIENT** resulting from the **SUBRECIPIENT'S** work as further described in this Agreement and its attachments, which may arise in favor of any person or persons resulting from the **SUBRECIPIENT'S** performance or nonperformance of its obligations under this Agreement except any damages arising out of personal injury or property claims from third parties caused solely by the negligence, omission(s) or willful misconduct of the **COUNTY**, its officials, commissioners, employees or agents, subject to the limitations as set out in Florida general law, Section 768.28, Florida Statutes, as amended from time to time. Further, the **SUBRECIPIENT** hereby agrees to indemnify the **COUNTY** for all reasonable expenses and attorney's fees incurred by or imposed upon the **COUNTY** in connection therewith for any loss, damage, injury, liability, or other casualty. The **SUBRECIPIENT** additionally agrees that the **COUNTY** may employ an attorney of the **COUNTY'S** own selection to appear and defend any such action, on behalf of the **COUNTY**, at the expense of the **SUBRECIPIENT**. The **SUBRECIPIENT** further agrees to pay all reasonable expenses and attorney's fees incurred by the **COUNTY** in establishing the right to indemnity.

The **SUBRECIPIENT** further agrees that it is responsible for any and all claims arising from the hiring of individuals relating to activities provided under the Agreement. All individuals hired are employees of the **SUBRECIPIENT** and not of the **COUNTY**.

The **SUBRECIPIENT** further agrees to assume sole responsibility, training and oversight of the parties it deals with or employs to carry out the terms of this Agreement to the extent set forth in Section 768.28, F.S. The **SUBRECIPIENT** shall hold the **COUNTY** harmless against all claims of whatever nature arises from the work and services performed by third parties under this Agreement. Nothing herein shall be construed as consent by the **SUBRECIPIENT** to be sued by third parties in any matter arising out of any agreement, contract or subcontract.

If the **SUBRECIPIENT** is a state agency or subdivision, as defined in Section 768.28, F.S., then the **SUBRECIPIENT** agrees to be fully responsible for its negligent or tortious acts of omissions, which result in claims or suits against the **COUNTY**. The **SUBRECIPIENT** agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in Section 768.28, F.S. Nothing herein shall be construed as consent by the state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any agreement, contract or subcontract.

Nothing herein is intended to serve as a waiver of sovereign immunity by the **COUNTY** or the **SUBRECIPIENT**.

The provisions of this SUBSECTION X.A. INDEMNIFICATION AND LIABILITY shall survive the termination of this Agreement.

**SUBSECTION X.B. – INSURANCE REQUIREMENTS****INSURANCE – NONPROFIT SUBRECIPIENTS**

The **SUBRECIPIENT** agrees to secure and maintain the insurance coverage outlined below during the term of this Agreement. The **SUBRECIPIENT** agrees that this insurance requirement shall not relieve or limit **SUBRECIPIENT'S** liability and that the **COUNTY** does not in any way represent that the insurance required is sufficient or adequate to protect the **SUBRECIPIENT'S** interests or liabilities but are merely minimums. It is the responsibility of the **SUBRECIPIENT** to ensure that all subcontractors comply with the insurance requirements.

Certificate(s) of Insurance **naming Lee Board of County Commissioners as Certificate Holder and additional insured** will be attached to this Agreement as an Exhibit (**Exhibit G – Certificate(s) of Insurance**). Name and address for Certificate Holder should be: Lee Board of County Commissioners, P.O. Box 398, Fort Myers, FL 33902. Certificate(s) must be provided for the following coverages at the time of Agreement execution and upon policy renewal. Renewal certificates are due to the **COUNTY** on or before the expiration date.

1. **Workers' Compensation:** Statutory benefits as defined by Section 440, F.S., encompassing all operations contemplated by this Agreement to apply to all owners, officers, and employees. Employers' liability will have minimum limits of:
  - \$100,000 per accident
  - \$500,000 disease limit
  - \$100,000 disease limit per employee
  
2. **Commercial General Liability:** Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability, and broad form property damage exposures with minimum limits of:
  - \$500,000 bodily injury per person (BI)
  - \$1,000,000 bodily injury per occurrence (BI)
  - \$500,000 property damage (PD) or
  - \$1,000,000 combined single limit (CSL) of BI and PD

The General Liability Policy Certificate shall name "**Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials**" as "**Additional Insured**". The **SUBRECIPIENT** agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess.
  
3. **Business Auto Liability:** The following Automobile Liability will be required and coverage shall apply to all owned, hired, and non-owned vehicles used with minimum limits of:
  - \$100,000 bodily injury per person (BI)
  - \$300,000 bodily injury per occurrence (BI)
  - \$100,000 property damage (PD) or
  - \$300,000 combined single limit (CSL) of BI and PD
  
4. **Directors & Officers Liability:** Entity coverage to cover claims against the organization directly for wrongful acts with limits not less than \$100,000.
  
5. **Fidelity Bonding:** Covering all employees who handle the agency's funds. The bond amount must be equivalent to the highest daily cash balance or a minimum amount of \$50,000.

#### **INSURANCE – GOVERNMENT/MUNICIPALITY SUBRECIPIENTS**

Documentation of the above coverage requirements are not applicable to local governments or municipalities that are self-insured.

**SUBSECTION X.C. – NOTICE OF CANCELLATION OR MODIFICATION:** The **COUNTY** will be given thirty (30) days notice prior to cancellation or modification of any stipulated insurance. Such notification will be in writing by registered mail, return receipt requested and addressed to the Lee County Risk Manager, P. O. Box 398, Ft. Myers, FL 33902.

#### **SECTION XI: SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION**

In accordance with the Federal Register Guidance, 2 CFR 200.208, 2 CFR 200.339, Appendix II to 2

CFR 200, 24 CFR 570.503, and other rights which may be available under law, the following Subsections identify suspension and termination of the Agreement, with and without cause, the potential events of default by the **SUBRECIPIENT**, and potential remedies by the **COUNTY** for noncompliance by the **SUBRECIPIENT** of any and all requirements of this Agreement, including any exhibits, attachments, and terms and conditions herein:

**SUBSECTION XI.A. – SUSPENSION:** The **COUNTY** reserves the right to suspend, withhold, withdraw, or recapture funding for failure to comply with the requirements of this Agreement. If the **SUBRECIPIENT** fails to submit required documents by the due date, the **COUNTY** can suspend the Agreement and withhold payments until all requirements are satisfied.

In the event the **SUBRECIPIENT** ceases operation for any reason or files for protection from creditors under bankruptcy law, any remaining unpaid portion of this Agreement, less funds for expenditures already incurred, shall be retained by the **COUNTY** and the **COUNTY** shall have no further funding obligation to the **SUBRECIPIENT** with regard to those unpaid funds.

**SUBSECTION XI.B. – EVENTS OF DEFAULT:** If any of the following events occur (“Events of Default”), the **COUNTY** may, in its sole and absolute discretion, elect to terminate any obligation to make any further payment of funds, exercise any of the remedies set forth in SUBSECTION XI.C. REMEDIES or pursue any remedy at law or in equity, without limitation:

1. Any warranty or representation made by the **SUBRECIPIENT**, in this Agreement with the **COUNTY**, 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 with the **COUNTY**, and/or has not cured them in a timely fashion and/or is unable or unwilling to meet its obligations under this Agreement and/or as required by statute, rule, or regulation;
2. Any material adverse change occurred in the financial condition of the **SUBRECIPIENT** at any time during the term of this Agreement and the **SUBRECIPIENT** fails to cure this adverse change within thirty (30) calendar days from the date written notice is sent by the **COUNTY**;
3. The **SUBRECIPIENT** fails to submit any required reports or submits any required report with incorrect, incomplete or insufficient information or fails to submit additional information as requested by the **COUNTY**;
4. The **SUBRECIPIENT** fails to perform or timely complete any of its obligations under this Agreement, including participation in the **COUNTY’S** measures for technical assistance and training;
5. Both the **SUBRECIPIENT** and the **COUNTY** agree that in the event the **COUNTY** elects to make payments or partial payments after any Events of Default, it does so without waiving the right to exercise remedies allowable herein or at law and without becoming liable to make any further payment; or,
6. Neither the **SUBRECIPIENT** nor the **COUNTY** (Parties) shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the **SUBRECIPIENT**, the **COUNTY**, or either Parties’ employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar causes wholly beyond both Parties’ control or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay from the foregoing causes, the **SUBRECIPIENT** shall take all reasonable measures to mitigate any and all resulting delays or disruptions in the **SUBRECIPIENT’S** performance obligation under this Agreement. If the delay is excusable under this Subsection, the delay will not result in any additional charges or cost under the Agreement to either Parties. In the case of any delay the **SUBRECIPIENT** believes is excusable under this Subsection, the **SUBRECIPIENT** shall notify the **COUNTY** in writing of the delay or potential delay and describe the cause of the delay either (1) with ten (10) calendar days after the cause that creates or will create the delay first arose, if the **SUBRECIPIENT** could reasonably foresee that a delay could occur as a result or (2) within five (5) calendar days after the date the **SUBRECIPIENT** first had reason to believe that a delay could result, if the delay is not reasonably

foreseeable. The foregoing shall constitute the **SUBRECIPIENT'S** sole remedy or excuse with respect to delay. Providing notice in accordance with this Subsection is a condition precedent to such remedy. The **COUNTY**, at its sole discretion, will determine if the delay is excusable under this Subsection and will notify the **SUBRECIPIENT** of its decision in writing. No claim for damages, other than an extension of time, shall be asserted against the **COUNTY**. The **SUBRECIPIENT** shall not be entitled to an increase in the Agreement price or payment of any kind from the **COUNTY** for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist, the **SUBRECIPIENT** shall perform at no increased cost, unless the **COUNTY** determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to the **COUNTY**, in which case, the **COUNTY** may do any or all of the following: (1) accept allocated activity(ies) performance or deliveries from the **SUBRECIPIENT**, provided that the **SUBRECIPIENT** grants preferential treatment to the **COUNTY** with respect to products or services subjected to allocation; (2) purchase from other sources (without recourse to and by the **SUBRECIPIENT** for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity or (3) terminate the Agreement in whole or in part.

**SUBSECTION XI.C. – REMEDIES:** If an Event of Default occurs, the **COUNTY** may, in its sole discretion and without limiting any other right or remedy available, provide thirty (30) calendar days written notice to the **SUBRECIPIENT**, and if the **SUBRECIPIENT** fails to cure within those thirty (30) calendar days, the **COUNTY** may choose to exercise one or more of the following remedies, either concurrently or consecutively:

1. Terminate this Agreement upon written notice by the **COUNTY**, sent in conformity with SECTION XIX. NOTICES;
2. Begin any appropriate legal or equitable action to enforce performance of this Agreement;
3. Withhold or suspend payment of all or any part of a request for payment; Demand the **SUBRECIPIENT** return to the **COUNTY** any funds used for any failed/incomplete activities, ineligible activities or unallowable costs under this Agreement or any applicable law, rule or regulation governing the use of the funds; and
4. Exercise any corrective or remedial actions, including but not limited to:
  - a. Request additional information from the **SUBRECIPIENT** to determine the reasons for or the extent of noncompliance or lack of performance;
  - b. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected; and/or
  - c. Advise the **SUBRECIPIENT** to suspend, discontinue, or refrain from incurring costs for any activities in question.
5. Exercise any other rights or remedies which may be otherwise available under law.

Pursuit of any of the above remedies does not preclude the **COUNTY** from pursuing any other remedies in this Agreement or provided at law or in equity. Failure to exercise any right or remedy in this Agreement or failure by the **COUNTY** to require strict performance does not affect, extend, or waive any other right or remedy available or affect the later exercise of the same right or remedy by the **COUNTY** for any other default by the **SUBRECIPIENT**.

**SUBSECTION XI.D. – TERMINATION BY COUNTY:** Excluding those scenarios and exceptions as noted within SUBSECTION XI.A. SUSPENSION, SUBSECTION XI.B. EVENTS OF DEFAULT, and SUBSECTION XI.C. REMEDIES, the **COUNTY** may, at any time and for other reasons not mentioned above (“for convenience”), cancel this Agreement by giving twenty-four (24) hours written notice to the **SUBRECIPIENT** by Certified Mail, Process Server or Hand Delivery following a determination by the County Manager or designee, at its sole discretion, that such cancellation is in the best interest of the

people of the **COUNTY**. From the date of cancellation, neither party shall have any further obligation unless specified in the termination notice.

If the financing for this project is contingent upon funding sources other than Lee County as identified in the application for this Agreement, and such funds become unavailable, the obligations of each party hereunder may be terminated upon no less than twenty-four (24) hours written notice.

**SUBSECTION XI.E. – TERMINATION BY SUBRECIPIENT:** Excluding those scenarios and exceptions as noted within SUBSECTION XI.A. SUSPENSION, SUBSECTION XI.B. EVENTS OF DEFAULT, and SUBSECTION XI.C. REMEDIES, the **SUBRECIPIENT** may, at any time and for other reasons not mentioned above (“for convenience”), cancel this Agreement by giving seventy-two (72) hours prior written notice to the **COUNTY** by Certified Mail or Process Server of such and specifying the effective date.

The **COUNTY'S** obligation to make any payments under any provision of this Agreement shall cease on the effective date of termination.

In the event that this Agreement is terminated, the **SUBRECIPIENT** shall not incur new obligations under the terminated portion of the Agreement after the date the **SUBRECIPIENT** has received the notification of termination. The **SUBRECIPIENT** shall cancel as many outstanding obligations as possible. The **COUNTY** shall disallow all costs incurred after the **SUBRECIPIENT'S** receipt of the termination notice. The **COUNTY** 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 to the **COUNTY** from the **SUBRECIPIENT** is determined.

In accordance with 24 CFR 570.503, upon expiration or termination of this Agreement, the **SUBRECIPIENT** shall transfer to the **COUNTY** any CDBG-DR funds on hand at the time of expiration or termination and any accounts receivable attributable to the use of CDBG-DR funds.

## **SECTION XII: USE AND REVERSION OF ASSETS, REAL PROPERTY**

The **SUBRECIPIENT** must ensure that any equipment or fixed assets purchased in whole or in part with CDBG-DR funds be adequately safeguarded and assure such assets are used solely for authorized purposes. The purchase, use, management and disposition of equipment and other capital assets must comply with 2 CFR 200.313, 2 CFR 200.439, the applicable Federal Register Guidance, and 24 CFR 570. See SECTION XI: SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION regarding the revision of any CDBG-DR funds or assets upon termination or expiration of this agreement. Per 24 CFR 570.502(a)(8), in all cases when equipment purchased with CDBG funds is sold, the net proceeds are considered program income, and shall be returned to the **COUNTY** within 30 days of receipt of the proceeds.

Any real property under the **SUBRECIPIENT'S** control that was acquired or improved in whole or in part with CDBG-DR funds (including CDBG-DR funds provided to the **SUBRECIPIENT** in the form of a loan) in excess of \$25,000 must (1) be used to meet a national objective until five years after expiration or termination of this Agreement (24 CFR 570.505), unless otherwise agreed upon by the Parties, or except as otherwise set forth herein or (2) if not used to meet a national objective, the **SUBRECIPIENT** shall pay to the **COUNTY** an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG-DR funds for the acquisition or improvement of the property for five years after expiration or termination of this Agreement.

The rights and remedies under this Section are in addition to any other rights or remedies provided by law or under this Agreement.

**SECTION XIII: ASSURANCE, CERTIFICATIONS, AND COMPLIANCE**

The **SUBRECIPIENT** agrees that compliance with these assurances and certifications constitutes a condition of continued receipt of or benefit from CDBG-DR funds provided through this Agreement, and that it is binding upon the **SUBRECIPIENT**, its successors, transferees, and assignees for the period during which services are provided and activities are performed. Additional requirements of the assurances, certifications, and compliance measures below can be further detailed or outlined in the Agreement's exhibits, forms, and attachments.

**SUBSECTION XIII.A. – IMMIGRATION LAWS AND CITIZENSHIP STATUS:** The **COUNTY** will not intentionally award Agreements to any **SUBRECIPIENT** who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324 a(e) Section 274A(e) of the Immigration and Nationality Act (INA).

The **COUNTY** shall consider the employment by the **SUBRECIPIENT** 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 the Agreement by the **COUNTY**.

Additionally, the **SUBRECIPIENT** must follow requirements to verify citizenship of CDBG-DR fund recipients in certain circumstances. In accordance with 49 CFR 24.408, the **SUBRECIPIENT** cannot provide relocation assistance to a person who has not provided certification of U.S. citizenship or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the **SUBRECIPIENT** that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States. The **COUNTY** may require the **SUBRECIPIENT** to follow other verification requirements as prescribed within the Federal Register Guidance, regulations, or within the Action Plan.

Furthermore, the **SUBRECIPIENT** shall ensure that CDBG-DR funds, which are passed through Lee County, are restricted to people legally able to reside in the United States.

**SUBSECTION XIII.B. - E-VERIFY REQUIREMENTS:** The **SUBRECIPIENT** must verify employment eligibility of all new employees hired during the Agreement term through the U.S. Department of Homeland Security's E-Verify system.

Section 448.095, F.S., requires the following:

1. Every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.
2. A private employer shall, after making an offer of employment which has been accepted by a person, verify such person's employment eligibility. A private employer is not required to verify the employment eligibility of a continuing employee hired before January 1, 2021. However, if a person is a contract employee retained by a private employer, the private employer must verify the employee's employment eligibility upon the renewal or extension of his or her contract.

E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States. There is no charge to the employer to use E-Verify. The Department of Homeland Security's E-Verify system can be found at: <https://www.e-verify.gov/>.

If the **SUBRECIPIENT**, or its contractors, consultants, or subrecipients, does not use E-Verify, they shall

enroll in the E-Verify system prior to hiring any new employee or retaining any contract employee after the Effective Date of this Agreement.

**SUBSECTION XIII.C. – NATIONAL OBJECTIVE:** All activities funded with CDBG-DR funds must meet the criteria for one of the CDBG program's National Objectives. The **SUBRECIPIENT** certifies that the activities carried out under this Agreement shall meet the stated national objective as outlined under SUBSECTION II.C. NATIONAL OBJECTIVE. Furthermore, the **SUBRECIPIENT** certifies and acknowledges that it understands documentation and records requirements for the stated national objective type(s), as defined at 24 CFR 570.208, 24 CFR 570.506, and any and all alternative requirements under the Federal Register Guidance in relation to relevant national objective type(s) as stated in the above Subsection.

**SUBSECTION XIII.D. – USE OF FUNDS AND ORDER OF ASSISTANCE:** CDBG–DR Appropriations Acts generally include a statutory order of assistance for Federal agencies which require Grantees to verify whether funds made available by FEMA or the U.S. Army Corps of Engineers (USACE) are available for an activity, or the costs are reimbursable by FEMA or the USACE, *before* awarding CDBG-DR assistance for the cost of carrying out the same activity.

The **SUBRECIPIENT** shall not use CDBG–DR funds for activities reimbursable by or for which funds are made available by FEMA or the U.S. Army Corps of Engineers (USACE). The **SUBRECIPIENT** must verify and inform the **COUNTY** if FEMA and USACE funds are available prior to award or expenditure of CDBG-DR funds to an eligible activity within the Scope of Work contained under *Exhibit B – Scope of Work and Activities – Project Activity Scope of Work Description*. *Exhibit H – Certification of CDBG-DR Compliance Provisions* further outlines Duplication of Benefits certifications which the **SUBRECIPIENT** must adhere to. Failure to do so can result in a return of funds as further outlined within this Agreement under SUBSECTION V.B. – DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS) and SUBSECTION XIII.E. DUPLICATION OF BENEFITS.

**SUBSECTION XIII.E. – DUPLICATION OF BENEFITS:** The **SUBRECIPIENT** certifies that it shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5155 et seq.) and described within Appropriations Acts and Federal Register Guidance. The **SUBRECIPIENT** must comply with HUD's requirements for Duplication of Benefits (DOB), as described in the Federal Register Guidance (Section IV.A.1. – Grant Administration; Duplication of Benefits (DOB)) and HUD guidance (including HUD training materials), including specific Order of Assistance requirements as noted under SUBSECTION XIII.D. USE OF FUNDS AND ORDER OF ASSISTANCE. The **SUBRECIPIENT** shall carry out the activities under this Agreement in compliance with the **COUNTY's** procedures to prevent DOB. The **SUBRECIPIENT** shall also sign a Subrogation Agreement (see *Exhibit K – CDBG-DR Program Subrogation Agreement*).

In accordance with the Federal Register Guidance at 88 FR 32053 – Section IV.A.1.(d)(v) Applicable Rules, Statutes, Waivers, and Alternative Requirements: Reassess Unmet Need When Necessary, the **SUBRECIPIENT** certifies that they will notify the **COUNTY** immediately of any funding source changes and/or additions from other sources that are different from that shown in the **SUBRECIPIENT'S** *application*. This notification must include a statement explaining how this change in funding affects the provisions of the project and activity requirements as well as the use of and continued need for CDBG-DR funds through the **COUNTY**.

The **SUBRECIPIENT** shall either (1) maintain all funds provided under this Agreement in a separate bank account or (2) ensure that the **SUBRECIPIENT'S** accounting system shall have sufficient internal controls to separately track expenditure of all funds under this Agreement, in accordance with 2 CFR 200.302. In cases where the project and its activities are funded by more than one funding source (other funds besides CDBG-DR funds) where potential duplicative assistance could exist, the **SUBRECIPIENT** shall

not commingle CDBG-DR funds provided under this Agreement with any other funds, projects or programs, when those funds are determined to be for the same purpose and same use, in accordance with the Federal Register Guidance. 88 FR 32050, Section IV.A.1.(a) – Overview of Grant Process, The Stafford Act – and Section 312 of the Stafford Act makes recipients of Federal disaster assistance liable for repayment of the amount of Federal disaster assistance that duplicates benefits available for the same purpose from another source (42 U.S.C. 5155(c)). The **COUNTY** may, in its sole discretion, disallow costs made with commingled funds that were designated as being available for the same purpose and use as the CDBG-DR funds and require reimbursement for such costs as described herein (SUBSECTION V.B. – DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS)).

**SUBSECTION XIII.F. – CIVIL RIGHTS REQUIREMENTS:** The **SUBRECIPIENT** further assures that all contractors, subcontractors, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs, projects, and activities are not discriminating against those participants or employees in violation of statutes, regulations, guidelines and standards. By acceptance of this CDBG-DR funding, the **SUBRECIPIENT** assures and certifies the following:

1. That they will comply with all applicable Federal, state and local anti-discrimination laws pertaining to nondiscrimination in programs receiving Federal financial assistance, including but not limited to:
  - a. Title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations – including that recipients/grantees of Federal financial assistance are required to take reasonable steps to ensure meaningful access to persons who are Limited English Proficiency (LEP), as per Executive Order 13166 and the Federal Register Guidance, to items such as, but not limited to, project outreach, project, or activity materials including communique in the form of digital (website) media and paper materials.
  - b. Section 109 - Title I of the Housing & Community Development Act of 1974
  - c. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)
  - d. Age Discrimination Act of 1975 (42 U.S.C. 610 et. seq.)
  - e. Fair Housing Act
2. That they will comply with the Americans with Disabilities Act of 1990 (“ADA”) (P.L. 101-336, as codified at U.S.C. 42.126 (sections 12101-12213) and as amended, and 28 CFR 35); the Florida Civil Rights Act, as amended, Chapter 76, F.S.; Title VII of the Civil Rights Act of 1964, as amended; and laws which gives civil rights protections to individuals with disabilities, guaranteeing equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services, and telecommunications. A Single-Point-of-Contact shall be required if the agency employs 15 or more employees. The Single-Point-of-Contact will ensure effective communication with deaf or hard-of-hearing customers or companions in accordance with Section 504 and the ADA and coordinate activities and reports with the **SUBRECIPIENT’S** Single-Point-of-Contact.
3. That if clients are to be transported under this Agreement, **SUBRECIPIENT** will comply with the provisions of Chapter 427, Florida Statutes, which requires the coordination of transportation for the disadvantaged.
4. That if personnel in programs under this Agreement work directly with children/youths and vulnerable or disabled adults, the **SUBRECIPIENT** will comply with applicable provisions under Florida Statutes 943.0542; 943.04351; 393.0655; 402, regarding employment screening.
5. That activities under this Agreement shall provide for access to equal participation of religious or faith-based organizations, where applicable, in accordance with 24 CFR 570.200 and Executive Order 13279.

Additional requirement information can be accessed at the following websites:

- [Office of Fair Housing and Equal Opportunity \(FHEO\) Fair Housing Rights and Obligations](#)
- [FHEO main website](#)

- Guidelines for promoting Fair Housing for individuals with Limited English Proficiency (LEP)

These requirements are designed to prevent discrimination in the delivery of benefits and services because of race, color, religion (creed), sex, national origin, age, familial status or disability. Affirmative marketing plans and use of universal design features for construction and rehabilitative projects should be incorporated when possible.

All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the home seeking public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, or national origin. The choice of logotype, statement, or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. Different styles/types/sizes of logos and information regarding brochures can be found on the Fair Housing and Equal Opportunities HUD website.

**SUBSECTION XIII.G. – DETECTION AND PREVENTION OF FRAUD, WASTE, AND ABUSE:** In accordance with the Federal Register Guidance, the **SUBRECIPIENT** certifies that they will administer their programs under procedures, supervision, safeguards, and such other methods as may be necessary to prevent fraud, waste, and abuse, and that it will target its services and activities to those who need them the most. Additionally, the **SUBRECIPIENT** certifies that their written standards of conduct and their conflict-of-interest policy will supplement their anti-fraud, waste, and abuse (AFWA) initiatives, and that the **SUBRECIPIENT** may be required to take part in fraud, waste, and abuse (FWA) training and will work with the **COUNTY** to develop a FWA complaint and reporting process, including reporting such complaints to the **COUNTY**.

**SUBSECTION XIII.H. – INELIGIBLE ACTIVITIES:** The **SUBRECIPIENT** assures that it will not conduct or expend CDBG-DR funds on any activities which are deemed ineligible by the Federal Register Guidance (88 FR 32077, Section III.G.), federal regulations (most notably at 24 CFR 570.207), the Action Plan, and all other applicable laws.

**SUBSECTION XIII.I. – PROGRAM INCOME:** The **SUBRECIPIENT** shall report to the **COUNTY** all program income (as defined at 24 CFR 570.500 or in the Federal Register Guidance governing the CDBG-DR funds) generated by activities carried out with CDBG-DR funds made available under this Agreement as part of the **SUBRECIPIENT'S** periodic reporting outlined under SECTION VI. REPORTS AND EXHIBITS and SECTION VII. AUDITS, MONITORING, AND RECORDS.

The **SUBRECIPIENT** must return to the **COUNTY**, prior to closeout, any program income generated by the project and its activities. The **COUNTY** certifies that it shall use program income in accordance with the applicable requirements of 2 CFR 200.307 and alternative requirements and waivers as prescribed under the Federal Register Guidance at 88 FR 32074, Appendix B: CDBG-DR Consolidated Notice - Section III.E. Program Income (in place of requirements at 24 CFR 570.500 and 24 CFR 570.504), and the terms of this Agreement. The **SUBRECIPIENT** shall return program income to the **COUNTY** if a program income balance exists, or program income is generated after closeout. In all cases, any program income received that is not used to continue the disaster recovery activity will not be subject to the waivers and alternative requirements of the Federal Register Guidance or the **COUNTY'S** CDBG Entitlement program, if program income is transferred to that program.

**SUBSECTION XIII.J. – CITIZEN PARTICIPATION AND PUBLIC WEBSITE REQUIREMENTS:** The **COUNTY**, as a Grantee, certified to HUD that it has a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 or 91.105 (except as provided for in waivers and alternative requirements under the Federal Register Guidance). Additionally, the **COUNTY**, as a Grantee, certified to HUD that it will maintain a comprehensive CDBG-DR public website that permits individuals and entities awaiting assistance and the general public to see how all grant funds are used and administered. The Action Plan

also details how the **COUNTY** will adhere to both requirements.

The **SUBRECIPIENT** certifies that it will adhere to requirements by the **COUNTY** to provide documentation and information which informs both the citizen participation and public website requirements. Further details on information needed to meet these requirements are spelled out in the exhibits, attachments, and forms as part of this Agreement.

**SUBSECTION XIII.K. – PERSONALLY IDENTIFIABLE INFORMATION (PII):** As previously referenced under SUBSECTION VII.D. RECORDKEEPING REQUIREMENTS and in accordance with 2 CFR 200.1 and 2 CFR 200.338, Personally Identifiable Information (PII) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Protected PII means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, and educational transcripts. This does not include PII that is required by law to be disclosed.

PII must always be safeguarded, even in instances of public records requests. No Federal awarding agency may place restrictions on the non-Federal entity that limits public access to the records of the non-Federal entity pertinent to a Federal award, *except for protected PII or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency.*

The **SUBRECIPIENT** certifies that they understand the PII definitions as noted above, and in accordance with their internal controls under 2 CFR 200.303, the SUBRECIPIENT must implement reasonable measures to safeguard Personally Identifiable Information (PII) and other sensitive data. These measures should form part of the SUBRECIPIENT's internal control framework to ensure compliance with federal regulations. The SUBRECIPIENT is responsible for maintaining appropriate safeguards to prevent unauthorized access, use, or disclosure of such information, consistent with cybersecurity best practices and the applicable federal, state, and local laws governing data protection.

Additionally, the **COUNTY**, pursuant to the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a "covered entity," as the law defines that term. Any "personal health information" (PHI) as defined by the law that the **COUNTY** receives pursuant to this Agreement in connection with this project and its activities, as applicable, is subject to the disclosure and security requirements of HIPAA. Transfer of information to the **COUNTY** sufficiently "de-identified" to no longer be considered PHI is encouraged as being in the best interest of client PHI confidentiality to the extent that public services are unaffected. Methods to accomplish the highest levels of public service coupled with PHI confidentiality will be an ongoing task of the affected staffs of the **COUNTY** and the **SUBRECIPIENT**.

**SUBSECTION XIII.L. – NECESSARY AND REASONABLE REQUIREMENTS:** The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for the Federal Awards in 2 CFR 200 Subpart E (Federal Cost Principles) apply to all CDBG-DR Grantees and their Subrecipients. The **SUBRECIPIENT** certifies that all costs incurred under this Agreement are necessary and reasonable for the performance of its project and/or activities. The Cost Principles are made applicable to local governments through 24 CFR 570.502. The **SUBRECIPIENT** must consider factors described at 2 CFR 200.404(a-e) when determining which types and amounts of cost items incurred under this Agreement are necessary and reasonable.

**SUBSECTION XIII.M. – COPYRIGHT, PATENT AND TRADEMARK:** In accordance with 2 CFR 200.1

and 2 CFR 200.135, trademarks, copyrights, patents and patent applications and property, are identified as intangible property, or property having no physical existence. The **SUBRECIPIENT** may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under this CDBG-DR award. HUD, through the **COUNTY** as its pass-through entity, reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. The **SUBRECIPIENT** is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR 401 (“Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements”).

Any and all patent rights accruing under, or in connection with, the performance of this Agreement are hereby reserved to the **COUNTY**. Any and all copyrights accruing under, or in connection with, the performance of this Agreement are hereby transferred by the **SUBRECIPIENT** to the **COUNTY**.

1. If the **SUBRECIPIENT** has a pre-existing patent or copyright, the **SUBRECIPIENT** shall retain all rights and entitlement to that pre-existing patent or copyright unless this Agreement expressly provides otherwise.
2. 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 **SUBRECIPIENT** shall refer the discovery or invention to the **COUNTY** for a determination whether the **COUNTY** 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 **COUNTY**. If any books, manuals, films, or other copyrightable material are produced, the **SUBRECIPIENT** shall notify the **COUNTY**. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the **SUBRECIPIENT** to **COUNTY**. Within thirty (30) calendar days of execution of this Agreement, the **SUBRECIPIENT** shall disclose all intellectual properties relating to the performance of this Agreement which give rise to a patent or copyright. The **SUBRECIPIENT** shall retain all rights and entitlements to any pre-existing intellectual property which is so disclosed. Failure to disclose will indicate that no such property exists, and the **COUNTY** shall have the right to all patents and copyrights which accrue during performance of this Agreement.

**SUBSECTION XIII.N. – FEDERAL TERMS AND CONDITIONS:** For Federal CDBG-DR funded programs, the **SUBRECIPIENT** has or will develop and maintain the capacity to carry out disaster recovery activities in a timely manner and will ensure compliance with applicable Uniform Administrative Requirements as described in 2 CFR 200, Community Development Block Grants (CDBG) regulations at 24 CFR 570, the Federal Register Guidance, the Action Plan, and all other established, applicable HUD regulations, acts, and statutes, as now in effect and as may be amended from time to time. The **COUNTY** outlines full CDBG-DR Compliance Provisions for the **SUBRECIPIENT** under *Exhibit H – Certification of CDBG-DR Compliance Provisions* and details program management standards within the respective program’s manual.

**SUBSECTION XIII.O. – STATE AND LOCAL GOVERNMENT REQUIREMENTS:** The **SUBRECIPIENT** agrees to the following statements as it relates to state and/or local government requirements:

1. The **SUBRECIPIENT** will comply with all applicable laws, ordinances, and regulations of the United States, the State of Florida, the **COUNTY**, and the municipalities as said laws, ordinances, and regulations exist and are amended from time to time. In entering into this Agreement, the **COUNTY** does not waive the requirements of any **COUNTY** or local ordinance or the requirements of obtaining any permits or licenses that are normally required to conduct business or activity contemplated by the **SUBRECIPIENT**.
2. The **SUBRECIPIENT** will comply with Chapter 39.201, Florida Statutes, that any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent,

legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, shall report such knowledge or suspicion to the Florida Abuse Hotline (1-800-962-2873).

3. The **SUBRECIPIENT** will comply with Chapter 415.1034, Florida Statutes, that any person who knows or has reasonable cause to suspect that a vulnerable and or disabled adult has been abused, neglected, or exploited, shall immediately report such knowledge or suspicion to the Florida Abuse Hotline (1-800-962-2873).
4. The **SUBRECIPIENT** will comply with and implement this Agreement in a manner satisfactory to Lee County and HUD and consistent with all applicable laws, regulations, and policies and procedures that may be required as a condition of Lee County providing the grant funds, including but not limited to, all applicable program administration and compliance requirements set forth by this Agreement, and in accordance with the CDBG-DR NOFA Application, CDBG-DR Action Plan, and any other documentation previously provided by the **SUBRECIPIENT**, attached as Exhibit F – Application, and made a part hereof.
5. Lee County's provision of grant funds under this Agreement is specifically conditioned on the **SUBRECIPIENT's** compliance with this provision and all terms and conditions of this Agreement, the most recently published version of Lee County's *Hurricane Ian CDBG-DR Subrecipient Manual and Internal Grant Management Manual*, and the *CDBG-DR Public Facilities Infrastructure Program Policies and Procedures Manual*, which can be accessed on <https://cdbgdr.leegov.com>, and any amendments thereto, related Federal Register Guidance (including Guidance, which is provided under future Federal Register Notices), and the requirements of the authorities cited above, as the same may be amended from time to time.
6. The **SUBRECIPIENT** will acknowledge support for activities funded wholly or in part by CDBG-DR funds provided by HUD and the **COUNTY**. In publicizing, advertising, or describing the program, state "Funding provided by Lee Board of County Commissioners and HUD."
7. The **SUBRECIPIENT** will notify the **COUNTY** of any changes to the **SUBRECIPIENT** organization to include Board Membership (roster), Articles of Incorporation and Bylaws within ten (10) working days of the effective date.
8. If needed, **SUBRECIPIENT** may be called upon to assist the **COUNTY** during a natural disaster or emergency. This may include, but is not limited to, the use of the **SUBRECIPIENT'S** facility to assist with Emergency Food Stamp preregistration if the facility is operations and use of staff to assist with case management and post-disaster shelter assessments. **SUBRECIPIENT** will be responsible to notify United Way 211 via phone, email, or through submission of online survey form, immediately after a disaster declaration if the location is accessible and operational and of any **SUBRECIPIENT** staff who are available to assist with recovery efforts.

#### **SECTION XIV: OTHER PROVISIONS AND CONDITIONS**

If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then that provision shall be null and void only to the extent of the conflict or unenforceability, and that provision shall be severable from and shall not invalidate any other provision of this Agreement.

Any power of approval or disapproval granted to the **COUNTY** under the terms of this Agreement shall survive the term of this Agreement.

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.

In the event travel is pre-approved by the **COUNTY**, any bills for travel expenses shall be submitted and reimbursed in accordance with section 112.061, F.S., the rules promulgated thereunder and 2 CFR 200.474.

If the **SUBRECIPIENT** is allowed to temporarily invest any advances of CDBG-DR funds under this Agreement, any interest income shall either be returned to the **COUNTY**.

The **SUBRECIPIENT** acknowledges being subject to Florida's Government in the Sunshine Law (section 286.011, F.S.) with respect to the meetings of the **SUBRECIPIENT'S** governing board or the meetings of any subcommittee making recommendations to the governing board. The **SUBRECIPIENT** agrees that all such aforementioned meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records made available to the public in accordance with Chapter 119, F.S.

The **SUBRECIPIENT** shall comply with section 519 of P.L. 101-144, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990; and section 906 of P.L. 101-625, the Cranston-Gonzalez National Affordable Housing Act, 1990, by having, or adopting within ninety (90) days of execution of this Agreement, and enforcing, the following:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.

Upon expiration or termination of this Agreement, the **SUBRECIPIENT** shall transfer to the **COUNTY** any CDBG-DR funds remaining at the time of expiration or termination, and any accounts receivable attributable to the use of CDBG-DR funds.

#### **SECTION XV: CITIZEN COMPLAINTS**

The **SUBRECIPIENT** is responsible for tracking and reporting citizen complaints to the **COUNTY** under the following types of complaints and/or inquiries: (1) Program or Project Appeals, where applicable; (2) HUD complaints; (3) Fair Housing complaints; and (4) Fraud, Waste, and Abuse (FWA) complaints. The **SUBRECIPIENT** must adopt the **COUNTY'S** written citizen complaint policy or provide their own policy that provides citizens with the address, phone number, and times for submitting complaints and grievances. The policy must also provide that timely written answers to written complaints and grievances will be provided within 15 working days, where practicable, or the **SUBRECIPIENT** must document why additional time for the response is required.

#### **SECTION XVI: 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** certifies that the undersigned person has the authority to legally execute and bind the **SUBRECIPIENT** to the terms of this Agreement. The **COUNTY** may, at its discretion, request documentation evidencing the undersigned has authority to bind the **SUBRECIPIENT** to this Agreement as of the Effective Date; any such documentation is incorporated herein by reference.

Prior to the execution of this Agreement, the **SUBRECIPIENT** warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, investigation, or any other legal or financial condition that would in any way prohibit, restrain, or diminish the **SUBRECIPIENT'S** ability to satisfy its obligations. The **SUBRECIPIENT** shall immediately notify the **COUNTY** in writing if its ability to perform is compromised in any manner during the term of this Agreement.

**SECTION XVII: AGREEMENT DISPUTE RESOLUTION PROCEDURE**

Any dispute between the Parties with respect to provisions contained in a Lee County Office of Strategic Resources and Government Affairs Agreement or issues that arise pertinent to an Agreement shall be resolved as follows:

The Parties may, by mutual agreement, attempt to resolve their dispute in the following manner within a thirty (30) day period. If both parties are in agreement, the thirty (30) daytime period can be extended for an additional ten (10) days.

1. Duly authorized representatives shall meet as often as mutually agreeable to discuss in good faith the dispute and to negotiate a mutually agreeable resolution. Authorized representatives for SRGA include the Agreement Coordinator and Program Manager.
2. During the course of the dispute process, requests made by one Party to the other for non-privileged information, reasonably related to the dispute, shall be responded to in good faith.
3. If the dispute is unable to be resolved between the authorized representatives within the specified time period, it will be forwarded to the Department Director for resolution. A decision by the Director will be issued within ten (10) days.
4. If the dispute remains unresolved after the Department Director's decision, the parties may proceed to litigation. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens. This Agreement and the rights and obligations of the Parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles. Unless otherwise agreed in writing, the **SUBRECIPIENT** will be required to continue all obligations under this Agreement during the pendency of claim or dispute including, but not limited to, actual period of mediation or judicial proceedings.
5. Either Party may at any time commence formal court proceedings, which shall be immediately communicated, and will end the informal Dispute Resolution process as described in Paragraph 1-3 above.

**SECTION XVIII: AGREEMENT CLOSEOUT**

The **SUBRECIPIENT** must complete a closeout checklist and final closeout reports to ensure complete and final documentation of all finance and program activities. The closeout checklist and reports must be submitted to the **COUNTY** within 90 days after the end date of this agreement.

The closeout checklist must include documentation and certification that:

1. All CDBG-DR funds have been expended within the exception of any closeout liabilities or contingent liabilities (24 CFR 570.509(a)(1));
2. All work financed with CDBG-DR funds has been completed, is eligible, and meets a national objective, including activities financed through escrow accounts, loan guarantees, or similar mechanisms; performance and expenditure reports have been submitted and account for program income and administrative expenditures (24 CFR 570.509(a)(2-5)); and
3. All other responsibilities under this Agreement have been met or the **COUNTY** has determined that there is no further benefit in keeping the Agreement open to secure performance (24 CFR 570.509(a)(6)).

The final closeout reports must include the following:

1. Final Project Performance Measures and Outcomes Form (*Exhibit E*);

2. Final *Monthly Activity Report* (with final progress narrative);
3. Updated *Project Budget and Expense (Sources and Uses) Worksheet* (including program income);
4. Final *Payment Request Form*; and
5. Inventory of property acquired or improved with CDBG funds. The inventory should identify real property acquired with over \$25,000 of CDBG funds including its current use, to facilitate compliance with requirements for the continuing eligible use of property at 24 CFR 570.505.

Based on the **SUBRECIPIENT'S** final reports and other relevant information, the **COUNTY** may execute a closeout agreement that specifies closeout costs or contingent liabilities that are subject to payment with CDBG-DR funds after the closeout agreement is signed; continuing responsibilities after closeout; or other provisions appropriate to special circumstances.

As specified in 2 CFR 200.345, the closeout of a CDBG-DR award to a **SUBRECIPIENT** does not affect:

1. The **COUNTY's** right to disallow costs and/or recover funds on the basis of a later audit or other review.
2. The **SUBRECIPIENT's** obligation to return funds due to the **COUNTY** from subsequent refunds, corrections, or other transactions.
3. The **COUNTY** and **SUBRECIPIENT'S** obligation to comply with records retention as specified in 2 CFR 200, Subpart D—Post Federal Award Requirements, Records Retention and Access, including 2 CFR 200.334-338, as modified by 24 CFR 570.502(a)(7)(ii).
4. The **SUBRECIPIENT's** responsibilities for property management and disposition:
  - For real property in 24 CFR 570.503(b)(7).
  - For other property, as applicable in 2 CFR 200, Subpart D, Post Federal Award Requirements, Property Standards, including:
    - 2 CFR 200.310 (Insurance coverage).
    - 2 CFR 200.312 (Federally owned and exempt property).
    - 2 CFR 200.313 and 24 CFR 570.502(a)(6) (Equipment).
    - 2 CFR 200.314 (Supplies).
    - 2 CFR 200.315 (Intangible property).
    - 2 CFR 200.316 (Property trust relationship).
    - Audit requirements in 2 CFR 200, Subpart F.

**SECTION XIX:       NOTICES**

Official notices concerning this Agreement will be directed to the following authorized representatives below, either in writing, by hand delivery, first class, or certified mail with return receipt requested at the addresses below, or in electronic format, by electronic mail:

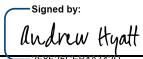
**SUBRECIPIENT**

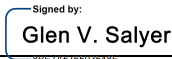
Name: Andy Hyatt  
Title: Town Manager  
Agency: Town of Fort Myers Beach  
Address: 2525 Estero Boulevard, Fort Myers Beach, FL 33931  
Telephone: 239-313-0895  
Email: AndyHyatt@fmbgov.com

**COUNTY**

Name: Jeannie Sutton  
Title: Director  
Agency: Office of Strategic Resources and Government Affairs  
Address: 1500 Monroe St., Fort Myers, FL 33901  
Telephone: (239) 822-8438  
Email: JSutton@leegov.com

The signatures of the two persons shown below are designated and authorized to sign all applicable reports:

Andy Hyatt  
Name (printed/typed)  
  
Signature  
Town Manager  
Title

Glen V. Salyer  
Name (printed/typed)  
  
Signature  
Assistant County Manager  
Title

In the event that the **SUBRECIPIENT** designates different representatives after execution of this Agreement, notice of the name and address of the new representative will be rendered in writing or electronically by authorized officer of the **SUBRECIPIENT** to the **COUNTY**.

**SECTION XX:       ALL TERMS AND CONDITIONS INCLUDED**

This Agreement and its attachments, and any exhibits referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties. There are no provisions, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of this Agreement is legally determined unlawful or unenforceable, the remainder of the Agreement shall remain in full force and effect and such terms or provisions shall be stricken.

**IN WITNESS THEREOF**, the **SUBRECIPIENT** and the **COUNTY** have caused this Agreement and all Agreement Exhibits, Attachments, Reports, and Forms as indicated on the *Subrecipient Agreement Document Checklist* to be executed by their undersigned officials as duly authorized.

**SUBRECIPIENT: TOWN OF FORT MYERS BEACH**

BY: <sup>Signed by:</sup> Andrew Hyatt 1/13/2025 | 10:43 AM EST  
Signature Date  
Andrew Hyatt  
Name (print)

ATTEST:  
CLERK OF CIRCUIT COURT

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: <sup>Signed by:</sup> Latasha Seth  
<sup>34140A3DDF374AZ...</sup>  
DSDeputy Clerk

BY: <sup>DocuSigned by:</sup> Kevin Ruane  
<sup>22FD05F15C7E43A...</sup>  
Chair



APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

<sup>DocuSigned by:</sup> Amanda L. Swindle  
<sup>EC9B5A5584DD473...</sup>  
County Attorney's Office

**EXHIBIT A**  
**SCOPE OF WORK AND ACTIVITIES**  
**PROGRAM/PROJECT ACTIVITY OVERVIEW**

The information provided under this Exhibit is retrieved from the Subrecipient's approved application in response to the Public Facilities Infrastructure Program NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to inform and update the County's approved System of Record for program and project eligibility with core HUD CDBG-DR requirements. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record.

**Program/Project Activity Overview**

**Project Name:** Parks & Recreation Revitalization

**CDBG-DR Program eligible activity:** Rehabilitation/reconstruction of public facilities

**The National Objective to be achieved for each activity as a result of this Project:** Activities designed to meet community development needs having a particular urgency ("Urgent Needs").

*Per 24 CFR 570.208(c), to comply with the national objective of meeting community development needs having a particular urgency, and activity must be designed to alleviate existing conditions which the grantee certifies:*

1. Pose a serious and immediate threat to the health or welfare of the community;
2. Are of recent origin or recently became urgent;
3. The grantee/subgrantee is unable to finance the activity on its own; and,
4. Other resources of funding are not available to carry out the activity.

*In accordance with FR-6393-N-01, this activity is using the Urgent Need national objective which is allowed for a period of 36 months after the applicability date of the Lee County's Allocation Announcement Notice (May 18, 2023).*

**The method of measuring the National Objective, if LMI:** Not Applicable – activity will not meet a LMI national objective

**The number of individuals benefiting as a result of this Project:**

- Total beneficiaries: 6,670
- Total low/mod beneficiaries: 2,055

**CDBG-DR storm tie-back and/or Mitigation resilience measure:** The Town of Fort Myers Beach was devastated by the unprecedented destruction of Hurricane Ian, which left many unmet needs and exposed areas of the community to future storms. The Parks & Recreation Revitalization Program aims to revitalize the community by replacing and updating multiple public facilities and community

parks that were severely damaged by the hurricane. These repair and enhancement efforts align with the broader community goals of sustainability, resilience, and community well-being. The first component is the Bay Oaks Community Pool Project, a critical community hub beloved by both residents and tourists. Hurricane Ian's surge and debris heavily damaged the entire facility, including the pool, hard deck, public restrooms, and staff offices. All mechanical systems were wiped out. This project proposes constructing a new facility to house public restrooms and staff offices, fully replacing the hard deck and slide structure, restoring the pool basins, and improving surrounding drainage, lighting, and landscaping. This comprehensive project will ensure an efficient, durable, and resilient community asset for many years to come. Efficient and timely completion of the pool project is essential not only for restoring services but also for demonstrating effective disaster recovery management, minimizing downtime, and allowing the community to benefit from the renewed resources as soon as possible. The disastrous impacts of Hurricane Ian, including a storm surge of over 15 feet, resulted in the complete loss of the previous community hub, creating an immediate need to restore this essential recreational facility. Restoring the Bay Oaks Community Pool aligns with community goals by providing a safe, inclusive, and engaging space that supports health, wellness, and social interaction. The second component, the Old San Carlos & Time Square Lighting Project, aims to revitalize the downtown core by replacing and updating the entire street lighting system, which was severely damaged by Hurricane Ian. This area, anchored by two vital community gathering spaces —Bayside on the north side and Time Square on the gulf side—is a critical business district and community hub. Hurricane Ian's surge and debris obliterated nearly all 46 streetlights and light poles, leaving the area dangerously dark. This project proposes installing two new panel/switch boxes, all new wiring and conduit, and poles with turtle-compliant lighting fixtures. This comprehensive upgrade will ensure efficient, durable, and safe lighting for the business district, addressing the immediate need for public safety and supporting the economic recovery of local businesses. The significance of this project is paramount to the town's prosperity in both the short and long term, transforming the area into a functional, energy-efficient, safe, and welcoming environment. Revitalizing the downtown lighting aligns with community goals by enhancing public safety, supporting local businesses, and creating a vibrant, attractive area for residents and visitors. Additionally, this lighting project will serve as the first step in the town's long-term plan to evolve Old San Carlos Boulevard into a "park corridor," connecting Bayside to the north and Time Square to the south, further enhancing connectivity and the overall aesthetic appeal of the downtown area. The final component, the Newton Park Beach Facility Project, aims to revitalize a historic landmark in Fort Myers Beach by replacing and updating the "Seven Seas" cottage, which was completely destroyed by Hurricane Ian. This cottage, with nearly 100 years of history, served as an education center for the community. The project proposes constructing a new elevated and resilient education-focused facility to replace the previous building, ensuring ADA compliance and public restrooms for the beachfront park, along with reconstructing the attached parking lot. Designed with future severe weather events in mind, the facility will feature a reinforced foundation and roof, high-impact glass, and sealants offering enhanced resistance to water and wind. Landscaping will include dune restoration with native grasses and shrubs to naturally mitigate erosion and flooding. These features ensure that the facility will endure as a safe, educational, and recreational resource through harsh conditions. The new Newton Park Beach Facility will align with community goals by preserving the town's history, promoting environmental education, and providing a resilient and accessible public space. The Parks & Recreation

Revitalization Program will utilize forward-looking strategies and proven best practices to mitigate future issues the completed projects may face. The town will use LED lighting to reduce energy consumption. Additionally, lighting near the beach will be turtle-compliant to ensure no disruption to natural habitats. These measures align with HUD's green building standards, offering direct economic benefits through reduced energy bills and contributing to the broader community goal of sustainable development. This program will provide a foundation for residential satisfaction, allowing the area to continue recovering from the catastrophic impacts of Hurricane Ian while applying environmentally friendly strategies and resilient building standards to reduce future storm impacts. The Parks & Recreation Revitalization Program is a transformative initiative that will significantly enhance the quality of life in Fort Myers Beach, aligning with community goals to create a safe, sustainable, and vibrant environment.

**EXHIBIT B**  
**SCOPE OF WORK AND ACTIVITIES**  
**PROJECT ACTIVITY SCOPE OF WORK DESCRIPTION**

The information provided under this Exhibit is retrieved from the Subrecipient's approved application in response to the Public Facilities Infrastructure Program NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to inform and update the County's approved System of Record for key performance measures and project budget cost eligibility. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record and/or under a formal amendment in accordance with the Agreement.

**Project Activity Scope of Work Description ("Work")**

The Town of Fort Myers Beach is applying for Community Development Block Grant Disaster Recovery (CDBG-DR) funding through the Lee County Public Facilities Program to support the restoration and enhancement of its parks and recreational facilities. The devastating impact of Hurricane Ian left the town not only physically damaged but also economically stifled. The Parks & Recreation Revitalization project is a vital initiative aimed at repairing and upgrading these essential public spaces. This project will address the damage caused by Hurricane Ian while also improving the resilience and sustainability of the Town's recreational facilities for future use. Before the storm, these facilities were central to the Town's community life, promoting health, wellness, and social connections. The program is divided into three key components, each crucial to the Town's long-term recovery and success:

1. Bay Oaks Community Pool Rehabilitation. This component of the project involves a comprehensive rebuild of the existing pool facilities, which suffered extensive damage during Hurricane Ian. The project's scope includes repairing the pool basins that withstood the storm and completely reconstructing the pool deck, water slide, mechanical systems, restrooms, offices, and other facilities that were devastated. The design strategy focuses on leveraging the intact parts of the pool infrastructure while updating and enhancing areas that require complete renovation.

The reconstruction will not only restore the pool to its former glory, but also introduce improvements in the design to enhance user experience and operational efficiency. This includes modernizing the pool deck layout to accommodate more visitors comfortably and safely, upgrading the water slide to meet the latest safety standards, and overhauling the mechanical systems to ensure more efficient and reliable operation.

The technical aspects of reconstruction will be carefully planned to ensure both

durability and functionality. The pool deck will be rebuilt using advanced, weather-resistant materials that offer both aesthetic appeal and long-lasting performance. The mechanical systems—including pumps, filters, and heating systems—will be state-of-the-art, optimized for energy efficiency and ease of maintenance.

This technical overhaul extends to the water management systems, with plans to implement cutting-edge solutions for water filtration and circulation, ensuring the pool water remains clean and safe for public use. Furthermore, the redesign includes enhanced accessibility features, making the pool complex fully compliant with ADA standards and more welcoming for all community members.

2. Old San Carlos & Time Square Lighting Restoration: This component of the project involves the complete replacement and modernization of the lighting system in the downtown area of the Town of Fort Myers Beach, which was severely damaged by Hurricane Ian. This project will install 46 new streetlights and light poles to replace those destroyed by the storm surge and debris, ensuring the new lights meet modern standards for energy efficiency and turtle compliance. Additionally, all damaged wiring and conduit throughout the area will be replaced to restore full functionality to the lighting grid. Two new panel/switch boxes will be installed to support the new lighting infrastructure and ensure reliable power distribution.

The business district has remained largely dark since Hurricane Ian, and this project focuses on improving public safety by providing adequate lighting, enhancing safety for both residents and visitors, supporting local businesses, and reducing the risk of accidents and crime. Aesthetic improvements will also be considered, with the new lighting fixtures designed to enhance the overall appearance of the downtown area, making it more inviting and attractive for tourists and locals alike.

The town is anchored by two community gathering spaces —Bayside to the north and Time Square to the south—connected by Old San Carlos Boulevard. The town's long-term plan is for Old San Carlos Boulevard to evolve into a "park corridor." This lighting project will be the first step toward realizing that vision.

Since Hurricane Ian, the Town has spent over \$200,000 on inadequate patchwork repairs, resulting in only three functioning streetlights out of the original 46. These temporary fixes have proven insufficient, highlighting the urgent need for a comprehensive overhaul. The new lighting system will prioritize sustainability and resiliency. Energy-efficient fixtures will reduce operational costs and environmental impact, while the infrastructure will be designed to withstand future storms and minimize damage.

The total cost for the Old San Carlos and Time Square Lighting Project represents a crucial investment in revitalizing the downtown area, ensuring public safety, supporting the economic recovery of local businesses, and enhancing the town's resilience and sustainability for the future.

3. Newton Park Beach Facility Project: This component of the project will rebuild and enhance park facilities, which were severely damaged by Hurricane Ian's 17-foot storm surge. This surge single-handedly erased a hundred years of history, including the historical 'Seven Seas' cottage. Given that the property was gifted to the town by the state to remain an educational center in perpetuity, the project focuses on constructing a new elevated educational and environmental center designed to meet current building codes and withstand future storm surges. Importantly, all new buildings will be constructed above base flood elevations to mitigate the risk of future flood losses. The center will serve as an educational hub, providing information on local history, environmental conservation, and marine life. The design will focus on modern architectural elements that are both functional and aesthetically pleasing, with an emphasis on sustainability. Additionally, all buildings, including restrooms, will be fully ADA-compliant, ensuring accessibility for all visitors.

Recognizing the ecological importance of native flora, the project will include extensive landscaping with indigenous plants to stabilize the beachfront and provide a habitat for local wildlife. Landscaping designs will promote ecological balance and resilience against future storms. A redesigned parking lot using eco-friendly materials will be installed to minimize environmental impact while accommodating visitors, including spaces for buses and bicycles to promote greener transportation options.

To honor the historical significance of the site, the project will incorporate elements that pay homage to the original 'Seven Seas' cottage. The new center will feature exhibits and displays educating visitors about the site's history and the impact of Hurricane Ian. Infrastructure and utility upgrades, including water, electricity, and sewage systems, will be implemented to support the new facilities and ensure reliability, with a focus on energy-efficient systems and sustainable technologies.

Investment in this project will restore a valuable community asset and enhance its resilience and sustainability, ensuring it remains a vital part of Fort Myers Beach for generations to come.

The comprehensive Parks and Recreation Revitalization Program, encompassing the Old San Carlos & Time Square Lighting Project, Newton Park Beach Facility

Project, and Bay Oaks Community Pool Project, is projected to yield significant positive outcomes for the Town of Fort Myers Beach. This program will restore and enhance critical public facilities that were severely damaged by Hurricane Ian, addressing immediate recovery needs and future resilience and addressing blighted properties contributing to economic decline and dangerous conditions. The upgraded lighting system in the downtown area will improve public safety and support local businesses, while the new educational and environmental center at Newton Park will preserve the site's historical significance and promote ecological awareness. The fully reconstructed Bay Oaks Community Pool will restore a key recreational facility, providing a central gathering place for community wellness and social bonding.

By integrating modern, energy-efficient technologies and ensuring all new structures are built above base flood elevations, the program will enhance the resilience and sustainability of these public facilities. ADA-compliant designs across all projects will ensure accessibility for all visitors, promoting inclusivity within the community. Extensive landscaping with native plants will stabilize the environment, prevent erosion, and support local wildlife, contributing to the ecological health of the area. The redesigned parking facilities will accommodate various transportation options, encouraging greener alternatives and reducing environmental impact.

The Town of Fort Myers Beach expects to create a new unity among residents, visitors, and businesses by investing in the community through the Parks & Recreation Revitalization Program. This set of projects will ensure a sustainable and effective recovery from the devastation of Hurricane Ian. With the support of CDBG-DR funding, the program will create a state-of-the-art community facility to replace the previous Bay Oaks community pool, revitalize three community parks by reintroducing the lighting grid to ensure public safety, and rebuild an improved facility with a focus on town history and education to replace the lost "Seven Seas" cottage, boosting tourism and resident satisfaction. Additionally, the town's long-term plan for Old San Carlos Boulevard to evolve into a "park corridor" will be initiated through the lighting project, enhancing connectivity between Bayside to the north and Time Square to the south and laying a foundation for a long-term vision that will significantly enhance the community.

The completed projects will bring back the cherished parks of Fort Myers Beach, accelerating the social and cultural recovery of the community through environmentally friendly construction practices. This program will serve the entire community, attracting visitors and catalyzing social and cultural revitalization. These places once served as vital recreational and social hubs for residents, and their restoration is essential to the community's physical and mental well-being. The urgency of this program is driven by the need to restore these essential services swiftly to avoid further disruption to community life.

The Parks & Recreation Revitalization Program is not just a reconstruction and

restoration effort; it is a transformative initiative that will significantly enhance the quality of life in Fort Myers Beach. By rebuilding these key community parks and facilities, the program addresses an urgent need for recreational and social infrastructure, providing safe, modern, and welcoming environments for residents and visitors of all ages. This investment will not only address the immediate damages caused by Hurricane Ian but also build a more resilient, sustainable, and inclusive future for the town, ensuring that these public facilities remain vital assets for generations to come.

**Design and Approach:** The Town of Fort Myers Beach employs staff with experience in completing projects of a similar size and scope, and has secured the services of Tidal Basin Group, which has extensive experience in implementation and oversight of projects utilizing federal, state, and/or local governmental grant funds. The combination of Town staff oversight and contractual support ensures adequate experience and capacity for effective administration and oversight of all compliance requirements. Additional information regarding Town staff and contractual support is provided below:

**Andrew Hyatt:** Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in municipal government and 13 years as a Town or City manager. Andy has an Associate's degree in general business from Cleveland State Community College in Cleveland, Tenn. From the University of Tennessee at Chattanooga, he has a Bachelor's degree in political science and a Master's degree in public administration. Mr. Hyatt will perform general oversight of project implementation and completion.

**Frank Kropacek:** Mr. Kropacek has more than 30 years of experience in local, county and state government administration ranging from contracts, contract negotiation, procurement, and project management to organizational administration. He attended the University of Wisconsin Whitewater studying Geology and Geophysics. Mr. Kropacek will be the Town's primary day-to-day contact for all project activities and will directly oversee and coordinate planning implementation.

**Joe Onzick:** Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and Bachelor's of Science degree in mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick will oversee fund accounting and financial compliance for the planning project.

To supplement Town staff's expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight

and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manager for Hendry County, FL overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will coordinate with Lee County and the Town of Fort Myers Beach to ensure HUD compliance, proper reporting, and the adherence to the proposed schedule to the project. Tidal Basin will ensure procurements adhere to 2 CFR 200, Davis Bacon Labor Compliance is adhered to, Section 3 reporting is completed, and all costs can be tied to the eligible activity and national objective tied to the project.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras and Associates collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG-DR funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf Coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, MBE/WBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.

This project will be directly implemented by the Town of Fort Myers Beach and will not involve a subgrantee.

The project administration team will be led by Mr. Andrew Hyatt, with programmatic activities overseen by Mr. Frank Kropacek and financial activities overseen by Mr. Joe Onzick. Additional information regarding each team member is included below:

Andrew Hyatt: Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in

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To supplement Town staff's expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manager for Hendry County, FL overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will coordinate with the Lee County and the Town of Fort Myers Beach to ensure HUD compliance, proper reporting, and the adherence to the proposed schedule to the project. Tidal Basin will ensure procurements adhere to 2 CFR 200, Davis Bacon Labor Compliance is adhered to, Section 3 reporting is completed, and all costs can be tied to the eligible activity and national objective tied to the project.

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compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf Coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, MBE/WBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.

**Major Project Milestones**

Milestone	Due Date
Design and Permitting Complete	12/31/2026
Construction Begins	04/30/2027
50% Construction	01/30/2028
Closeout and Final Reimbursement Request	12/30/2028

**EXHIBIT C**  
**FINANCIAL AND GRANT MANAGEMENT SYSTEM BUDGET WORKSHEET**

The information provided under this Exhibit is retrieved from the Subrecipient Agreement. In coordination and agreement with the Subrecipient, the County will utilize the information below to set up and encumber budget obligations within the County’s financial accounting system for the awarded CDBG-DR funds. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record, financial accounting records, and/or under a formal amendment in accordance with the Agreement.

**Financial and Grant Management System Budget Worksheet**

As noted within the Agreement, the Subrecipient’s allocation of CDBG-DR funding for this project is broken down in the following manner:

	<b>Most Impacted and Distressed (MID)</b>
Activity Funds (Direct Project Costs)	\$7,919,916.00
Activity Delivery Funds	\$416,837.00
Total	\$8,336,753.00

**EXHIBIT D**  
**INDIRECT COST RATE ALLOCATION PLAN**

The information provided under this Exhibit is retrieved from the Subrecipient Agreement and the Subrecipient's approved application in response to the Public Facilities Infrastructure Program NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to set up and encumber budget obligations for an indirect cost rate within the County's financial accounting system. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record, financial accounting records, and/or under a formal amendment in accordance with the Agreement.

**Indirect Cost Rate Allocation Plan**

When applicable, documentation that supports the indirect cost rate and Activity Delivery Cost must be included under this Exhibit. The County is responsible for reviewing and approving the Subrecipient's indirect cost allocation plan or proposal included below. Calculated Modified Total Direct Costs (MTDCs) subject to a: **Not applicable – an indirect cost rate will not be utilized or requested from the subrecipient under this Agreement.**

See the plan or proposal above for further details and requirements of when the Subrecipient is set to receive indirect costs. The County also identifies financial data and information in Exhibit C for the Subrecipient's use in the submission of Payment Request Forms, Single Audits, and other reports which require the County's accounting of CDBG-DR funding through its financial system.

## EXHIBIT E

### **PROJECTED PERFORMANCE MEASURES AND OUTCOMES FORM**

The information provided under this Exhibit is retrieved from the Subrecipient Agreement and, if applicable, the Subrecipient's approved application in response to the NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to set up detailed performance management goals for the Subrecipient to meet through implementing and completing the project.

The Subrecipient will report via the monthly activity report on how the project has progressed on reaching the target numbers of the projected performance measure(s). Subrecipients will work with the County to ensure any updates to this Exhibit are subsequently reviewed and approved within the System of Record in accordance with the Agreement.

#### **Projected Performance Measures and Outcomes**

When applicable, documentation which supports the performance measure(s) is taken from the Subrecipient's stated project scope of work ("projected outcomes"). The following table provides those measures which the Subrecipient must report performance on related to meeting performance goals:

Eligible Activity Type	Possible Performance Measures/Accomplishments (select at least one measure for the eligible activity being met)	Projected Total
Rehabilitation/ reconstruction of public facilities	# of buildings (non-residential)	
	# of Linear feet of green public improvement	
	# of Non-business Organizations benefitting	
	# of public facilities	3
	# of Linear feet of Public Improvement	
	# of Acres wetlands	
	# of Linear miles of Public Improvement	
	# of cable feet of public utility	
	# of Properties	
	# of Elevated Structures	
MIT - Public Facilities and Improvements-Non Covered Projects	# acres of newly added or improved green space	
	# acres of wetlands created	
	# cubic feet of stormwater storage added	
	% decrease in affluent discharged	
	% decrease in area inundated by flooding	
	% decrease in disruption hours to residents and businesses from impacts of storm events	
	% decrease in NFIP CRS score	

Eligible Activity Type	Possible Performance Measures/Accomplishments (select at least one measure for the eligible activity being met)	Projected Total
	% decrease in road closures in target area during a flood event	
MIT - Public Facilities and Improvements-Non Covered Projects (cont'd)	% decrease water surface elevation level during a flood with a qualifying event	
	\$ estimated flood loss avoidance	
	\$ Funds allocated for water management/flood mitigation improvements	
	\$ Funds allocated for water-quality improvements	
	% increase in acres of cropland protected from flooding	
	% increase in groundwater infiltration	
	% increase in number of acres converted to open space	
	% increase in pumping capacity	
	# linear feet of streams restored	
	# occupied structures in floodplain	
	# of acres green infrastructure created	
	# of acres green space created	
	# of acres green space preserved	
	# of acres no longer vulnerable to flood events	
	# of acres of native vegetation planted	
# of acres with improved multiple hazard risk mapping		

Eligible Activity Type	Possible Performance Measures/Accomplishments (select at least one measure for the eligible activity being met)	Projected Total
	# of brownfield acres converted to wetland	
	# of buildings (non-residential)	
	# of containment systems constructed	
	<b># of Elevated Structures</b>	
	# of fewer outages of critical facilities and utilities	
	# of green infrastructure projects constructed	
	# of greenspace users	
	<b># of Linear feet of Public Improvement</b>	
	<b># of Linear Feet of Sewer Lines</b>	
MIT - Public Facilities and Improvements-Non Covered Projects (cont'd)	# of linear feet of trails constructed	
	<b># of Linear Feet of Water Lines</b>	
	<b># of Linear miles of Public Improvement</b>	
	<b># of Non-business Organizations benefitting</b>	
	# of non-invasive species trees planted on project sites	
	<b># of properties protected from future flooding</b>	
	# of properties with access above 100-yr flood level	
	<b># of public facilities repaired/replaced</b>	

Eligible Activity Type	Possible Performance Measures/Accomplishments (select at least one measure for the eligible activity being met)	Projected Total
	# of reduced hours streets are flooded	
	# of residents protected from future flooding	
	<b># of Section 3 Labor Hours</b>	7,600
	# of small water retention devices/systems installed	
	# of storm water projects implemented	
	# of Targeted Section 3 Labor Hours	380
	# of Total Labor Hours	30,400
	# of vacant lots repurposed	
	# of water control structures repaired/replaced	
	% reduction in emergency maintenance costs	
	% reduction in energy costs	
	% reduction in loss of service	
	% reduction of sanitary sewer overflows	
	% reduction of watershed nitrate loading	
	% reduction of water surface elevation level	
	<b># of structures harden against future flood events</b>	
	<b># of Persons</b>	

## **EXHIBIT F**

### **APPLICATION**

The information provided under this Exhibit is retrieved from the Subrecipient's approved application in response to the Public Facilities Infrastructure Program NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below as a reference point to establish the original, approved conditions under which the original project was considered. The County will review this Exhibit when considering changes to the Agreement or other project details as outlined within the System of Record. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record and/or under a formal amendment in accordance with the Agreement.

#### **Application**

*Please see the following documentation below: The full, approved project application, submitted by the Subrecipient, for which this Agreement was completed. Supporting documentation submitted by the Subrecipient as part of the application process is incorporated by reference and is maintained within the System of Record. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:*

- 1. Subrecipient Agreement*
- 2. Public Facilities Infrastructure Program NOFA.*
- 3. Public Facilities Infrastructure Program Guidelines*
- 4. Notice to Proceed*
- 5. Subrecipient's application in response to the Notice of Funding Availability*



Lee County  
*Southwest Florida*

# Public Facilities Infrastructure Program



## Organization Information

- ▶ Organization Name: Town of Fort Myers Beach
- ▶ Address: 2731 Oak Street Fort Myers Beach, FL 33931
- ▶ Telephone: (239) 765-0202
- ▶ Federal Employer ID #: 65-0632342
- ▶ Organization Website: <https://fortmyersbeachfl.gov/>
- ▶ Unique Entity Identifier: J87EFSEEQ884

## Authorized Organization Representative

- ▶ Name: Andrew Hyatt
- ▶ Title: Town Manager

## Contact Person

- ▶ Name: Jason Freeman
- ▶ Title: Legislative Liaison / Deputy Clerk
- ▶ Email: [jasonf@fmbgov.com](mailto:jasonf@fmbgov.com)
- ▶ Telephone: (239) 266-4673

## Partner Organization

- ▶ Will your organization be partnering with any other organizations? No



Project Information

Name: Parks & Recreation Revitalization

Public Facility Description

The Town of Fort Myers Beach seeks CDBG-DR funding to restore and enhance its parks and recreation facilities, all of which were severely impacted by Hurricane Ian. The three key components of this consolidated project are the Old San Carlos & Time Square Lighting Project, Newton Park Beach Facility, and the Bay Oaks Pool Complex. Together, these projects aim to address blighted conditions in the Town, revitalize the Town's public spaces, improve public safety, and enhance the quality of life for residents and visitors

Project Type

- Aquisition, New Construction, Building Hardening, Backup Generator: Must be a permanent fix to the structure. No portable generators, Safe Rooms, Handicapped Accessibility Improvements, Energy Efficiency Improvements

Other: Reconstruction and rehabilitation of parks and recreation public facilities



## Target Service Location

### Target Service Location

- |  |  |
|--|--|
| <input type="checkbox"/> City of Cape Coral            | <input type="checkbox"/> Town of Fort Myers Beach  |
| <input checked="" type="checkbox"/> City of Fort Myers | <input type="checkbox"/> Village of Estero         |
| <input type="checkbox"/> City of Bonita Springs        | <input type="checkbox"/> Unincorporated Lee County |
| <input type="checkbox"/> City of Sanibel               | <input type="checkbox"/> All of Lee County         |



**National Objective**

▶ National Objective: Urgent Need

**Provide a description how the proposed project will meet the selected National Objective**

As a direct result of Hurricane Ian, the designated activity area meets the definition of a blighted area under 163.340, F.S. The project area includes a substantial number of deteriorated or deteriorating structures leading to economic distress, including both unsafe conditions and deterioration of the project site(s) and improvements.

Additionally, as a direct result of the impacts of Hurricane Ian, public improvements throughout the area are in a general state of deterioration and more than 25% of properties throughout the area exhibit physical deterioration of buildings/improvements due to damage from Hurricane Ian.

The attached Memorandum provides additional detail regarding these findings.

**National Objective Descriptions**

National Objective	Description
L/M Income Area Benefit	Census block groups that align with the service area maps
L/M Income Limited Clientele	The infrastructure improvements benefit a specific persons who are presumed by HUD to be principally LMI (abused children, battered spouses, elderly persons, severely disabled adults, homeless persons, illiterate adults, persons living with AIDS or migrant farm workers)
L/M Income Job Creation or Retention	The project proposes activities designed to create or retain permanent jobs, at least 51 percent of which (computed on a full-time equivalent basis) will be made available to or held by LMI persons. Must include income certifications or describe method on how LMI job creation will be documented
Urgent Need	Does the narrative description on the application under Urgent Need provide specific examples of needs that have urgency, including how the existing conditions pose a serious and immediate threat to the health and welfare of the community?

Slums and Blight	<p>Does the designated activity area meet the definition of a slum, blighted, deteriorated or deteriorating area under state or local law? Additionally, the area must meet one of the two conditions:</p> <ul style="list-style-type: none"><li>• Public improvements throughout the area are in a general state of deterioration; or</li><li>• At least 25 percent of the properties throughout the area exhibit one or more of the following:<ul style="list-style-type: none"><li>• Physical deterioration of buildings/improvements;</li><li>• Abandonment of properties;</li><li>• Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;</li><li>• Significant declines in property values or abnormally low property values relative to other areas in the community; or</li><li>• Known or suspected environmental contamination</li></ul></li></ul>
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## The scope of the project

The Town of Fort Myers Beach is applying for Community Development Block Grant Disaster Recovery (CDBG-DR) funding through the Lee County Public Facilities Program to support the restoration and enhancement of its parks and recreational facilities. The devastating impact of Hurricane Ian left the town not only physically damaged but also economically stifled. The Parks & Recreation Revitalization project is a vital initiative aimed at repairing and upgrading these essential public spaces. This project will address the damage caused by Hurricane Ian while also improving the resilience and sustainability of the Town's recreational facilities for future use. Before the storm, these facilities were central to the Town's community life, promoting health, wellness, and social connections. The program is divided into three key components, each crucial to the Town's long-term recovery and success:

1. Bay Oaks Community Pool Rehabilitation. This component of the project involves a comprehensive rebuild of the existing pool facilities, which suffered extensive damage during Hurricane Ian. The project's scope includes repairing the pool basins that withstood the storm and completely reconstructing the pool deck, water slide, mechanical systems, restrooms, offices, and other facilities that were devastated. The design strategy focuses on leveraging the intact parts of the pool infrastructure while updating and enhancing areas that require complete renovation.

The reconstruction will not only restore the pool to its former glory, but also introduce improvements in the design to enhance user experience and operational efficiency. This includes modernizing the pool deck layout to accommodate more visitors comfortably and safely, upgrading the water slide to meet the latest safety standards, and overhauling the mechanical systems to ensure more efficient and reliable operation.

The technical aspects of reconstruction will be carefully planned to ensure both durability and functionality. The pool deck will be rebuilt using advanced, weather-resistant materials that offer both aesthetic appeal and long-lasting performance. The mechanical systems—including pumps, filters, and heating systems—will be state-of-the-art, optimized for energy efficiency and ease of maintenance.

This technical overhaul extends to the water management systems, with plans to implement cutting-edge solutions for water filtration and circulation, ensuring the pool water remains clean and safe for public use. Furthermore, the redesign includes enhanced accessibility features, making the pool complex fully compliant with ADA standards and more welcoming for all community members.

2. Old San Carlos & Time Square Lighting Restoration: This component of the project involves the complete replacement and modernization of the lighting system in the downtown area of the Town of Fort Myers Beach, which was severely damaged by Hurricane Ian. This project will install 46 new streetlights and light poles to replace those destroyed by the storm surge and debris, ensuring the new lights meet modern standards for energy efficiency and turtle compliance. Additionally, all damaged wiring and conduit throughout the area will be replaced to restore full functionality to the lighting grid. Two new panel/switch boxes will be installed to support the new lighting infrastructure and ensure reliable power distribution.

The business district has remained largely dark since Hurricane Ian, and this project focuses on improving public safety by providing adequate lighting, enhancing safety for both residents and visitors, supporting local businesses, and reducing the risk of

accidents and crime. Aesthetic improvements will also be considered, with the new lighting fixtures designed to enhance the overall appearance of the downtown area, making it more inviting and attractive for tourists and locals alike.

The town is anchored by two community gathering spaces —Bayside to the north and Time Square to the south—connected by Old San Carlos Boulevard. The town's long-term plan is for Old San Carlos Boulevard to evolve into a "park corridor." This lighting project will be the first step toward realizing that vision.

Since Hurricane Ian, the Town has spent over \$200,000 on inadequate patchwork repairs, resulting in only three functioning streetlights out of the original 46. These temporary fixes have proven insufficient, highlighting the urgent need for a comprehensive overhaul. The new lighting system will prioritize sustainability and resiliency. Energy-efficient fixtures will reduce operational costs and environmental impact, while the infrastructure will be designed to withstand future storms and minimize damage.

The total cost for the Old San Carlos and Time Square Lighting Project represents a crucial investment in revitalizing the downtown area, ensuring public safety, supporting the economic recovery of local businesses, and enhancing the town's resilience and sustainability for the future.

3. Newton Park Beach Facility Project: This component of the project will rebuild and enhance park facilities, which were severely damaged by Hurricane Ian's 17-foot storm surge. This surge single-handedly erased a hundred years of history, including the historical 'Seven Seas' cottage. Given that the property was gifted to the town by the state to remain an educational center in perpetuity, the project focuses on constructing a new elevated educational and environmental center designed to meet current building codes and withstand future storm surges. Importantly, all new buildings will be constructed above base flood elevations to mitigate the risk of future flood losses. The center will serve as an educational hub, providing information on local history, environmental conservation, and marine life. The design will focus on modern architectural elements that are both functional and aesthetically pleasing, with an emphasis on sustainability. Additionally, all buildings, including restrooms, will be fully ADA-compliant, ensuring accessibility for all visitors.

Recognizing the ecological importance of native flora, the project will include extensive landscaping with indigenous plants to stabilize the beachfront and provide a habitat for local wildlife. Landscaping designs will promote ecological balance and resilience against future storms. A redesigned parking lot using eco-friendly materials will be installed to minimize environmental impact while accommodating visitors, including spaces for buses and bicycles to promote greener transportation options.

To honor the historical significance of the site, the project will incorporate elements that pay homage to the original 'Seven Seas' cottage. The new center will feature exhibits and displays educating visitors about the site's history and the impact of Hurricane Ian. Infrastructure and utility upgrades, including water, electricity, and sewage systems, will be implemented to support the new facilities and ensure reliability, with a focus on energy-efficient systems and sustainable technologies.

Investment in this project will restore a valuable community asset and enhance its resilience and sustainability, ensuring it remains a vital part of Fort Myers Beach for generations to come.

### The projected outcome(s) of the project

The comprehensive Parks and Recreation Revitalization Program, encompassing the Old San Carlos & Time Square Lighting Project, Newton Park Beach Facility Project, and Bay Oaks Community Pool Project, is projected to yield significant positive outcomes for the Town of Fort Myers Beach. This program will restore and enhance critical public facilities that were severely damaged by Hurricane Ian, addressing immediate recovery needs and future resilience and addressing blighted properties contributing to economic decline and dangerous conditions. The upgraded lighting system in the downtown area will improve public safety and support local businesses, while the new educational and environmental center at Newton Park will preserve the site's historical significance and promote ecological awareness. The fully reconstructed Bay Oaks Community Pool will restore a key recreational facility, providing a central gathering place for community wellness and social bonding.

By integrating modern, energy-efficient technologies and ensuring all new structures are built above base flood elevations, the program will enhance the resilience and sustainability of these public facilities. ADA-compliant designs across all projects will ensure accessibility for all visitors, promoting inclusivity within the community. Extensive landscaping with native plants will stabilize the environment, prevent erosion, and support local wildlife, contributing to the ecological health of the area. The redesigned parking facilities will accommodate various transportation options, encouraging greener alternatives and reducing environmental impact.

The Town of Fort Myers Beach expects to create a new unity among residents, visitors, and businesses by investing in the community through the Parks & Recreation Revitalization Program. This set of projects will ensure a sustainable and effective recovery from the devastation of Hurricane Ian. With the support of CDBG-DR funding, the program will create a state-of-the-art community facility to replace the previous Bay Oaks community pool, revitalize three community parks by reintroducing the lighting grid to ensure public safety, and rebuild an improved facility with a focus on town history and education to replace the lost "Seven Seas" cottage, boosting tourism and resident satisfaction. Additionally, the town's long-term plan for Old San Carlos Boulevard to evolve into a "park corridor" will be initiated through the lighting project, enhancing connectivity between Bayside to the north and Time Square to the south and laying a foundation for a long-term vision that will significantly enhance the community.

The completed projects will bring back the cherished parks of Fort Myers Beach, accelerating the social and cultural recovery of the community through environmentally friendly construction practices. This program will serve the entire community, attracting visitors and catalyzing social and cultural revitalization. These places once served as vital recreational and social hubs for residents, and their restoration is essential to the community's physical and mental well-being. The urgency of this program is driven by the need to restore these essential services swiftly to avoid further disruption to community life.

The Parks & Recreation Revitalization Program is not just a reconstruction and restoration effort; it is a transformative initiative that will significantly enhance the quality of life in Fort Myers Beach. By rebuilding these key community parks and facilities, the program addresses an urgent need for recreational and social infrastructure, providing

safe, modern, and welcoming environments for residents and visitors of all ages. This investment will not only address the immediate damages caused by Hurricane Ian but also build a more resilient, sustainable, and inclusive future for the town, ensuring that these public facilities remain vital assets for generations to come.

### **The unmet or mitigation need that is being addressed by the project and how it aligns with community goals**

The Town of Fort Myers Beach was devastated by the unprecedented destruction of Hurricane Ian, which left many unmet needs and exposed areas of the community to future storms. The Parks & Recreation Revitalization Program aims to revitalize the community by replacing and updating multiple public facilities and community parks that were severely damaged by the hurricane. These repair and enhancement efforts align with the broader community goals of sustainability, resilience, and community well-being.

The first component is the Bay Oaks Community Pool Project, a critical community hub beloved by both residents and tourists. Hurricane Ian's surge and debris heavily damaged the entire facility, including the pool, hard deck, public restrooms, and staff offices. All mechanical systems were wiped out. This project proposes constructing a new facility to house public restrooms and staff offices, fully replacing the hard deck and slide structure, restoring the pool basins, and improving surrounding drainage, lighting, and landscaping. This comprehensive project will ensure an efficient, durable, and resilient community asset for many years to come. Efficient and timely completion of the pool project is essential not only for restoring services but also for demonstrating effective disaster recovery management, minimizing downtime, and allowing the community to benefit from the renewed resources as soon as possible. The disastrous impacts of Hurricane Ian, including a storm surge of over 15 feet, resulted in the complete loss of the previous community hub, creating an immediate need to restore this essential recreational facility. Restoring the Bay Oaks Community Pool aligns with community goals by providing a safe, inclusive, and engaging space that supports health, wellness, and social interaction.

The second component, the Old San Carlos & Time Square Lighting Project, aims to revitalize the downtown core by replacing and updating the entire street lighting system, which was severely damaged by Hurricane Ian. This area, anchored by two vital community gathering spaces—Bayside on the north side and Time Square on the gulf side—is a critical business district and community hub. Hurricane Ian's surge and debris obliterated nearly all 46 streetlights and light poles, leaving the area dangerously dark. This project proposes installing two new panel/switch boxes, all new wiring and conduit, and poles with turtle-compliant lighting fixtures. This comprehensive upgrade will ensure efficient, durable, and safe lighting for the business district, addressing the immediate need for public safety and supporting the economic recovery of local businesses. The significance of this project is paramount to the town's prosperity in both the short and long term, transforming the area into a functional, energy-efficient, safe, and welcoming environment. Revitalizing the downtown lighting aligns with community goals by enhancing public safety, supporting local businesses, and creating a vibrant, attractive area for residents and visitors. Additionally, this lighting project will serve as the first step in the town's long-term plan to evolve Old San Carlos Boulevard into a "park corridor," connecting Bayside to the north and Time Square to the south, further enhancing connectivity and the overall aesthetic appeal of the downtown area.

The final component, the Newton Park Beach Facility Project, aims to revitalize a historic landmark in Fort Myers Beach by replacing and updating the "Seven Seas" cottage, which was completely destroyed by Hurricane Ian. This cottage, with nearly 100 years of history, served as an education center for the community. The project proposes constructing a new elevated and resilient education-focused facility to replace the previous building, ensuring ADA compliance and public restrooms for the beachfront park, along with reconstructing the attached parking lot. Designed with future severe weather events in mind, the facility will feature a reinforced foundation and roof, high-impact glass, and sealants offering enhanced resistance to water and wind. Landscaping will include dune restoration with native grasses and shrubs to naturally mitigate erosion and flooding. These features ensure that the facility will endure as a safe, educational, and recreational resource through harsh conditions. The new Newton Park Beach Facility will align with community goals by preserving the town's history, promoting environmental education, and providing a resilient and accessible public space.

The Parks & Recreation Revitalization Program will utilize forward-looking strategies and proven best practices to mitigate future issues the completed projects may face. The town will use LED lighting to reduce energy consumption. Additionally, lighting near the beach will be turtle-compliant to ensure no disruption to natural habitats. These measures align with HUD's green building standards, offering direct economic benefits through reduced energy bills and contributing to the broader community goal of sustainable development. This program will provide a foundation for residential satisfaction, allowing the area to continue recovering from the catastrophic impacts of Hurricane Ian while applying environmentally friendly strategies and resilient building standards to reduce future storm impacts. The Parks & Recreation Revitalization Program is a transformative initiative that will significantly enhance the quality of life in Fort Myers Beach, aligning with community goals to create a safe, sustainable, and vibrant environment.

**Description of your agency's experience completing projects of a similar size and scope, including federal, state, and/or local government grant experience and capacity of the organization to administer the project and oversee all compliance requirements.**

The Town of Fort Myers Beach employs staff with experience in completing projects of a similar size and scope, and has secured the services of Tidal Basin Group, which has extensive experience in implementation and oversight of projects utilizing federal, state, and/or local governmental grant funds. The combination of Town staff oversight and contractual support ensures adequate experience and capacity for effective administration and oversight of all compliance requirements. Additional information regarding Town staff and contractual support is provided below:

**Andrew Hyatt:** Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in municipal government and 13 years as a Town or City manager. Andy has an Associate's degree in general business from Cleveland State Community College in Cleveland, Tenn. From the University of Tennessee at Chattanooga, he has a Bachelor's degree in political science and a Master's degree in public administration. Mr. Hyatt will perform general oversight of project implementation and completion.

**Frank Kropacek:** Mr. Kropacek has more than 30 years of experience in local, county and state government administration ranging from contracts, contract negotiation, procurement, and project management to organizational administration. He attended the University of Wisconsin Whitewater studying Geology and Geophysics. Mr. Kropacek will be the Town's primary day-to-day contact for all project activities and will directly oversee and coordinate planning implementation.

**Joe Onzick:** Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and Bachelor's of Science degree in mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick will oversee fund accounting and financial compliance for the planning project.

To supplement Town staff's expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manager for Hendry County, FL overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will coordinate with Lee County and the Town of Fort Myers Beach to ensure HUD compliance, proper reporting, and the adherence to the proposed schedule to the project. Tidal Basin will ensure procurements adhere to 2 CFR 200, Davis Bacon Labor Compliance is adhered to, Section 3 reporting is completed, and all costs can be tied to the eligible activity and national objective tied to the project.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras and Associates collectively have more than 70 years of combined experience working in



high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG-DR funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf Coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, MBE/WBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.

### The applicant's plan of executing the Subgrantee Agreement

Not Applicable. This project will be directly implemented by the Town of Fort Myers Beach and will not involve a subgrantee.

### The applicant's plan for Oversight and Monitoring of Subgrantee

Not Applicable. This project will be directly implemented by the Town of Fort Myers Beach and will not involve a subgrantee.

### Please provide a project administration team highlighting roles and responsibilities of each individual participating in program participation and management.

The project administration team will be led by Mr. Andrew Hyatt, with programmatic activities overseen by Mr. Frank Kropacek and financial activities overseen by Mr. Joe Onzick. Additional information regarding each team member is included below:

Andrew Hyatt: Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in municipal government and 13 years as a Town or City manager. Andy has an Associate's degree in general business from Cleveland State Community College in Cleveland, Tenn. From the University of Tennessee at Chattanooga, he has a Bachelor's degree in political science and a Master's degree in public administration. Mr. Hyatt will perform general oversight of project implementation and completion.



Frank Kropacek: Mr. Kropacek has more than 30 years of experience in local, county and state government administration ranging from contracts, contract negotiation, procurement, and project management to organizational administration. He attended the University of Wisconsin Whitewater studying Geology and Geophysics. Mr. Kropacek will be the Town's primary day-to-day contact for all project activities and will directly oversee and coordinate planning implementation.

Joe Onzick: Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and Bachelor's of Science degree in mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick will oversee fund accounting and financial compliance for the planning project.

To supplement Town staff's expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manager for Hendry County, FL overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will coordinate with the Lee County and the Town of Fort Myers Beach to ensure HUD compliance, proper reporting, and the adherence to the proposed schedule to the project. Tidal Basin will ensure procurements adhere to 2 CFR 200, Davis Bacon Labor Compliance is adhered to, Section 3 reporting is completed, and all costs can be tied to the eligible activity and national objective tied to the project.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras & Associates, LLC collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates, LLC has unique expertise in CDBG-DR funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf Coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, MBE/WBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.



**The partner's experience undertaking projects of similar complexity and providing public services**

N/A

**The partner's plan for Maintenance and Operations**

N/A

**Please provide a project administration team highlighting roles and responsibilities of each individual participating in program participation and management**

N/A



## Capacity to perform financial management and oversight

The Town of Fort Myers Beach will manage financial aspects of project implementation in accordance with established financial management policies and procedures. Financial management will be overseen by the Town's Financial Director, Mr. Joe Onzick. Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and a Bachelor of Science in Mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick oversees fund accounting and financial compliance for the project.

To supplement the Town staff's expertise and capacity for financial management and oversight, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras & Associates collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG-DR funding, with team members having performed compliance and management of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the Southeast with comprehensive project implementation and compliance services from project inception to grant closeout.

## Capacity to perform grant management functions as demonstrated through prior experience managing grants with in-house staff or with a grant management consultant

The Town of Fort Myers Beach staff members listed below will perform respective grant management functions for the project:

**Andrew Hyatt:** Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in municipal government and 13 years as a town or city manager. Andy has an associate degree in general business from Cleveland State Community College in Cleveland, Tennessee. From the University of Tennessee at Chattanooga, he has a bachelor's degree in political science and a master's degree in public administration. Mr. Hyatt will perform general oversight of project implementation and completion.

**Frank Kropacek:** Mr. Kropacek has more than 30 years of experience in local, county, and state government administration ranging from contract negotiation, procurement, and project management to organizational administration. He attended the University of Wisconsin Whitewater studying geology and geophysics. Mr. Kropacek will be the Town's



## Applicant Capacity and Experience: Applicant/Subrecipient

primary day-to-day contact for all project activities and will directly oversee and coordinate project implementation.

Joe Onzick: Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and a Bachelor of Science in Mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick will oversee fund accounting and financial compliance for the project. To supplement the Town staff's expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manager for Hendry County, FL, overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will coordinate with the Lee County and the Town of Fort Myers Beach to support HUD compliance efforts, proper reporting, and adherence to the proposed project schedule. Among other grant management functions, Tidal Basin will support procurement efforts in accordance with 2 CFR 200, Davis Bacon Labor Standards Compliance reporting and oversight, HUD Section 3 reporting and oversight, and confirmation that all costs can be tied to the project's eligible activity and national objective.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras & Associates collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG-DR funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the Southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, DBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.

### Internal auditing capability

The Town of Fort Myers Beach will perform internal monitoring and financial compliance oversight in accordance with established financial management policies and procedures. Internal monitoring will be overseen by the Town's Financial Director, Mr. Joe Onzick.



## Applicant Capacity and Experience: Applicant/Subrecipient

Mr. Onzick previously served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and a Bachelor of Science in Mathematics from Wheaton College.

To supplement the Town's staff capacity related to internal monitoring and financial compliance, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras & Associates collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG-DR funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the Southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation.

With Mr. Onzick's oversight and supervision of both Town staff and contractual support, the Town has demonstrated capacity to perform internal financial monitoring and experience for compliance with HUD and Lee County requirements.

### Administrative staffing

The Town of Fort Myers Beach staff will be available to support the necessary day-to-day administrative functions required for successful project implementation. Administrative staff will be overseen by Mr. Andrew Hyatt and Mr. Frank Kropacek. To supplement the Town staff's administrative capacity, Fort Myers Beach will utilize the services of Tidal Basin Group. Tidal Basin Group will be further supported by Gouras & Associates, LLC, for CDBG-DR specific administrative staffing needs.

### Monitoring and control of timely expenditure of funds

The Town of Fort Myers Beach understands that monitoring and control of timely expenditures of funds is paramount to a successful project. These elements will be



## Applicant Capacity and Experience: Applicant/Subrecipient

overseen by the Town's Financial Director, Mr. Joe Onzick, in accordance with established financial management policies and procedures. The Town of Fort Myers Beach staff, along with its partners in Tidal Basin Group and Gouras & Associates, LLC, have the capacity and experience to monitor the funding and expenditures of CDBG-DR funds from project award through closeout.

Prior to expenditure of funds, procurement efforts will be conducted in accordance with 2 CFR 200 procurement standards to ensure that project activities are allowable, reasonable, and cost-effective. Additionally, the Town will adhere to cost and/or price analysis requirements, as applicable, to support the proper usage of project funds.

**Describe how the subrecipient will implement Construction, Davis Bacon, and Related Acts and understand project costs must be based on paying laborers and mechanics federal prevailing wages, as published by DOL. The then-current wage rates must be attached to the construction contract and accepted by the general contractor prior to contract execution**

The Town will utilize the expertise of Tidal Basin Group and their partner, Gouras & Associates, LLC, (the Town's contractual support) to ensure the proper implementation of the construction related federal requirements of the Davis Bacon and its related acts. Construction solicitation documents and related contract documents will include Form HUD-4010, the appropriate Department of Labor Wage Decision(s), and the requirements of Executive Order 14026, which must be accepted by the contractor prior to contract execution to ensure that prevailing wage rates are met or exceeded. Labor standards requirements will be communicated at both pre-bid and pre-construction conferences, and Town staff and contractual support will be available to provide contractor assistance as needed. Required payroll reporting will be submitted by contractors on a weekly basis and reviewed by Town staff and contractual support to ensure compliance with prevailing wage requirements. Town staff and contractual support will be available to all construction contractors to resolve any issues that may arise throughout construction activities, such as payment and documentation of wage restitution, new job classification requests, and payment and documentation of liquidated damages. Throughout construction, on-site employee interviews will also be conducted and documented via HUD Form-11 to confirm that weekly payroll reports are accurate and consistent with the types of work performed by on-site laborers.

**Confirm that the subrecipient will not take any choice limiting actions, including, but not limited to, physical work or activity, may start until environmental clearance is obtained. All prohibitions regarding 'choice limiting actions will apply, rendering the award void and applicant ineligible for award. Activities with multiple environmental issues which cannot be addressed timely and cost-effectively will cause the award of CDBG-DR Funds to be canceled**

The Town confirms that it will not take any choice limiting actions, including, but not limited to, physical work or construction activities, until environmental clearance is issued and Authority to Use Grant Funds is obtained. The Town understands that the result of



committing a choice limiting action could result in the termination of the award and that, in the event of excessive environmental issues, the award of CDBG-DR funds may be cancelled.

**Explain the applicant/subrecipient's plan to provide OR ensure the subgrantee provides opportunities and training to low and very low-income persons to the greatest extent feasible. These efforts should be, especially focused on recipients of government assistance for housing and to businesses that provide economic opportunities to low and very low-income persons. The applicant/subrecipient should explain how they will comply with Section 3 requirements set forth in 24 CFR Part 75**

The Town of Fort Myers Beach understands that the implementation of Section 3 requirements and striving to meet the quantitative and qualitative goals laid out by the regulations are of paramount importance to the effective recovery of the community. Solicitation documents and related contract documents for Section 3-covered contracts will include HUD-required Section 3 Contract Clauses and require contractors to submit Section 3 reporting throughout the life of the contract. Section 3 documentation, including a Section 3 plan and employee and business certifications, will be required for bid submission and Section 3 terms and conditions must be accepted by the contractor prior to contract execution. The construction contract will also require the prime contractor to incorporate Section 3 terms and conditions into all subcontracts. Section 3 requirements will be communicated at both pre-bid and pre-construction conferences, and Town staff and contractual support will be available to provide contractor assistance as needed. All contractor and subcontractor employees working on the covered contract (existing employees and new hires) will be required to submit an Employee Self-Certification for Section 3 Qualification form. Required Section 3 reporting will be submitted by covered contractors and subcontractors on a weekly, monthly, and quarterly basis and reviewed by Town staff and contractual support to ensure that quantitative and qualitative efforts are effectively implemented. Contractors will be required to complete qualitative efforts along with the Town by utilizing the list provided by HUD in 24 CFR part 75.

**Describe how the subrecipient will take affirmative steps to ensure good faith effort outreach to small, minority, women and veteran-owned business to be included in all solicitation opportunities (procurement of services and goods) and documenting efforts and procurement opportunities**

The Town of Fort Myers Beach will utilize the State of Florida's minority, women, and veteran owned business directory (<https://vendor.myfloridamarketplace.com/search/vendor>) to solicit minority, women, and veteran owned businesses for participation in each contract procured as a result of this project. All solicitation documents for services to be performed through this project will encourage participation of minority, women, and veteran owned businesses and all contracts and subcontracts issued will require compliance with 2 CFR 200.321, such that subcontracting opportunities must be made available, as a priority, to minority, women, or veteran owned businesses when possible. The Town will document all outreach efforts to demonstrate that affirmative steps were taken to ensure good faith effort outreach to minority, women, and veteran-owned



businesses.

**Subrecipients must provide their procurement policy documents for analysis**

The Town of Fort Myers Beach will provide all procurement policy documentation to Lee County for analysis.

**Subrecipient's ability to Complete Subgrantee Capacity Assessment**

N/A

**Subrecipient's ability to Complete Subgrantee Risk Assessment**

N/A

**Subrecipient's Ability to Execute a Subgrantee Agreement**

N/A

**Please describe Subrecipient's Plans for Subgrantee Oversight and Monitoring**

N/A



**Subgrantee's Capacity to perform financial management and oversight**

N/A

**Subgrantee's Capacity to perform grant management functions as demonstrated through prior experience managing grants with in-house staff or with a grant management consultant**

N/A

**Subgrantee's Internal auditing capability**

N/A

**Subgrantee's Administrative staffing**

N/A

**Subgrantee's Monitoring and control of timely expenditure of funds**

N/A

**Describe how the subgrantee will implement Construction, Davis Bacon and Related Acts and understand project costs must be based on paying laborers and mechanics federal prevailing wages, as published by DOL. The then-current wage rates must be attached to the construction contract and accepted by the general contractor prior to contract execution**

N/A



Confirm that the subgrantee will not take any choice limiting actions, including, but not limited to, physical work or activity, may start until environmental clearance is obtained. All prohibitions regarding 'choice limiting actions will apply, rendering the award void and applicant ineligible for award. Activities with multiple environmental issues which cannot be addressed timely and cost-effectively will cause the award of CDBG-DR Funds to be canceled

N/A

Explain the subgrantee's plan to provide opportunities and training to low and very low-income persons to the greatest extent feasible. These efforts should be , especially focused on recipients of government assistance for housing and to businesses that provide economic opportunities to low and very low-income persons. The applicant/subrecipient should explain how they will comply with Section 3 requirements set forth in 24 CFR Part 75

N/A

Describe how the subgrantee will take affirmative steps to ensure good faith effort outreach to small, minority, women and veteran-owned business to be included in all solicitation opportunities (procurement of services and goods) and documenting efforts and procurement opportunities

N/A

**Subgrantee's must comply with 2 CFR Part 200 requirements for procurement**

N/A

**Timelines of critical tasks to be accomplished for each proposed activity, including a description of the steps you will take to complete the funded activities and describe any dependencies or actions that need to happen before you can start on the activities**

1. Execution of a Subrecipient Agreement: Award + 1 month.

The Town, upon receiving notification of award, will submit required policies and other documentation to Lee County for review and comment. After thorough review, the Subrecipient Agreement will be presented to the Town Council for approval. Once executed the Subrecipient Agreement will be submitted to Lee County for final execution.

Final Deliverable: An executed Subrecipient Agreement for the Parks and Recreation Revitalization project.

Prerequisite Dependencies or Actions: Receipt of a Subrecipient Agreement from Lee County.

2. Completion of Engineering Procurement: Award + 4 months.

The Town of Fort Myers Beach will solicit Statements of Qualifications from Florida Certified Engineering firms to complete the design and permitting activities necessary for project completion. Procurement activities will be conducted in accordance with 2 CFR 200 Procurement Standards (2 CFR 200.317-327) and Florida Statute 287.055. In compliance with these requirements, the Town will ensure that professional services are competitively solicited and a price for the contract is negotiated prior to contract execution. This process will be documented, along with the Town's determination for use of an RFQ, rather than Invitation to Bid (ITB) or a Request for Proposals (RFP).

Final Deliverable: An executed contract for professional engineering services.

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement, Lee County review of procurement documentation, Lee County authorization to execute a contract for Engineering Services.

3. Completion of Project Design and Permitting: Award + 22 Months.

The Florida Certified Engineer selected for this project will complete all project design and permitting activities. Throughout project design, the project engineer will work closely with Town Staff responsible for project oversight. The project engineer will provide comprehensive services for the Parks and Recreation Revitalization project in Fort Myers Beach, while utilizing existing plans and project documentation to ensure efficient and cost-effective delivery of services. These services include conducting developing conceptual and detailed designs for the revitalization projects, with a particular focus on resiliency against natural disasters and climate-related hazards. For projects with existing plans, specifications, or contract documents, the project engineer will review those documents to ensure accuracy and completeness, while evaluating the requirements for resilient construction methods. The engineer will ensure regulatory compliance and assist with permitting, while managing the project from inception to completion, including construction supervision and coordination with contractors. The engineer will provide additional services, as needed, such as surveys, geotechnical assessments, wetlands delineations, etc. The engineer will also work closely with the Town and Tidal Basin to ensure that all final contract documents address the federal provisions required by

Appendix II to 2 CFR Part 200, mitigation activities required by the final ERR, and applicable terms and conditions of the CDBG-DR Subrecipient Agreement, such as Section 3, Davis-Bacon, utilization of MBE/WBE contractors and subcontractors, registration with SAM.gov, confirmation of debarment and suspension status for all contractors and subcontractors, etc.

Final Deliverable: Permit documents for project construction; plans, specifications, and contract documents for solicitation of construction bids.

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement for project funding; Execution of a contract for engineering services.

#### 4. Completion of the Environmental Review Record (ERR): Award + 22 Months.

Concurrently with project design and permitting efforts, the Town will work with Tidal Basin and Gouras & Associates to compile the HUD-required environmental review record. Activities for compilation of the ERR may include, but are not limited to: compilation of project information for distribution to interested federal, state, local, and tribal stakeholders; coordination of stakeholder feedback related to project information; compilation of an 8-Step Process (if required); completion of HUD-issued environmental worksheets to assess possible areas of impact; analysis of publicly available environmental resources such as EPA's NEPAAssist Tool, USFWS's iPac Tool, the National Wetlands Inventory, and others, to assess potential environmental impacts; publication of required public notices for floodplain and/or wetlands impacts (when applicable), Findings of No Significant Impact (FONSIs), and Notices of Intent to Request Release of Funds (RROFs). Should interested stakeholders request or require additional studies or reports of a technical nature (e.g., wetlands delineations, ESA's, Cultural Resources Surveys, etc.), the Town will task the project engineer with completion of said studies or reports and will coordinate ensure that interested stakeholders are able to review requested documentation.

Upon certification of the ERR, the Town will publish required public notices, consider comments received, and submit the final ERR package, including HUD Form 7015.15, to Lee County for review and issuance of Authority to Use Grant Funds (AUGF), The Town will ensure that no choice-limiting actions are taken prior to issuance of AUGF.

Final Deliverable: A certified Environmental Review Record and receipt of AUGF from Lee County

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement for project funding; execution of a project-specific Task Order with Tidal Basin, which will include compilation of the ERR.

#### 5. Completion of Construction Procurement: Award + 26 Months.

The Town of Fort Myers Beach will competitively solicit bids for each component of the Parks and Recreation revitalization project in accordance with 2 CFR 200.320(b)(1) and applicable Florida Statutes. Based on guidance from the project engineer, the Town may choose to separately solicit bids for each component of the project or combine solicitation documents to capture economies of scale. The engineer will compile Opinions of Probable Construction Costs for each bid package prior to acceptance of bids. After bids are accepted, the engineer will review all bids received to ensure that bid prices are reasonable and that the low bidder is qualified to complete the scope of work. The Town will take the affirmative steps listed at 2 CFR 200.321(b) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when

possible. The project engineer will coordinate all pre-bid and pre-construction conferences, in conjunction with the Town and Tidal Basin, during which critical federal compliance requirements will be reviewed in detail (e.g., Davis-Bacon Act Requirements, Section 3 Requirements, MBE/WBE outreach requirements, prohibition on participation of debarred or suspended entities, etc.).

Final Deliverable: One or more executed construction contract(s) for Parks and Recreation Revitalization projects.

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement for project funding; Execution of a contract for engineering services; Completion of plans, specifications, and contract documents necessary for solicitation of bids; Completion of the ERR and issuance of AUGF.

6. Completion of Construction Activities: Award + 45 months.

The construction contractor(s) procured by the Town of Fort Myers Beach will construct each component of the project in accordance with the plans, specifications, and contract documents issued by the project engineer and the Town of Fort Myers Beach. The project engineer will closely oversee construction activities to ensure quality of work, and the Town, with support from Tidal Basin, will oversee and document compliance with applicable labor standards and Section 3 requirements. Throughout this phase, the general contractor will submit weekly Certified Payroll Reports to ensure that workers are paid in accordance applicable wage rates. The general contractor will also submit documentation of Section 3 compliance on a weekly, monthly and quarterly basis to ensure adherence to quantitative benchmarks and qualitative efforts.

Final Deliverable: Completion of Parks and Recreation Revitalization project construction activities; Delivery of as-builts for each component of the project.

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement for project funding; Execution of a contract for engineering services; Completion of plans, specifications, and contract documents necessary for solicitation of bids; Completion of the ERR and issuance of AUGF; Execution of a contract for construction activities.

7. Project Closeout: Award + 48 Months.

Upon completion of construction activities, the Town and Tidal Basin will work with Lee County to submit all documentation required for closeout of the Subrecipient Agreement.

Final Deliverable: Lee County acceptance of final closeout documentation.

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement for project funding; Execution of a contract for engineering services; Completion of plans, specifications, and contract documents necessary for solicitation of bids; Completion of the ERR and issuance of AUGF; Execution of a contract for construction activities; Completion of Construction Activities.

## Monthly spending plans and proposed draw down schedules

The Town of Fort Myers Beach anticipates the following monthly spending plan and proposed draw down schedule for project activities throughout the 48-month period of performance for completion of the Parks and Recreation Revitalization project. Estimated project spending and drawdowns total \$9,961,000.00.

Month 1 – Month 4: \$10,375.00 per Month (Through completion of engineering procurement).

Month 5 – Month 22: \$38,784.72 per Month (Through completion of design, permitting, and completion of the environmental review record).

Month 23 – Month 26: \$18,231.25 per Month (Through construction procurement).

Month 27 – Month 45: \$479,859.21 per Month (Through construction completion).

Month 46 – Month 48: \$10,375.00 per Month (Through completion of project closeout).

### Proposed reporting for outcomes achieved

The Town will hold regularly scheduled status meetings with the consultant team as well as the hired engineer and construction contractor(s) to monitor progress, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges.

The Town will submit all reports required by Section VI: Reports of any Subrecipient Agreement executed between the Lee County Board of County Commissioners and the Town of Fort Myers Beach, in the manner and frequency established therein. Required reporting may include, but is not limited to, activity performance reports, payment request forms, program information forms, budget analysis, closeout reports, and periodic certifications by the Town, to be specified in Section VI: Reports.

The Town of Fort Myers Beach's commitment to ensuring the success and accountability of the Parks and Recreation Revitalization project is demonstrated through its structured approach to project management and oversight. This approach is designed to keep the project timeline on track, adaptable, and transparent to all stakeholders involved. Regularly scheduled status meetings with the Town, the Town's consultant team, and the project engineer are a critical component of the Town's approach to project activities. These meetings serve multiple purposes, including providing a forum for continuous progress monitoring and enabling the Town and the teams to stay aligned on project goals, timelines, and deliverables. They also offer an opportunity to promptly identify and address any unforeseen challenges or obstacles that may arise, ensuring that such issues are managed proactively to mitigate potential impacts on the project's timeline and budget. This dynamic and responsive communication strategy is essential for maintaining momentum and ensuring that the project outcomes remain aligned with the community's needs and expectations.

Moreover, the Town's adherence to the reporting requirements outlined in Section VI: Reports of the Subrecipient Agreement with the Lee County Board of County Commissioners further underscores its dedication to transparency and accountability. These requirements ensure that all activities, from budget management to performance metrics, are documented and reported in a consistent and comprehensive manner. The

variety of reports required—including activity performance reports, payment request forms, and closeout reports—provides a structured framework for tracking the project's financial and operational progress. This not only facilitates effective project management, but also ensures compliance with the funding requirements, reinforcing the Town's commitment to stewardship of public funds.

Detailed reporting and regular consultations with the consultants and engineering teams are designed to preemptively identify risks to the project's timeline and budget, allowing for the development of strategic responses to such risks. This could include reallocating resources, adjusting timelines, or modifying project scopes to accommodate changing circumstances, ensuring that the project continues to move forward efficiently.

In summary, the Town's approach to monitoring progress, coupled with its rigorous reporting protocol, is a testament to its commitment to delivering a completed project on schedule that will benefit the Town for the future. By implementing these strategies, the Town of Fort Myers Beach not only safeguards the project against potential risks but also ensures that the project is conducted with the highest levels of efficiency, transparency, and accountability.

### **Subrecipients plan to ensure the project is timely, draws are completed on time, and reports are complete and accurate**

The Town of Fort Myers Beach will ensure that the project is completed in a timely manner by establishing detailed project timelines, including milestones and deliverables for each phase of project activities. Regular update meetings will be held with project professionals and construction contractors to monitor progress in accomplishing milestones and deliverables, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges. Regular reporting will be compiled based on feedback from the project engineer and reviewed by Town staff to ensure accuracy and consistency with known project milestones and deliverables statuses. Actual drawdown of project funds will be based on contract amounts and the payment terms and conditions contained therein; as such, the drawdown schedule established in this project application may be modified once contractual obligations are known. Throughout the life of the project, Town staff will review invoices submitted by project professionals and construction contractors to ensure that the invoices are accurate based on both the payment provisions of contract documents and completed project milestones and deliverables, thereby ensuring that funding draws are consistent with work performed.

## Describe the process carried out to determine cost estimations prior to applying

The process adopted by the Town of Fort Myers Beach to ascertain cost estimations for its Parks & Recreation Revitalization Program prior to applying for funding was both strategic and methodical, ensuring a realistic and informed budgetary foundation for the application. This proactive approach involved a series of steps aimed at accurately capturing the financial requirements of the proposed project activities, reflecting the Town's commitment to fiscal responsibility and project feasibility.

For the Newton Park Beach Facility, the Town utilized preliminary engineering estimates for construction of the Seven Seas Cottage. This estimate included engineering fees of approximately 9% of construction costs. For construction of ADA compliant restaurants, native plantings, and beach-friendly parking areas, the Town estimated construction costs based on experience with other revitalization projects of similar size and scope. A 9% fee for engineering services was budgeted, consistent with the engineering fees included in the preliminary engineering estimates for construction of the Seven Seas Cottage. The Town budgeted construction-phase engineering and inspection (CEI) costs at 3% of construction costs, consistent with FEMA's Cost Estimating Tool for Engineering and Design Services ([https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services\\_12-21-2015.pdf](https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services_12-21-2015.pdf)). Funds have also been budgeted for permitting activities and other studies that may be required, but may not be identified until preliminary engineering and design due diligence begins.

For the Old San Carlos & Time Square Lighting Project construction activities, Town staff utilized estimates from local contractors as a basis for preliminary costs of replacement of all wiring, poles, and fixtures. Engineering fees were estimated at 9% consistent with the engineering fees included in preliminary engineering estimates for construction of the Seven Seas Cottage. The Town budgeted construction-phase engineering and inspection (CEI) costs at 3% of construction costs, consistent with FEMA's Cost Estimating Tool for Engineering and Design Services ([https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services\\_12-21-2015.pdf](https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services_12-21-2015.pdf)).

For the Bay Oaks Community Pool Project, Town staff utilized estimates provided by a regional contractor that is qualified to implement a project of this size and scope as a basis for preliminary construction costs. The Town budgeted basic engineering and design services at approximately 11% of construction costs, consistent with FEMA Cost Curve A for a \$4.25 million construction budget ([https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services\\_12-21-2015.pdf](https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services_12-21-2015.pdf)). The Town budgeted construction-phase engineering and inspection (CEI) costs at 3% of construction costs, consistent with FEMA's Cost Estimating Tool for Engineering and Design Services ([https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services\\_12-21-2015.pdf](https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services_12-21-2015.pdf)). Funds have also been budgeted for permitting activities and other studies that may be required, but may not be identified until preliminary engineering and design due diligence begins.

The Town budgeted activity delivery costs at 5% of the total award request based on the Lee County NOFA for CDBG-DR Public Facilities Programs limitation of ADCs. This rate is consistent with industry standard budgeting for ADCs, providing a realistic estimate for the costs project specific ADCs. Activities may include project specific management and oversight services and project specific compliance with the terms and conditions of the related award. ADC's may also include activities such as participation in meetings,

strategy sessions, etc.; coordination with the selected project engineer to ensure compliance with the project-specific scope, schedule, and budget as approved in the grant agreement; compilation of required project-specific progress reporting; compilation of project-specific reimbursement requests and financial reporting; coordination and oversight support for procurement of engineering services and documentation of federal procurement compliance for same; coordination and oversight support for procurement of a construction contractor and documentation of federal procurement compliance for same; documentation of environmental compliance for project-specific activities; and documentation of project-specific labor standards compliance, including Davis Bacon and Section 3 Requirements; and other project-specific services as requested by the Town. ADC services will be provided by Tidal Basin and all ADC activities will pertain to implementation of the Parks and Recreation Revitalization project.

### **Describe additional steps you will take, if approved, to manage costs, change orders, and ensure the project is completed on time and within budget**

To manage costs associated with contractual services, the Town of Fort Myers Beach plans to enter into firm fixed price, lump sum agreements for completion of construction activities, engineering design and permitting, and ADCs. Should the firm fixed price, lump sum method of contracting not be appropriate for any category of required services, the Town may use a time-and-materials type contract that includes a ceiling price; however this method of contracting will only be used after a determination that no other contract type is suitable, consistent with 2 CFR 200.318(j). Change orders will only be considered if the circumstances prompting a contractual change were reasonably unforeseeable or unknowable at the time of contract execution and additional services due to such conditions are necessary for successful completion of the contractual scope of work. Furthermore, change orders will only be considered if funding for such a change order is available and proposed change order costs are determined to be reasonable and necessary. The Town will hold regularly scheduled status meetings with the consultant teams, the project engineer, and the construction contractor to monitor progress, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges.

### **Describe the actions that will be taken to implement the project after construction completion. Describe how the finished project will be maintained and updated**

Upon completion of each component of the Parks and Recreation Revitalization project, the Town of Fort Myers Beach will implement a detailed operations and maintenance (O&M;) plan to ensure the long-term functionality of that component. The estimated annual cost for O&M; includes routine inspections, preventive maintenance, repairs, and upgrades to address wear and tear. These tasks will be performed by trained Town staff, ensuring familiarity with the project improvements and prompt attention to any issues. The costs will be covered through a combination of municipal budget allocations and potential grants or subsidies (when available) aimed at supporting resilience of public facilities. This proactive approach to funding O&M; will help safeguard the investment in

the public facilities.

## **Describe how the project is innovative, based on national best practices, and designed in accordance with an existing evidence-based program**

During proposal scoring, consideration will be given to the selection of an engineering firm with proven use of innovative concepts, national best practices, and existing evidence-based programs that may be applicable to projects in post-disaster coastal communities. Incorporation of this as a selection metric in the RFQ and ITB will ensure that the selected engineering firm and construction contractor is experienced, forward-thinking, and innovative as well as being capable of providing actionable designs that can be of function and utility in both short- and long-term Town development.

The commitment to innovation, eco-friendly design, and adherence to national best practices and evidence-based programs is a cornerstone of the Town of Fort Myers Beach's approach to the Parks & Recreation Revitalization Program, particularly in the context of post-disaster and coastal community resilience. This commitment is operationalized through the selection process for an engineering firm, ensuring that the chosen firm brings knowledge, experience, and creativity to the project.

Understanding the vulnerability of Fort Myers Beach to extreme weather events, the projects will be reconstructed to better withstand future storms and environmental stressors. This involves not only the selection of robust building materials, but also the integration of advanced drainage systems to manage stormwater effectively and prevent flooding—a critical improvement over the previous infrastructure.

Furthermore, each project designed and implemented through the Parks & Recreation Revitalization Program will prioritize sustainability as a core principle. The new facilities, parks, and lighting grids will use materials and technologies that minimize environmental impact while enhancing operational efficiency. Examples of these types of materials and technologies include LED lighting, low-impact construction practices and traffic management, water management, and well-trained staff to reduce maintenance costs and upkeep.

## **Subrecipients plan to oversee cost effectiveness and internal controls of the subgrantee**

Not Applicable. This project will be directly implemented by the Town of Fort Myers Beach and will not involve a subgrantee.

**A description of how the subgrantee will coordinate with other planning, community development, and/or recovery or resilience projects and initiatives that are underway**

This project will be directly implemented by the Town of Fort Myers Beach and will not involve a subgrantee; however, the Town of Fort Myers Beach recognizes the importance of coordination with other planning, community development, and/or recovery or resilience projects and initiatives that are underway.

As such, The Town of Fort Myers Beach will coordinate Parks and Recreation Revitalization project activities with existing planning, community development, and resilience initiatives to maximize efficiency and ensure comprehensive community benefits. Collaboration with ongoing public facility and resilience projects will be a priority. By aligning components of the parks and recreation revitalization project with these initiatives, the Town can leverage shared resources and expertise.

The Town will engage with local planning and development departments to integrate the parks and recreation revitalization project into the broader community development strategy. This integration will ensure that the project supports and enhances other ongoing and planned improvements in the area, such as housing developments, transportation upgrades, and public space enhancements.

By coordinating with other projects and initiatives, the Town of Fort Myers Beach aims to create cohesive and resilient public facilities that not only meet immediate needs, but also prepare the Town's public facilities for future challenges. This collaborative approach will enhance the effectiveness and sustainability of parks and recreation improvements and contribute to the overall resilience and development of the town.

Furthermore, the Town of Fort Myers Beach was awarded for a Comprehensive and Long-Term Recovery Plan through the Lee County Recovery and Resiliency Planning Program. As the projects included in the Town's parks and recreation revitalization project are important to the elimination of blight and the recovery and future growth of the island, this project will be foundational to future parks and recreation planning recommendations identified in that plan.

**Describe how the subgrantee will coordinate with other partners carrying out related activities and/or projects**

This project will be directly implemented by the Town of Fort Myers Beach and will not involve a subgrantee; however, the Town of Fort Myers Beach recognizes the importance of coordination with other partners carrying out related activities and/or projects.

The Town of Fort Myers Beach will coordinate with various partners to enhance the impact of the Parks and Recreation Revitalization project to the Town of Fort Myers Beach. As needed, the Town may conduct meetings or workshops with neighboring municipalities and interested local stakeholder organizations to share information regarding this project and promote alignment with other parks and recreation initiatives. Interdepartmental coordination within the Town's government will ensure cohesive planning. Collaboration with utility providers and contractors will optimize service

integration and reduce construction conflicts. This collaborative approach will ensure the project's success and contribute to the community's long-term resilience and development.

### A description of the area of the need that will be addressed

The Parks and Recreation Revitalization Project aims to address critical needs in Fort Myers Beach following the unprecedented destruction caused by Hurricane Ian. This project will address blight caused by the hurricane and significantly improve infrastructure and safety by replacing and updating the entire street lighting system in the downtown area, particularly Old San Carlos and Time Square, which were left dangerously dark after the hurricane. This enhancement will improve public safety, reduce crime, and create a more inviting environment for residents and visitors; this is also the first step toward the Town's long-term plan to evolve Old San Carlos Boulevard into a "park corridor," connecting Bayside to the north and Time Square to the south. The project will also reconstruct essential facilities such as the Bay Oaks Community Pool and Newton Park Beach Facility, restoring vital recreational and educational resources crucial for community wellness. These facilities will offer safe spaces for physical activity, social interaction, and educational programs.

Environmental resilience is another key focus. New structures will be built above base flood elevations with reinforced foundations, roofs, and high-impact glass to ensure they withstand future storms and environmental challenges. The project will incorporate sustainable practices, including energy-efficient systems like LED lighting and solar panels, and eco-friendly materials for construction and landscaping. Turtle-compliant lighting will be installed near the beach to protect local wildlife. The project also prioritizes historical and cultural preservation by rebuilding the historical "Seven Seas" cottage at Newton Park, transforming it into an elevated and resilient education center that honors the area's history and provides a space for learning about local heritage and environmental conservation.

The project will enhance community well-being by addressing blight caused by the hurricane, restoring the Bay Oaks Community Pool and other parks, providing essential recreational spaces that contribute to physical and mental health. These spaces will foster community bonding and offer places for residents and visitors to gather, play, and relax. Ensuring all new buildings and facilities are ADA-compliant will make the parks and recreational areas accessible to all community members, including those with disabilities.

Economic recovery is more likely when blighted areas are made safe, useful and accessible, and this recovery is a crucial aspect of the project. Revitalizing downtown lighting and improving public spaces will attract more visitors, supporting local businesses and contributing to the economic recovery of Fort Myers Beach. Enhancing the aesthetic appeal and safety of the area will help restore the town's vibrant tourism sector. The construction and ongoing maintenance of these facilities will create job opportunities, further aiding in the town's economic revitalization.

By addressing these critical needs, the Parks and Recreation Revitalization Project will play a pivotal role in the comprehensive recovery of Fort Myers Beach, ensuring it becomes a safer, more resilient, and vibrant community.

### A description of the intended impact the plan will have on the community and area of high need

The Parks and Recreation Revitalization Project is expected to have a profound impact on the community of Fort Myers Beach, particularly in areas of high need. By addressing blight caused by Hurricane Ian through restoring and enhancing key public facilities and parks, the project will significantly improve the quality of life for residents and visitors. The reconstruction of the Bay Oaks Community Pool and the Newton Park Beach Facility will provide essential recreational and educational resources, promoting physical health, mental well-being, and community engagement. The updated and expanded facilities will also serve as safe, inclusive spaces for people of all ages and abilities, fostering a sense of unity and belonging. Additionally, the project will initiate the Town's long-term plan to evolve Old San Carlos Boulevard into a "park corridor," connecting Bayside to the north and Time Square to the south, enhancing connectivity and the overall aesthetic appeal of the downtown area.

Moreover, the installation of a modern, energy-efficient lighting system in the downtown area will enhance public safety, reduce crime, and support local businesses by making the area more attractive and accessible. This improvement will boost the local economy by drawing more visitors and encouraging tourism. The project's emphasis on sustainability and resilience, including the use of eco-friendly materials and construction practices, will not only protect the environment but also ensure that the community is better prepared for future storms and environmental challenges.

By addressing these high-need areas, the Parks and Recreation Revitalization Project will help Fort Myers Beach recover from the devastating impacts of Hurricane Ian, rebuild its infrastructure, and strengthen its social and economic fabric. The project aims to create a vibrant, resilient, and sustainable community where residents can thrive and visitors are welcomed, thereby restoring the town's charm and vitality.

### **A description of the intended beneficiaries of the project, including any HUD-defined vulnerable populations and communities who are the intended beneficiaries of the project**

The intended beneficiaries of the Parks and Recreation Revitalization Project in Fort Myers Beach encompass a diverse cross-section of the community, including residents, visitors, and particularly vulnerable populations as defined by HUD. Geographically, this includes all of Census Tracts 601 and 602. All residents of those Tracts are considered intended beneficiaries, including HUD-defined vulnerable populations within those areas. According to 2020 U.S. Census records, 56.3% of the Town's population is considered elderly (65+); the national average is 17.3%. In addition, 11.1% of the Town's population under 65 is disabled; the national average is 8.9%.

While this project will benefit all residents of the island, this project will significantly benefit the elderly and disabled by ensuring that all new facilities, such as the Bay Oaks Community Pool and Newton Park Beach Facility, are fully ADA-compliant, providing accessible and safe spaces for recreation and social engagement. Additionally, the project will support the Town's long-term plan to evolve Old San Carlos Boulevard into a "park corridor," which will enhance connectivity between Bayside to the north and Time Square to the south, providing a continuous, accessible, and enjoyable environment for all community members.

Once this project is implemented, families with children will benefit from enhanced recreational opportunities and educational programs that promote physical activity and



learning. Local businesses will also see a positive impact as improved infrastructure and increased tourism will drive economic recovery and growth. The project is designed to foster inclusivity and support for all community members, including low- and moderate-income families, by creating public spaces that are welcoming and accessible to everyone.

By prioritizing the needs of vulnerable populations throughout the Town, the project aims to enhance the quality of life for all residents, ensuring a more resilient, vibrant, and inclusive community.

A project area map and corresponding beneficiary data from the HUD Low and Moderate Income Summary Data (LMISD) dataset and mapping tool is attached.

The applicable census tracts and block groups that are projected to benefit from the project. Census data can be found here: [Low- and Moderate-Income Area Data](#)

	Census Tract	Block Group
1	0601.02	1,2,3,4,5
2	0602.01	1,2,3
3	0602.02 / 0602.03	1,2 / 1,2

**The types of entities benefitting from the plan**

- Residents
- Local Government
- Businesses
- Other:

▶ If “Residents” is selected, list the projected number of beneficiaries and number of LMI beneficiaries who will benefit from the project

Total Number of Beneficiaries: 6670  
 Total LMI Beneficiaries: 2055

**The target populations from the table below who will benefit from the project**

- Populations presumed by HUD to be LMI persons:
  - Abused children
  - Elderly persons (62 and older)
  - Battered spouses
  - Homeless persons
  - Severely disabled adults (as defined by the Census)
  - Illiterate adults
  - Persons living with AIDS
  - Migrant farm workers
- Vulnerable populations, as defined by HUD in the Consolidated Notice:
  - Groups or communities whose circumstances present barriers to obtaining or understanding information or accessing resources, based on such factors as the following:
    - Geography
    - Markets
    - Prevalent housing stock and tenure
    - History
    - Prejudice
- Underserved communities, as defined by HUD in the Consolidated Notice:
  - Populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life

**A description of the method used to identify the intended beneficiaries of the project if it were implemented**

The Town's Parks & Recreation Revitalization Program will benefit all current and future residents and business owners (the intended beneficiaries) in the Town of Fort Myers Beach.

According to 2020 U.S. Census records, 56.3% of the Town's population is considered elderly (65+); the national average is 17.3%. In addition, 11.1% of the Town's population under 65 is disabled; the national average is 8.9%. As such, the Parks and Recreation Revitalization Project will thoughtfully consider the needs of the elderly and disabled populations in Fort Myers Beach through several key improvements designed to enhance accessibility, safety, and overall quality of life. All new facilities, including the Bay Oaks Community Pool and the Newton Park Beach Facility, will be fully ADA-compliant, ensuring that these spaces are accessible to individuals with mobility impairments. This includes the installation of ramps, wide pathways, and accessible restrooms to facilitate easy movement throughout the parks.

Additionally, the project will incorporate features that support needs of elderly residents, such as shaded seating areas and rest zones that provide comfortable spots to relax and socialize. Improved lighting systems in the downtown area and parks will enhance visibility and safety, reducing the risk of accidents for those with limited vision or mobility and enhancing connectivity between Bayside to the north and Time Square to the south, providing a continuous, accessible, and enjoyable environment for all community members.

By prioritizing the needs of the elderly and disabled, the Parks and Recreation Revitalization Project aims to create inclusive, welcoming environments that support the health, well-being, and active participation of all community members in Fort Myers Beach.

**A description of the community outreach and engagement that has happened to date, including a description of the stakeholders and approaches to outreach and engagement**

The Town of Fort Myers Beach notified the public of its intention to apply for infrastructure funds through the Lee County – CDBG Critical Infrastructure program. Notice was published in a newspaper of local circulation in block/display ad format on Friday, May 17, 2024, and included instructions for submitting written comments via email and instructions for submitting written comments in person. Interested parties were invited to make public comments at the Town Meeting held on Monday, May 20, 2024; written comments were accepted through Thursday, May 23, 2024.

No comments were received.

## A description and justification of the proposed costs

The total project budget for rehabilitation of the North Island Water Tower Complex is estimated at \$10,673,000.00. Additional information regarding detailed budget line items is provided below:

**Construction Activities: \$9,165,000 Total.** The Parks and Recreation Revitalization Project in Fort Myers Beach will involve comprehensive construction activities aimed at restoring and enhancing key public facilities and parks. Additional detail regarding each project is provided below:

**Bay Oaks Community Pool Project (\$4,675,000).** Construction activities will include demolition of damaged structures, including the hard deck, slide, and mechanical systems, construction of a new facility to house public restrooms and staff offices, full replacement of the hard deck and slide structure, and restoration of the pool basins. Infrastructure upgrades will include new drainage systems, lighting, and landscaping to improve functionality and aesthetics. All new structures will be ADA-compliant, with ramps, accessible restrooms, and pathways to ensure inclusivity.

**Old San Carlos & Time Square Lighting Project (\$495,000).** Construction activities will include clearing of old, damaged streetlights and poles, installation of new panel/switch boxes, installation of new wiring and conduit, and installation of 46 new streetlights and poles with turtle-compliant lighting fixtures. These improvements will enhance public safety by ensuring the entire downtown area is well-lit and inviting for both residents and visitors, and will mark an important first step in the Town's plan to create a "park corridor" that connects Bayside and Time Square.

**Newton Park Beach Facility (\$3,995,000).** Construction activities will include removal of any remaining storm-damaged structures, construction of a new elevated, resilient educational and environmental center, and construction of ADA-compliant restroom facilities. Project designs will consider resiliency measures such as reinforced foundations, roofs, high-impact glass, and water-resistant sealants. Environmental restoration efforts will include planting of native grasses and shrubs to mitigate erosion and flooding. A beach-friendly parking lot will also be constructed using eco-friendly materials, with spaces for buses and bicycles to promote greener transportation options. The new facility and surrounding areas will be fully ADA-compliant, with ramps, accessible restrooms, and wide pathways.

**Engineering Fees: \$668,500 Total.** Engineering funds will be utilized for costs associated with basic engineering and design services normally performed by an engineering firm on construction projects. Such services include preliminary engineering analysis, preliminary design, final design, and construction-phase professional services.

**Permitting / Studies: \$50,000.00 Total.** Funds specific to permitting and studies will be utilized for costs related to permitting activities and other studies that may be necessary throughout the life of the project. Permitting includes all activities necessary for issuance of a required permit, such as initial assessment of permits required, development of permit applications, submission of permit applications, and coordination with permitting agencies from application submission to issuance of a permit. Other studies include any other studies that may be needed to secure permitting, complete the Environmental Review Record, or ensure that engineering and design of project components; this may include geotechnical reports, topographical surveys, wetlands delineations, environmental site assessments, cultural resource surveys, asbestos surveys, etc.

Construction-Phase Engineering & Inspection (CEI): \$256,500 Total. Funds for CEI services will be utilized for costs related to basic construction management activities. These may include activities such as daily or weekly site inspections and monitoring of construction methods to meet specified standards; site supervision to ensure safety and efficiency on the construction site, adhering to regulations and best practices; compliance monitoring to verify adherence to local, state, and federal regulations, ensuring all necessary permits are obtained and maintained; and compilation of detailed CEI Reports to track construction progress, including daily logs and inspection reports.

Activity Delivery Costs: \$533,000 Total. ADC funds will be utilized for project specific direct costs that are integral to the delivery of the project, including management and oversight services and project specific compliance with the terms and conditions of the related award. ADC's may also include activities such as participation in meetings, strategy sessions, etc.; coordination with the selected project engineer to ensure compliance with the project-specific scope, schedule, and budget as approved in the grant agreement; compilation of required project-specific progress reporting; compilation of project-specific reimbursement requests and financial reporting; coordination and oversight support for procurement of engineering services and documentation of federal procurement compliance for same; coordination and oversight support for procurement of one or more construction contractors and documentation of federal procurement compliance for same; documentation of environmental compliance for project-specific activities; and documentation of project-specific labor standards compliance, including Davis Bacon and Section 3 Requirements; and other project-specific services as requested by the Town. The Town has budgeted activity delivery costs at 5% of the total award request based on the Lee County NOFA for CDBG-DR Public Facilities Program limitation of ADCs. This rate is consistent with industry standard budgeting for ADCs, providing a realistic estimate for the costs project specific ADCs. ADC services will be provided by Tidal Basin and all ADC activities will pertain to implementation of the Parks and Recreation Revitalization Project and will be integral to the delivery of the final project.

### **A description of whether the project will be implemented with applicant staff, vendor support and/or other**

The project will be implemented by a team comprised of Town staff and vendor support. Town of Fort Myers Beach employs staff with experience in completing projects of a similar size and scope, including Mr. Andrew Hyatt, Mr. Frank Kropacek, and Mr. Joe Onzick. To supplement staff expertise and capacity, the Town has secured the services of Tidal Basin Group, which has extensive experience in implementation and oversight of projects utilizing federal, state, and/or local governmental grant funds. Tidal Basin Group is further supported by Gouras & Associates, LLC, whose team members collectively have more than 70 years of combined experience working with state and federal funding, including CDBG-DR funding, and projects of all scopes and sizes.

The Town will competitively procure the services of an engineering firm licensed in the state of Florida to complete all design, permitting, other studies, and construction-phase engineering and inspection.

The Town will competitively procure one or more properly licensed construction contractors to implement all construction activities based upon the plans, specifications, and contract documents developed by the project engineer.

**A description of the timeframe, dependencies, and methods for obligating grant funds, and how the applicant plans to ensure funds are spent timely. A description of how the applicant will address and control for dependencies, if applicable**

The Town of Fort Myers Beach anticipates completion of project activities through two contractual agreements for professional services and one or more contractual agreements for construction services. The timeframe for execution of each, as well as dependencies that may affect execution of each contract is further described below:

**Contract A - Contractual Activity Delivery Services:**

The Town of Fort Myers Beach has competitively procured the services of Tidal Basin Group to supplement Town staff in project-specific activity delivery services. An existing contract is in place with Tidal Basin Group. Upon award of planning funds, a task order can be issued to obligate grant funds for project-specific activity delivery services. The Town anticipates that funding under this contract will be expended consistently throughout the project's period of performance. Timeframe associated with Contract A: Award + 1 month through project closeout.

Dependencies associated with Contract A: Issuance of an award for planning funds.

**Contract B - Engineering, Permitting, and CEI Services (including other studies):**

The Town of Fort Myers Beach will competitively procure a Florida-licensed professional engineering firm to complete all project engineering and design, secure all necessary permitting, perform all construction-phase oversight, and complete other studies that may be required throughout the life of the project. Upon project award, the Town will develop procurement documents and solicit Statements of Qualifications from firms qualified to perform these services. The Town anticipates that funding under this contract will be expended as follows:

- **Engineering and Design Services:** 75% of Basic Engineering Fee expended consistently throughout project design; 5% of Basic Engineering Fee expended throughout construction bidding; 20% of Basic Engineering Fee expended throughout construction phase activities.
- **Permitting and Other Studies:** 100% of Permitting/Other Study Fees expended during the project design phase.
- **Construction-Phase Engineering and Inspection:** 100% of CEI Fees expended consistently throughout the construction phase.

Timeframe associated with Contract B: Award + 4 months to Award + 45 months.

Dependencies associated with Contract B: Issuance of a grant award; Completion of Engineering Procurement; Execution of an Engineering Contract. To address and control for dependencies, the Town will ensure that an RFQ for solicitation of engineering services developed promptly upon award of project funding.

**Contract C - Construction Activities:**

The Town of Fort Myers Beach will competitively procure one or more qualified and licensed construction companies to construct the project based on the plans, specifications, and contract documents prepared by the project engineer. A determination of the number and nature of construction contracts will be made during preliminary engineering and due diligence. At this time, the Town has scheduled consistent expenditure of funding throughout the project's construction phase; however, this may require modification if engineering due diligence determines that multiple construction contracts should be procured for independent implementation of each component.

Timeframe associated with Contract C: Award + 27 months to Award + 45 months.

Dependencies associated with Contract C: Issuance of a grant award; Completion of Engineering Procurement; Execution of an Engineering Contract; Completion of project design and permitting; Completion of Construction Procurement(s); Execution of one or more Construction Contract(s). To address and control for dependencies, the Town will regularly coordinate with the project engineer to ensure that pre-construction activities are progressing on-budget and on-schedule.



**Budget Form**

Description	CDBG-DR Funds Requested	Leveraged Funds	Project Cost
<b>Activity Delivery Costs</b>			
Environmental Review Costs	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
File Management	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Inspections	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Program Administration	\$533,000.00	\$0.00	\$533,000.00
Source of External Funds	N/A		
<b>Construction</b>			
Bonding/Insurance	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Construction Management	\$256,500.00	\$0.00	\$256,500.00
Source of External Funds	N/A		
Debris Removal	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Demolition	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Fixtures/Equipment	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
General Contractor	\$9,165,000.00	\$0.00	\$9,165,000.00
Source of External Funds	N/A		
Landscaping	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Maintenance of Traffic	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Mobilization	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Site Preparation	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
<b>Planning/Design</b>			
Development of Bidding Document	\$68,500.00	\$0.00	\$68,500.00
Source of External Funds	N/A		



Drawings/Blueprints	\$600,000.00	\$0.00	\$600,000.00
Source of External Funds	N/A		
Land Acquisition	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Permitting	\$50,000.00	\$0.00	\$50,000.00
Source of External Funds	N/A		
Site Plan	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Surveys	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Testing	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		

### Funding Summary

CDBG-DR Funds Requested	Leveraged Funds	Project Cost
\$10,673,000.00	\$0	\$10,673,000.00



Duplication of Benefits

Source of Funds	Amount	Status of Funds
FEMA Building Resilient Infrastructure and Communities (BRIC)	\$0.00	N/A
Purpose of Funds:	N/A	
FEMA Hazard Mitigation Grant Program (HMGP)	\$0.00	N/A
Purpose of Funds:	N/A	
FEMA Public Assistance (PA)	\$0.00	Identified
Purpose of Funds:	<p>The Town is currently working with FEMA to secure funding that would contribute to the implementation of this project; however, at this time, funding has not been committed. No other leveraged funding sources are currently committed to the organization for this project. Should leveraged funds be committed to this project, the Town of Fort Myers Beach will promptly notify Lee County and adjust CDBG-DR funding awarded to ensure that no Duplication of Benefits exists.</p>	
Local (Municipal) Funds	\$0.00	N/A
Purpose of Funds:	N/A	
Other CDBG-DR Funds (from Florida COM)	\$0.00	N/A
Purpose of Funds:	N/A	
Other State Funds	\$0.00	N/A
Purpose of Funds:	N/A	
Resilient Florida	\$0.00	N/A
Purpose of Funds:	N/A	
US Army Corps of Engineers (USACE)	\$0.00	N/A
Purpose of Funds:	N/A	
US Department of Transportation	\$0.00	N/A
Purpose of Funds:	N/A	
Total	\$0.00	

**Describe how the proposed project integrates mitigation measures and strategies to reduce natural hazard risks, including climate-related risks. Mitigation measures include but are not limited to, reducing risks to people and property; public service interruption for members who are most vulnerable to natural and climate-related risks; and/or community lifelines**

The proposed Parks and Recreation Revitalization Project integrates several mitigation measures and strategies to reduce natural hazard risks, including climate-related risks, thereby enhancing the resilience and safety of the Town of Fort Myers Beach. Key measures include constructing all new buildings, such as the Bay Oaks Community Pool facility and the Newton Park Beach educational center, above base flood elevations with features such as reinforced foundations and roofs, high-impact glass, and water-resistant sealants. These features are designed to withstand future storms and flooding, significantly reducing risks to people and property. The installation of modern, energy-efficient lighting systems, including turtle-compliant fixtures, will ensure the downtown area remains well-lit and safe, even during adverse weather conditions, minimizing public service interruptions and enhancing safety for the most vulnerable community members.

The project also includes environmental restoration efforts, such as planting of native grasses and shrubs at Newton Park Beach, which will naturally mitigate erosion and flooding, thereby protecting the coastline and adjacent properties. The use of eco-friendly materials and sustainable construction practices will further reduce the environmental footprint and enhances the long-term resilience of the facilities. By incorporating these mitigation measures, the project aims to protect community lifelines, ensuring that essential public services and recreational spaces remain functional and accessible during and after natural disasters. These strategies collectively contribute to the town's ability to withstand and recover from climate-related risks, safeguarding the well-being of all residents, particularly those most vulnerable to such hazards.

**Identify the risks or hazards being reduced and the impacts that those hazards have on people and property**

The Parks and Recreation Revitalization Project addresses and mitigates several key risks and hazards that significantly impact the Town of Fort Myers Beach. Chief among these are flooding, storm surges, and extreme weather events, which have historically caused extensive damage to infrastructure, public facilities, and private properties. By constructing new buildings, such as the Bay Oaks Community Pool facility and the Newton Park Beach educational center, above base flood elevations and incorporating reinforced foundations, roofs, high-impact glass, and water-resistant sealants, the project reduces the risk of structural damage from future flooding and hurricanes. These measures protect people and property by ensuring that facilities can withstand severe weather conditions, thereby minimizing the likelihood of catastrophic loss and displacement.

Additionally, the project addresses the hazard of inadequate lighting in the downtown area, which can lead to increased crime and accidents, especially during severe weather when visibility is compromised. By installing modern, energy-efficient lighting systems, including turtle-compliant fixtures, the project enhances public safety and reduces the risk

of accidents and criminal activity, particularly benefiting vulnerable populations such as the elderly and disabled.

Environmental hazards such as erosion and flooding are also mitigated through the project's planting of native grasses and shrubs at Newton Park Beach. These natural barriers help protect the coastline and adjacent properties from erosion and flood damage. By addressing these risks, the project not only protects physical structures and property but also ensures the continuity of essential public services and recreational spaces, thereby safeguarding the overall well-being and resilience of the community.

**Describe the value of the proposed project to the community. Describe the anticipated short-term impacts during normal circumstances, as well as how the project will enhance resilience in the long term and during extreme events. Description should include qualitative or quantitative data**

The Parks and Recreation Revitalization Project offers immense value to the Fort Myers Beach community by restoring and enhancing critical public facilities and parks, thereby improving the overall quality of life for residents and visitors. In the short term, the project will provide immediate benefits by reviving key recreational spaces like the Bay Oaks Community Pool and Newton Park Beach Facility, offering safe and accessible venues for physical activity, social interaction, and educational programs. This revitalization will foster community cohesion and promote physical and mental well-being. For instance, the ADA-compliant features and modern amenities will ensure that all community members, including the elderly and disabled, can fully utilize these spaces, enhancing inclusivity and participation. Additionally, the project will initiate the Town's long-term plan to evolve Old San Carlos Boulevard into a "park corridor," which will enhance connectivity between Bayside to the north and Time Square to the south, creating a continuous, accessible, and enjoyable environment for all community members.

Quantitatively, the project is expected to increase local tourism and support economic recovery by making Fort Myers Beach more attractive to visitors. The improved lighting in the downtown area will enhance safety, potentially reducing crime rates and accidents, which can be measured through local law enforcement and public health data.

In the long term, the project will significantly enhance community resilience by incorporating robust construction standards and sustainable practices that mitigate the risks of future natural disasters. Buildings constructed above base flood elevations with reinforced materials will withstand extreme weather events, reducing the likelihood of costly repairs and displacement. The environmental restoration efforts, including dune restoration and native plantings, will provide natural barriers against erosion and flooding, protecting both property and natural habitats.

During extreme events, these resilient infrastructure improvements will ensure resilient public facilities have minimized disruptions and facilitate quicker recovery. Qualitatively, this resilience can be seen in the community's ability to maintain normalcy and safety during adverse conditions, fostering a sense of security and stability among residents. Overall, the project's blend of immediate benefits and long-term resilience strategies will create a safer, more vibrant, and sustainable community in the Town of Fort Myers Beach.



## Application Certification

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct and that the application and all support documentation has been duly authorized by the governing body of the applicant. I further certify that I am authorized to submit this application and have followed all policies and procedures of my agency regarding grant application submissions.

- ▶ Authorized Organization Representative Name: Andrew Hyatt
- ▶ Authorized Submitter Representative Name: Andrew Hyatt
- ▶ Authorized Submitter Representative Title: Town Manager
- ▶ Certification Date: 05/24/2024
- ▶ Authorized Submitter Representative Signature: *Andrew Hyatt*
- ▶ Authorized Submitter Representative IP Address: 173.165.214.193

## **EXHIBIT G**

### **CERTIFICATE(S) OF INSURANCE**

The information provided under this Exhibit is retrieved from the Subrecipient Agreement or the Subrecipient's approved application in response to the *Public Facilities Infrastructure Program* NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to confirm that the Subrecipient has sufficient coverage against personal, commercial, or any other liability regarding the spending of CDBG-DR dollars. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently updated, reviewed, and/or approved within the System of Record when necessary.

#### **Certificate(s) of Insurance**

The Subrecipient has provided the following documentation below in an effort to confirm sufficient coverage is in place:

(1) Workers' Compensation Coverage

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

(2) Commercial General Liability

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

(3) Business Auto Liability

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

(4) Directors & Officers Liability

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout

the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

(5) Fidelity Bonding

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

**EXHIBIT H (SIGNATURE REQUIRED)**

**CERTIFICATIONS**  
**CDBG-DR COMPLIANCE PROVISIONS**  
*Housing and Infrastructure*

This Exhibit to the Community Development Block Grant Disaster Recovery (“CDBG-DR”) Program Subrecipient Agreement contains supplementary compliance conditions for use with procured contracts and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development (“HUD”) under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.

This Exhibit shall be included as part of the terms of the Agreement for all procured contracts and subrecipient agreements funded fully or in part by the CDBG-DR Program by Lee County and the selected contractor or subrecipient.

By signing this Exhibit, the Subrecipient certifies they understand that all the below compliance provisions will apply to all projects that are awarded CDBG-DR funds.

**1. NATIONAL OBJECTIVES**

In accordance with [24 CFR 570.208](#), Section 104(b)(3) of the Housing and Community Development Act of 1974, all CDBG-DR funded activities must meet a National Objective. Under Section 101(c) of the authorizing Act (42 U.S.C. 5301), all CDBG-DR Activities must satisfy one of the named National Objectives.

1. Benefit to Low-to-Moderate Income Persons (LMI)
2. Urgent Need (UN)
3. Elimination of Slum and Blight (SB)

Upon completion of approved activity(ies) funded under this Agreement and prior to the funding expiration date of this Agreement, whichever comes first, the Subrecipient must document that the approved activity(ies) met the approved National Objective, as necessary.

For Subrecipients with a National Objective requirement, the County shall review the actual National Objective achievements of the activity. If the Subrecipient does not or cannot satisfactorily document the National Objective achievement of an approved activity(ies), the activity(ies) may be deemed ineligible, and repayment of funds may be required of the Subrecipient.

## **2. DUPLICATION OF BENEFITS**

A Duplication of Benefits (DOB) occurs when a person, household, business, or other entity receives disaster assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of the total need for the same purpose. It is the County's responsibility to ensure that CDBG-DR programs provide assistance only to the extent that the disaster recovery need has not been fully met by funds that have already been paid, or will be paid, from another source.

The Subrecipient or Contractor must report all funds obtained for the same activity from any source from the date of the disaster until the activity is completed.

The Subrecipient or Contractor agrees to repay to the County, immediately upon demand, any assistance later received for the same purpose as the CDBG-DR funds and that exceeds the total need for the particular recovery purpose.

- a. **CDBG-DR Funds as Match (Infrastructure)**: When applicable and approved by the County, Subrecipients may use grant funds to satisfy a match requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-DR activity. This includes programs or activities administered by the Federal Emergency Management Agency (FEMA) or U.S. Army Corps of Engineers (USACE). By law, only \$250,000 or less of CDBG-DR funds may be used for the non-Federal cost-share of any project funded by USACE. Furthermore, Appropriations acts prohibit the use of CDBG-DR funds for any activity reimbursable by, or which funds are also made available by, FEMA or USACE.

For all match activities, Subrecipients must document that CDBG-DR funds have been used for the actual costs incurred for the assisted project and for costs that are eligible, meet a national objective, and meet other applicable CDBG requirements.

## **3. EQUAL EMPLOYMENT OPPORTUNITY**

The obligations undertaken by the Subrecipient or Contractor include, but are not limited to, the obligation to comply with all Federal laws and regulations described in Subpart K of 24 CFR Part 570 and specifically with each of the following, among other things, as the same may be amended from time to time:

- a. **Title VI of the Civil Rights Act of 1964**: This act provides that no person shall

be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving Federal financial assistance.

- b. **Title VII of the Civil Rights Act of 1968 (The Fair Housing Act)**: This act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promote fair housing.
- c. **Restoration Act of 1987**: This act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives Federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability or age in a program or activity which does not directly benefit from such assistance.
- d. **Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 5309]**: This Section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.
- e. **The Fair Housing Amendment Act of 1988**: This act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.
- f. **The Age Discrimination Act of 1975**: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic.
- g. **Section 504 of the Rehabilitation Act of 1973**: It is unlawful to discriminate based on disability in Federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance.
- h. **The Americans with Disabilities Act of 1990 (ADA)**: This act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a

qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.

- i. **Executive Order 11063**: This executive order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with Federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the Federal government.
- j. **Executive Order 12259**: This executive order provides that the administration of all Federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.
- k. **The Equal Employment Opportunity Act**: This act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, state, and local governments under the Civil Rights Act of 1964.
- l. **The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978**: This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal, and referral. It is designed to assist employers, labor organizations, employment agencies, licensing, and certification boards in complying with the requirements of Federal laws prohibiting discriminatory employment.
- m. **The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002)**: This act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.
- n. **Executive Order 11246**: This executive order applies to all Federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race

#### 4. **CERTIFICATION OF NONSEGREGATED FACILITIES**

(applicable to contracts and subcontracts over \$10,000)

The Subrecipient or Contractor and its subcontractor(s) certifies that the entity does not maintain or permit employees to perform their services at any location where segregated facilities are maintained. The Subrecipient or Contractor certifies further that it shall not maintain or provide for employees any segregated facilities at any of its establishments and will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Subrecipient or Contractor and its subcontractor(s) agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Subrecipient or Contractor further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that it will retain such certifications in project files; and will provide notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

## **5. ENVIRONMENTAL PROTECTION AND ACTS**

- a. National Environmental Protection Act (NEPA):** All Federally funded activities are subject to the National Environmental Policy Act of 1969 (NEPA) and its regulations under 40 CFR 1500 – 1508. Additionally, [24 CFR 58.22](#) prohibits committing or spending HUD or non-HUD funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an environment review once a project has Federal funding, in full or in part. This prohibition on "choice-limiting actions" prohibits physical activity, including acquisition, rehabilitation, and construction, as well as contracting for or committing to any of these actions, prior to completion of the environmental review. Awarded activities must have completed an environmental review to demonstrate compliance with NEPA, as well as 24 CFR 58.
- b. Clean Air and Water Acts:** *(applicable to contracts and subcontracts exceeding \$100,000)* The Subrecipient or Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

- c. **Flood Disaster Protection:** The Subrecipient or Contractor shall comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001). The Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, that flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).
- d. **Energy Efficiency:** The Subrecipient or Contractor shall comply with mandatory standards and policies relating to energy efficiency under the Energy Policy and Conservation Act (Public Law 94-163).
- e. **Procurement of Recovered Materials:** Per 2 CFR 200.323, if a subrecipient is a state agency or an agency of a political subdivision of a state, it 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.

## 6. **CONSTRUCTION STANDARDS**

While the following Construction Standards requirements are called out below, the Subrecipient also certifies and acknowledges that it has read and complies with all requirements as noted within the *CDBG-DR Construction Standards Procedure* for Housing Programs and applicable program guidelines.

- a. **Green and Resilient Building Standards in Housing:** All new construction or rehabilitation of residential structures must meet an industry-recognized standard that has achieved certification under (i) Enterprise Green Communities; (ii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development); (iii) ICC-700 National Green Building Standard Green+ Resilience; (iv) Living Building Challenge; or (v) any other equivalent comprehensive green building program acceptable to HUD. Additionally, all such covered construction must achieve a minimum energy efficiency standard, such as (i) ENERGY STAR (Certified Homes or Multifamily High-Rise); (ii) DOE Zero Energy Ready Home; (iii) EarthCraft House, EarthCraft Multifamily; (iv) Passive House Institute Passive Building or EnerPHit certification

from the Passive House Institute US (PHIUS), International Passive House Association; (v) Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label); (vi) Earth Advantage New Homes; or (vii) any other equivalent energy efficiency standard acceptable to HUD

- b. **Rehabilitation of Nonsubstantially Damaged Residential Buildings (Housing)**: Per Federal Register Notice 88 FR 32046, for rehabilitation other than the rehabilitation of substantially damaged residential buildings described in 6.a. above, the Subrecipient must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist.

Subrecipients must apply these guidelines to the extent applicable for the rehabilitation work undertaken, for example, the use of mold resistant products when replacing surfaces such as drywall. Products and appliances replaced as part of the rehabilitation work must be ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products or appliances.

- c. **Broadband Infrastructure in Housing**: Per Federal Register Notice 88 FR 32046, any substantial rehabilitation, as defined by 24 CFR 5.100, reconstruction, or new construction of a building with more than four units must include installation of broadband infrastructure.

d. **Elevation Standards (Housing and Infrastructure)**:

- i. ***Housing***: All new construction or rehabilitation of residential structures and located in the one percent annual chance (or 100-year) floodplain must be elevated at least two feet above the base flood elevation.
  - ii. ***Mixed-use and Non Residential***: Non-residential structures and infrastructure must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above base flood elevation.
  - iii. ***Critical Actions***: Structures and services defined at 24 CFR 55.2(b)(3) and within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(2-3) or successor standard) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation.
- e. **Planning and Design (Infrastructure)**: All newly constructed infrastructure that is assisted with CDBG-DR funds must be designed and constructed to withstand extreme weather events and the impacts of climate change. To satisfy this requirement, the Subrecipient is required to provide resilience performance metrics as identified by the County.

- f. **Flood Control Structures (Infrastructure and Non-Residential Structures)**:

Subrecipients that use CDBG-DR funds to assist flood control structures (i.e., dams and levees) are prohibited from using CDBG-DR funds to enlarge a dam or levee beyond the original footprint of the structure that existed before the disaster event, without obtaining approval from the County, HUD, and any Federal agencies that HUD determines are necessary based on their involvement or potential involvement with the levee or dam. Additional requirements and approval steps are outlined under Federal Register Notice guidance at 88 FR 32046.

## **7. AFFORDABILITY PERIOD REQUIREMENTS (HOUSING)**

While the following minimum affordability period requirements are called out below, the Subrecipient also certifies and acknowledges that it has read and complies with all requirements as noted within the applicable program guidelines regarding affordability period requirements.

- a. **New Construction and Rehabilitation of Affordable Rental Housing:** To meet the LMI housing national objective, a Subrecipient who implements rental housing activities that will result in the new construction or rehabilitation of five or more units, assisted with CDBG-DR funds, must rent to LMI households at affordable rents as described within the *Lee County Action Plan for CDBG-DR Funds*. Furthermore, the minimum timeframes, enforceability, and other related requirements acceptable for compliance can be found under the HOME Investment Partnerships Program (HOME) requirements at 24 CFR 92.252(e), including the table listing the affordability periods at the of 24 CFR 92.252(e). The County has adopted these requirements and spells out affordability restriction enforcement and minimum affordability periods within the respective program guidelines, which Subrecipients are required to follow, where applicable.
- b. **New Construction of Homes Built for LMI Households:** For Subrecipients who implement activities where there is a construction of new single-family units (four units or less) for homeownership that will meet the LMI housing national objective criteria, the County has set affordability restrictions, which follow minimum affordability period and enforcements mechanisms of the HOME requirements set at 24 CFR 92.254(a)(4). Subrecipients whose activities are applicable to these requirements must follow the County's respective program guidelines regarding affordability restrictions, resale or recapture requirements, affordability period requirements, and all other requirements prescribed under the applicable guidelines regarding affordability.

## **8. CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, VETERAN OWNED BUSINESSES, AND LABOR SURPLUS AREA FIRMS**

The Subrecipient or Contractor will take necessary affirmative steps to assure that minority firms, women's business enterprises, veteran owned businesses, and labor

surplus area firms are used in subcontracting when possible. Steps include:

- a. Placing qualified small and minority businesses, veteran owned businesses, and women's business enterprises on solicitation lists:
- b. Assuring that small and minority businesses, and women's and veteran's business enterprises are solicited whenever they are potential sources:
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, veteran owned, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, veteran owned businesses, and women's business enterprises; and
- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

#### **9. POLITICAL ACTIVITY**

The Subrecipient or Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

#### **10. LOBBYING PROHIBITION AND BYRD ANTI-LOBBYING AMENDMENT**

The Subrecipient is prohibited from using contracted funds for the following purposes: (1) political activities; (2) lobbying; (3) political patronage; (4) nepotism activities; and (5) inherently religious activities such as worship, religious instruction, or proselytization. The Subrecipient will also comply with Chapter 216.347, Florida Statutes, which prohibits the expenditure of Agreement funds for the purpose of lobbying the legislature, state or county agencies.

Additionally and in accordance with 24 CFR 87, the Subrecipient certifies that it will not use CDBG-DR funds received from the County to directly or indirectly influence legislation or any other official action by the Florida legislature, any state agency, or other local government and county (BOCC) business, including through the use of Federal appropriated funds being paid to any person for influencing or attempting to influence an office or employee of any agency, a member of Congress, an office or employee of Congress or an employee of a member of Congress in connection with this Federal contract, grant, loan or cooperative agreement. If the County and/or the Subrecipient suspects such action of occurring, the County reserves the right to request that the Subrecipient disclose and certify such activities in accordance with reporting requirements noted within the Agreement.

The Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) requires that Contractors 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 certifies, to the best of his or her knowledge and belief that:

- 1) No Federally appropriated funds have been paid or will be paid by, or on behalf of, the contractor, 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, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federally 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 contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

## **11. DEBARMENT AND SUSPENSION**

A contract award ([2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235).

By executing this Agreement or contract, the Subrecipient or Contractor verifies and affirms that it has not been suspended or debarred from participating in or receiving federal government contracts, subcontracts, loans, grants or other assistance programs and will not enter into contracts with any entity that has been suspended or debarred from federal contract work.

## **12. CONFLICT OF INTEREST**

No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Subrecipient or Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

No member of, or delegate to, Congress, or any Resident Commissioner, shall be admitted to any share or part of any contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to any contract if made with a corporation for its general benefit.

### **13. DOMESTIC PREFERENCES FOR PROCUREMENTS**

Per [2 CFR 200.322](#), as appropriate and to the extent consistent with law, the subrecipient should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section: (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole, or in part, of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; or aggregates such as concrete; glass, including optical fiber; and lumber.

### **14. DAVIS-BACON AND RELATED LABOR STANDARD ACTS**

- a. **Davis Bacon Act:** Subrecipient or Contractor shall comply with the Davis Bacon Act (40 U.S.C. §§ 3141-3148) and 29 CFR Subtitle A, Parts 1, 3 and 5, as applicable, to construction, alteration, and repair contracts over \$2,000.00.
- b. **AntiKickback Act of 1986:** Subrecipient or Contractor shall ensure that all contracts comply with the AntiKickback Act of 1986 (41 U.S.C. § 5158) that prohibits attempted as well as completed "kickbacks," which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind.
- c. **Contract Work Hours and Safety Standards Act of 1962:** Subrecipient or Contractor shall ensure all contracts comply with the Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. § 3702) which requires that workers

receive overtime compensation at a rate of one and one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.

- d. For the purposes of this requirement "construction work" includes, but is not limited to, rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this agreement or contract. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract").
- e. Subrecipient or Contractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the County for review upon request.

### **15. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968**

The work to be performed under this contract may be subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3), and implementing regulation at [24 CFR, Part 75](#). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The responsibilities outlined in 24 CFR Part 75.19 include:

- a. Implementing procedures designed to notify Section 3 workers about training and employment opportunities generated by Section 3 covered assistance and Section 3 business concerns about contracting opportunities generated by Section 3 covered assistance.
- b. Notifying potential Contractors for Section 3 covered projects of the requirements of Part 75, Subpart C and incorporating the Section 3 clause set forth below in all solicitations and contracts in excess of \$100,000 as required at 24 CFR 75.27.

#### **Section 3 Clause**

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD's regulations in 24 CFR. Part 75, which implements Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.

The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

The contractor acknowledges that subrecipients, contractors, and subcontractors are required to meet the employment, training, and contraction requirements of 24 CFR 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 75.

Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

The contractor agrees to submit, and shall require its subcontractors to submit to them, annual reports detailing the total number of labor hours worked on the Section 3 Project, the total number of labor hours worked by Section 3 Workers, and the total number of hours worked by Targeted Section 3 Workers, and any affirmative efforts made during the quarter to direct hiring efforts to low- and very low-income persons, particularly persons who are Section 3 workers and Targeted Section 3 workers.

- c. Facilitating the training and employment of Section 3 workers and the award of contracts to Section 3 business concerns by undertaking activities such as described in Section 75.25(b), as appropriate, to reach the goals set forth in Section 75.23 and in Federal Register Vol. 85, No. 189, page 60909, until superseded by HUD in a subsequent publication. As of September 29, 2020, the minimum Section 3 benchmark is twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers; and five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers.
- d. Documenting actions taken to comply with the foregoing requirements, the results of those actions taken and impediments, if any.

**16. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970, AS AMENDED (42 U.S.C. 4601 et seq.) – “URA”**

The Subrecipient understands that activities and projects it undertakes with CDBG–DR funds may be subject to the URA at 49 CFR Part 24, section 104(d) of the HCDA (42 U.S.C. 5304(d)), and CDBG program requirements related to displacement, relocation, acquisition, and replacement of housing, except as modified by waivers and alternative requirements provided in Federal Register Notices 88 FR 3198 and 88 FR 32046. In such Notices, HUD waived or provided alternative requirements for the purpose of promoting the availability of decent, safe, and sanitary housing with respect to the use of CDBG–DR funds allocated under the Consolidated Notice.

Subrecipients are required to adopt the County’s Residential Anti-Displacement and Relocation Assistance Plan or establish separate optional relocation policies prior to undertaking any activity assisted with CDBG-DR funding which involves relocation. The written policy must be available to the public, describe the relocation assistance that the Subrecipient has elected to provide, and provide for equal relocation assistance within each class of displaced persons according to 24 CFR 570.606(d).

In the event of displacement because of a federally funded award, Subrecipients must comply with the URA, for any household, regardless of income, which is involuntarily and permanently displaced, and to comply with Section 104(d). The County also provides notice to Subrecipients that any demolition or disposition of public housing is

subject to Section 18 of United States Housing Act of 1937, as amended, and 24 CFR Part 970.

**17. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

Per [2 CFR 200.216](#), Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

As described in Public Law 117–328, section 208, subsection (a), covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country, is prohibited.

**18. AGREEMENTS BETWEEN SUBRECIPIENTS AND CONTRACTORS**

- a. The Subrecipient shall not enter into any agreement, written or oral, with any contractor or other party without the prior determination that the contractor or other party is eligible to receive federal funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible contractors.

The terms “other party” is defined as public or private nonprofit agencies or organizations and certain (limited) private for-profit entities who receive grant funds from a Subrecipient to undertake Approved Activities.

- b. An agreement between the Subrecipient and any contractor or other party shall require:
- 1) Compliance with all State and Federal requirements described in this Agreement including, without limitation, those that pertain to labor standards, nondiscrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug Free Workplace, and prevailing wages.
  - 2) Maintenance of at least the minimum State required Workers' Compensation Insurance for those employees who will perform the Approved Activities.

- 3) Maintenance, as required by law, of unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor, in performing the Approved Activities.
- 4) Compliance with the applicable Equal Opportunity Requirements described in Section 3 of this Exhibit.

**c. Contractors shall:**

- 1) Perform Activities in accordance with Federal, state, and local regulations, as applicable.

**19. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

If a Federal award meets the definition of “funding agreement” under 37 CFR 401.2(a) and the Subrecipient or Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance, the Subrecipient or Contractor must comply with requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulation issued by the awarding agency.

**20. PATENTS**

- a. The Subrecipient or Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.
- b. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Subrecipient or Contractor.
- c. If the Subrecipient or Contractor uses any design device or materials covered by letters, patents or copyrights, he shall provide for such use by suitable agreement with the owner of such patented or copyrighted design device or material. It is mutually agreed and understood that without exception the contract prices shall include all royalties or costs arising from the use of such design, device, or materials, in any way involved in the work. The Subrecipient or Contractor and/or

his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device, materials, or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

## **21. COPYRIGHT**

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Subrecipient or Contractor for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

## **22. DRUG-FREE WORKPLACE ACT OF 1988**

- a. Publish and give a policy statement to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy.
- b. Establish a drug-free awareness program to make employees aware of a) the dangers of drug abuse in the workplace; b) the policy of maintaining a drug-free workplace; c) any available drug counseling, rehabilitation, and employee assistance programs; and d) the penalties that may be imposed upon employees for drug abuse violations.
- c. Notify employees that as a condition of employment on a Federal contract or grant, the employee must a) abide by the terms of the policy statement; and b) notify the employer, within 5 calendar days, if he or she is convicted of a criminal drug violation in the workplace.
- d. Notify the contracting or granting agency within 10 days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.
- e. Impose a penalty on or require satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted of a reportable workplace drug conviction.
- f. Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the act.

**23. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM (E-VERIFY)**

Subrecipients must certify that they will verify employment eligibility of all new employees hired during the Agreement term through the U.S. Department of Homeland Security's E-Verify system.

Section 448.095, F.S., requires the following:

1. Every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.
  2. A private employer shall, after making an offer of employment which has been accepted by a person, verify such person's employment eligibility. A private employer is not required to verify the employment eligibility of a continuing employee hired before January 1, 2021. However, if a person is a contract employee retained by a private employer, the private employer must verify the employee's employment eligibility upon the renewal or extension of his or her contract
- a. E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States. There is no charge to the employer to use E-Verify. The Department of Homeland Security's E-Verify system can be found at: <https://www.e-verify.gov/>.
  - b. If the subrecipient or its contractors, consultants, or subrecipients, does not use E-Verify, they shall enroll in the E-Verify system prior to hiring any new employee or retaining any contract employee after the Effective Date of the Subrecipient Agreement.

**24. SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS, AND ACCIDENT PREVENTION**

- a. Use of Explosives: When the use of explosives is necessary for the prosecution of the work, the contractor shall observe all local, state, and Federal laws in purchasing and handling explosives. The contractor shall take all necessary precautions to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced, and the material shall be covered with suitable timber, steel, or rope mats.
- b. The contractor shall notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any

supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the contractor or his Surety for damages that may be caused by such use.

- c. Danger Signals and Safety Devices: The contractor shall make all necessary precautions to guard against damages to property and injury to persons. The contractor shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades, and other devices necessary to protect the public.
- d. Protection of Lives and Health: The contractor shall exercise proper precautions at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971, Title 29 - LABOR, shall be observed and the contractor shall take, or cause to be taken,, such additional safety and health measures as the Developer may determine to be reasonably necessary.

## **25. PROHIBITION AGAINST PAYMENTS OF BONUS OR COMMISSION**

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of:

- a. Obtaining the County's approval of the Application for such assistance; or,
- b. Any other approval or concurrence of the County required under this Agreement, Title I of the Housing and Community Development Act of 1974, or State regulations with respect thereto; provided, however, that reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

## **26. CONFIDENTIAL FINDINGS**

All of the reports, information, data, etc., prepared or assembled by the Subrecipient or Contractor under any Agreement are confidential, and the Subrecipient or Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

## **27. ACCESS TO RECORDS – MAINTENANCE OF RECORDS**

Lee County, the Department of Housing and Urban Development, the Comptroller

General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Subrecipient or Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with any contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the County's final closeout of the grant.

**28. INSPECTION**

The authorized representative and agents of Lee County and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

**29. PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted in any contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

BY: Signed by:  
*Andrew Hyatt*  
2F8F25CEB4A742B...  
\_\_\_\_\_  
Signature  
Andrew Hyatt  
\_\_\_\_\_  
Name (print)

1/13/2025 | 10:43 AM EST  
\_\_\_\_\_  
Date

## EXHIBIT I

### **CDBG-DR SPECIAL TERMS AND CONDITIONS**

This Exhibit to the Community Development Block Grant Disaster Recovery (“CDBG-DR”) Program Subrecipient Agreement contains special conditions for use with procured contracts and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development (“HUD”) under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.

This Exhibit shall be included as part of the terms of the agreement for all procured contracts and subrecipient agreements funded fully or in part by the CDBG-DR Program by Lee County and the selected contractor or subrecipient.

#### **1. INITIAL RISK ASSESSMENT**

The Subrecipient has provided, or will provide, the County with information about the Subrecipient’s experience, processes, policies, and procedures related to the management of Federal funding by the Subrecipient. These submissions, in addition to discussions with the Subrecipient, have been used by the county to assess the risk of noncompliance and capacity to compliantly execute the required activities for which the Agreement is made.

Should there be substantive changes to the organization, key personnel, methods, capacity, policies, or processes of the Subrecipient that impact the implementation of this Agreement, the Subrecipient shall notify the County of said changes within 30 days of those changes.

The Subrecipient agrees to provide documents and information to the County, within 30 days of such a request made by the County, to facilitate its due diligence review as required by Federal Register Notice 88 FR 32046. Subrecipient further agrees to comply with the requirements, requests, and results of the County’s due diligence and maintain the capacity to carry out disaster recovery activities in a timely and compliant manner at all times during the term hereof.

#### **2. RISK ASSESSMENT**

During the term of this Agreement, the Subrecipient agrees to provide documents and information, within 30 days of such a request made by the County, to facilitate the County’s Subrecipient risk assessment process. The Subrecipient further agrees to comply with the requirements, requests, and results of the County’s risk assessment, including participation in Subrecipient monitoring events.

#### **3. SPECIAL CONDITIONS**

Pursuant to Exhibit A, Scope of Work, and the Risk Assessment Sections, as referenced above, Subrecipient agrees to adhere to the following Special Conditions:

**A. ENVIRONMENTAL REVIEW SPECIAL CONDITION**

The environmental review for this project is currently classified as “Exempt” under 24 CFR §58.34. However, upon the completion of 30% design, the Subrecipient must initiate the process for an Environmental Assessment (EA) pursuant to 24 CFR Part 58.

The Subrecipient shall adhere to the following requirements upon reaching 30% design completion:

1. **Notification to the County:** The Subrecipient must notify their Grant Manager and Lee County in writing via email or a VistaTRAK note that the project has reached 30% design completion.
2. **Submission of Designs:** The Subrecipient must upload the 30% design documents to VistaTRAK for County review.
3. **Restriction on Activities:** The Subrecipient must not execute any construction contracts, commit funds, or undertake any choice-limiting actions as defined in 24 CFR §58.22, until an Authority to Use Grant Funds (AUGF) has been issued by HUD.
4. **Coordination with Lee County:** The Subrecipient must coordinate closely with Lee County to ensure compliance with all applicable federal, state, and local environmental review requirements.

Failure to comply with these conditions may result in noncompliance findings and the withholding of reimbursement for project expenses until compliance is achieved and documented.

**EXHIBIT J**  
**SUBRECIPIENT STAFF ORGANIZATION**  
**Parks & Recreation Revitalization**

The Subrecipient must complete the following information, as applicable, as an extension of the requirements outlined within SECTION XVIII. NOTICES of the Agreement. The Subrecipient is not required to hire or create the following positions or titles but should assign the following roles to staff members who will serve as a primary point of contact for relevant responsibilities associated with that role.

Some projects or activities will not require a contact for all roles identified below. In addition, individual staff members may perform multiple roles. The Subrecipient will complete the contact information for those roles which are applicable for successful completion of this project/activity and denote where a specific member is performing multiple roles. If certain roles are not applicable for implementation of this project/activity, please denote "Not Applicable" under the Contact Information for each role.

The Subrecipient is responsible for providing an updated version of this Exhibit as contact information changes or updates are made to personnel which impact the roles and responsibilities. Descriptions of each role are outlined below.

**Section 1: Subrecipient Contract Administrator**

**1. Description**

The Subrecipient Contract Administrator (must be a Subrecipient employee) is identified in SECTION XVIII. NOTICES of the Agreement. Unless otherwise directed by the County, any notice, report, or other communication required by the Agreement shall be directed via the County's approved system or written to the Subrecipient's Contract Administrator at the contact information identified in SECTION XVIII. NOTICES of the Agreement.

**2. Contact Information**

Name: Andrew Hyatt  
Title: Town Manager  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street, Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: andyhyatt@fmbgov.com

**Section 2: Project Manager**

**1. Description**

The Subrecipient staff member who will serve as the primary contact and decision-maker for the project's implementation. This staff member is responsible for ensuring the project reaches established milestones and deadlines for completion, oversees all elements of project completion (e.g., procurement actions, reconciliations, contract management, administration), and is considered the administrator to ensure general and overall compliance of the project/activity with the CDBG-DR grant.

## **2. Contact Information**

Name: Frank Kropacek  
Title: Operations and Compliance Director  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street, Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: fkropacek@fmbgov.com

## **Section 3: Davis Bacon and Labor Standards Coordinator**

### **1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Section 3 and Davis-Bacon and Related Acts (DBRA) labor standards. This staff member is responsible for actions such as providing guidance to (including conducting monitoring and oversight of) contractors and vendors on Section 3 and labor compliance requirements. This includes, but is not limited to, overseeing Section 3 goals reporting by contractors and vendors, conducting employee interviews, reviewing certified labor payrolls, and completing Section 3 and labor compliance reports for submission of performance data to the County. The Coordinator would likely be responsible for ensuring proper recordkeeping of such files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

### **2. Contact Information**

Name: Jason Freeman  
Title: Legislative Liaison/Deputy Clerk  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street, Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: jasonf@fmbgov.com

## **Section 4: Section 504 Coordinator**

## **1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Section 504, the Americans with Disabilities Act of 1990 ("ADA") and ensuring meaningful access to persons who are Limited English Proficiency (LEP). This staff member is responsible for actions which include, but are not limited to, conducting a Section 504 evaluation or self-assessment of Subrecipient facilities, detailing and tracking complaints or grievances on potential Section 504 or Civil Rights violations, and developing and maintaining Language Access Plans (LAPs) for LEP individuals, as applicable. The Coordinator would likely be responsible for ensuring proper recordkeeping of files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

## **2. Contact Information**

Name: Amy Baker  
Title: Town Clerk  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street, Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: amy@fmbgov.com

## **Section 5: Fair Housing Coordinator**

### **1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Fair Housing requirements as outlined within the Agreement and Exhibits. This staff member is responsible for actions which affirmatively promote fair housing, which may include, but are not limited to, conducting, overseeing, and documenting fair housing activities, conducting affordable housing reports, and detailing and tracking complaints or grievances on potential Fair Housing violations, as applicable. The Coordinator would likely be responsible for ensuring proper recordkeeping of such files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

### **2. Contact Information**

Name: Jason Freeman  
Title: Legislative Liaison/Deputy Clerk  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street, Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: jasonf@fmbgov.com

## **Section 6: Financial Manager**

### **1. Description**

The Subrecipient staff member who will serve as the primary contact and subject matter expert for all financial management duties associated with the project. This staff member is most likely responsible for overseeing accounting actions such as accounts receivable, accounts payable, project budget setup, or encumbering the CDBG-DR dollars within the Subrecipient's financial management system and/or fiscal year (FY) obligations of CDBG-DR dollars to the project/activity governed by this Agreement. Tasks of the Financial Manager may include, but are not limited to, approving project invoices, overseeing monthly account reconciliations, creating or approving annual budgets for expending CDBG-DR dollars under this project/activity, and being responsible for walking through accounting procedures for County staff. The Financial Manager would likely be responsible for ensuring proper recordkeeping of such financial and accounting records for access by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. Given the segregation of duties for financial and accounting staff, the Financial Manager may also supervise or oversee multiple accounting clerks, financial analysts, or other financial staff who perform duties described above.

### **2. Contact Information**

Name: Joe Onzick  
Title: Finance Director  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street, Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: JOnzick@fmbgov.com

## **Section 7: Certification of Time Allocation**

Are there any staff who are working on both CDBG-DR and non CDBG-DR programs? If so how many, and list names.

n/a

**EXHIBIT K****CDBG-DR PROGRAM SUBROGATION AGREEMENT**

This Subrogation and Assignment Agreement ("Agreement") is made and entered into by and between Town of Fort Myers Beach (hereinafter referred to as "Subrecipient") and Lee County (hereinafter referred to as "County").

In consideration of the Subrecipient's receipt of funds or the commitment by the County to evaluate the Subrecipient's application for the receipt of funds (collectively, the "Subrecipient Award") under the Community Development Block Grant – Disaster Recovery Program (the "CDBG-DR Program") administered by the County, the Subrecipient hereby assigns to the County all of the Subrecipient's future rights to reimbursement and all payments received from any grant, subsidized loan, lawsuit, or insurance policies of any type or coverage, or under any reimbursement or relief program related to or administered by the Federal Emergency Management Agency ("FEMA") or the Small Business Administration ("SBA") (singularly, a "Disaster Program" and collectively, the "Disaster Programs"), that was the basis of the calculation of the Subrecipient Award paid or to be paid to the Subrecipient under the CDBG-DR Program and that are determined at the sole discretion of the County to be a duplication of benefit ("DOB"), as provided in this Agreement.

The proceeds or payments referred to in the preceding paragraph, whether they are from insurance, FEMA, or the SBA, or any other source, and whether or not such amounts are a DOB, shall be referred to herein as "Proceeds," and any Proceeds that are a DOB shall be referred to herein as "DOB Proceeds."

The Subrecipient agrees to notify the County within five (5) business days of any additional or new payments, loans, grants, or awards by HUD, FEMA, SBA, the State of Florida, or any other entity not specifically disclosed in this Agreement. Further, the Subrecipient understands and acknowledges the County's right and responsibility to enforce this requirement by recapturing all or a portion of the CDBG-DR Subrecipient Award if the Proceeds received are determined to be DOB Proceeds within this CDBG-DR Program activity. The Subrecipient will be required to pay back the received CDBG-DR Subrecipient Award, which was found to be DOB Proceeds, within 30 days of receipt of the identified duplicative payment. The amount of DOB determined to be paid to the County shall not exceed the Subrecipient Award amount received by the Subrecipient from the CDBG-DR Program.

The Subrecipient agrees to assist and cooperate with the County to pursue any of the claims the Subrecipient has against insurers for reimbursement of DOB Proceeds under any such policies. The Subrecipient's assistance and cooperation shall include, but not be limited to, allowing suit to be brought under the Subrecipient's name(s) and providing any additional documentation with respect to such consent, giving depositions, providing documents, producing records and other evidence, testifying at trial, and any other form of assistance and cooperation reasonably requested by the County. The Subrecipient further agrees to assist and cooperate in the attainment and collection of any DOB Proceeds that the Subrecipient would be entitled to under any applicable Disaster Program.

If requested by the County, the Subrecipient agrees to execute such further and additional documents and instruments as may be requested to further and better assign to the County, to

the extent of the Subrecipient Award paid to the Subrecipient under the CDBG-DR Program, the policies, any amounts received under the CDBG-DR Program that are DOB Proceeds, and/or any right thereunder, and to take, or cause to be taken, all actions and to do, or cause to be done, all things requested by the County to consummate and make effective for the purposes of this Agreement.

The Subrecipient explicitly allows the County to request of any company with which the Subrecipient held insurance policies, FEMA, SBA, or any other entity from which the Subrecipient has applied for or is receiving Proceeds, any non-public or confidential information determined to be reasonably necessary by the County to monitor and enforce its interest in the rights assigned to it under this Agreement and give the Subrecipient's consent to such company(ies) to release all information to the County.

If the Subrecipient (or any lender to which DOB Proceeds are payable to such lender, to the extent permitted by superior loan documents) hereafter receives any DOB Proceeds, the Subrecipient agrees to promptly pay such amounts to the County, if Subrecipient received a Subrecipient Award under the CDBG-DR Program in an amount greater than the amount the Subrecipient would have received if such DOB Proceeds had been considered in the calculation of the Subrecipient's award.

In the event that the Subrecipient receives or is scheduled to receive any subsequent Proceeds, the Subrecipient shall notify the County in the manner above of such subsequent Proceeds. The County will determine the amount, if any, of the subsequent Proceeds that are DOB Proceeds ("Subsequent DOB Proceeds"). Subsequent Proceeds in excess of the determined Subsequent DOB Proceeds shall not be requested from the Subrecipient to provide to the County. Subsequent DOB Proceeds shall be remitted to the County as follows:

1. If the Subrecipient has received full payment of the Subrecipient Award, any Subsequent DOB Proceeds shall be remitted to the County.
2. If the Subrecipient has received no payment of the Subrecipient Award, any determined Subsequent DOB Proceeds shall be used by the County to reduce payments and the agreed-upon amount of the Subrecipient Award to the Subrecipient, and all Subsequent DOB Proceeds shall be retained by the Subrecipient for use on the CDBG-DR Program activity.
3. If the Subrecipient has received a portion of the Subrecipient Award, any Subsequent DOB Proceeds shall be used, retained, and/or disbursed in the following order: **(A)** Subsequent DOB Proceeds shall first be used to reduce the remaining payments or agreed-upon amount of the Subrecipient Award, and Subsequent DOB Proceeds in such amount shall be retained by the Subrecipient for use on the CDBG-DR Program activity; and **(B)** any remaining Subsequent DOB Proceeds shall be remitted to the County.
4. If the County makes the determination that the Subrecipient does not qualify to participate in the CDBG-DR Program or the Subrecipient determines not to participate in the CDBG-DR Program, the Subsequent DOB Proceeds shall be returned to the Subrecipient, less any portion of the Subrecipient Award amount paid to the Subrecipient and which needs to be remitted to the County, and this Agreement shall terminate.

Once the County has recovered an amount equal to the Subrecipient Award paid to the Subrecipient, the County will reassign to the Subrecipient any right assigned to the County pursuant to this Agreement.

The Subrecipient represents that all statements and representations made by the Subrecipient regarding Proceeds received by the Subrecipient shall be true and correct as of the date of the signing of this Agreement.

**Warning:** Any person who intentionally or knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 C.S.C. 3729.

The person executing this Agreement on behalf of the Subrecipient hereby represents that he/she has received, read, and understands this notice of penalties for making a false claim or statement regarding Proceeds received by the Subrecipient.

In any proceeding to enforce this Agreement, the County shall be entitled to recover all costs of enforcement, including actual attorney's fees.

**TOWN OF FORT MYERS BEACH**

**LEE COUNTY**

By: Andrew Hyatt \_\_\_\_\_

By: Kevin Ruane \_\_\_\_\_

Signature:  \_\_\_\_\_  
Signed by: Andrew Hyatt  
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Signature:  \_\_\_\_\_  
DocuSigned by: Kevin Ruane  
22FDD5F15C7E43A...

Title: Town Manager \_\_\_\_\_

Title: Chair \_\_\_\_\_

Date: 1/13/2025 | 10:43 AM EST \_\_\_\_\_

Date: 1/21/2025 | 9:02 AM EST \_\_\_\_\_