

RESOLUTION NUMBER 25-209

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO AWARD ITB-25-02-EN TO EARTHBALANCE CORPORATION AS THE ONLY RESPONSIVE AND RESPONSIBLE BIDDER, TO COMPLETE THE ESTERO ISLAND DUNE PLANTING PROJECT; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND THE EARTHBALANCE CORPORATION IN THE AMOUNT OF \$509,859.50 OF WHICH THE TOWN SHALL EXPEND BUDGETED FUNDS IN THE AMOUNT OF \$76,988.78 AS ITS PORTION OF THE TOTAL COST WITH THE REMAINDER TO BE PAID BY A GRANT; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

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

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

WHEREAS, the Town of Fort Myers Beach is seeking to maintain and restore dune vegetation in accordance with the Estero Island Beach Nourishment Project permit requirements and Dune Management Plan; and

WHEREAS, the Estero Island Dune Planting Project was competitively bid and advertised in accordance with the Town of Fort Myers Beach Purchasing Code Section 2-480; and

WHEREAS, EarthBalance Corporation is the only responsive and responsible bidder for completion of the Estero Island Dune Planting Project with a bid in the amount of \$509,859.50; and

WHEREAS, EarthBalance Corporation's bid satisfies the requirements set forth in ITB-25-02-EN and has been recommended by the Town's Engineer of Record (See Exhibit A); and

WHEREAS, the Town of Fort Myers Beach project cost share is 15.1% of the Estero Island Dune Project's total cost of \$509,859.50 and is within the Town's budget; and

WHEREAS, the cost of the Estero Island Dune Planting Project is eligible for the funding provided by the FEMA Category G Public Assistance Program, the Florida Department of Environmental Protection 23LE1 Grant Agreement, the Florida Department of Emergency Management Local Agency Program Grant D1502 Agreement, and the Lee County and Town of

Fort Myers Beach Estero Island Beach Nourishment Project Interlocal Agreement dated 1st of April, 2024; and

WHEREAS, pursuant to a competitive procurement process in compliance the Town’s Code and the requirements in ITB-25-02-EN “Estero Island Dune Plantings Project,” the Town awards the bid to EarthBalance Corporation; and

WHEREAS, EarthBalance Corporation has agreed to execute an agreement for the Estero Island Dune Plantings Project containing similar terms to the draft Agreement attached as Exhibit B; and

WHEREAS, it is in the best interest of the Town to contract with EarthBalance Corporation as provided herein.

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

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council hereby approves an agreement between the Town and EarthBalance Corporation for Dune Planting Work substantially similar to the Agreement attached as Exhibit A.

Section 3. The Town Manager is hereby authorized to execute the Agreement, subject to legal sign-off, and expend budgeted funds on behalf of the Town to satisfy the Town’s financial obligations under the Agreement.

Section 4. This resolution shall take effect immediately upon adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member King and seconded by Vice Mayor Atterholt and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 16th day of June 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers

Dan Allers (Aug 26, 2025 10:12:38 EDT)
Dan Allers, Mayor

ATTEST:

Amy Baker

Amy Baker (Aug 27, 2025 13:15:29 EDT)
Amy Baker, Town Clerk

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

Nancy Stuparich

Nancy Stuparich (Aug 27, 2025 02:55:24 EDT)
Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: Aug 27, 2025.

**INDEPENDENT CONTRACTOR'S AGREEMENT
ITB-25-02-EN**

THIS INDEPENDENT CONTRACTOR'S AGREEMENT (hereinafter this "Agreement") is effective the 4th day of August 2025 by and between the **TOWN OF FORT MYERS BEACH**, a Florida municipal corporation (hereinafter the "TOWN") and **EARTHBALANCE CORPORATION**, a Florida corporation (hereinafter "CONTRACTOR").

WITNESSETH

WHEREAS, the TOWN is a municipal corporation in the State of Florida, having a responsibility to provide certain services to benefit the citizens of the TOWN OF FORT MYERS BEACH; and

WHEREAS, the TOWN has the full power and authority to enter into the transactions contemplated by this Agreement; and

WHEREAS, CONTRACTOR is in the business of Dune Vegetation and Planting in the TOWN and elsewhere in the State of Florida; and

WHEREAS, CONTRACTOR is competent and has sufficient manpower, training, and technical expertise to perform the services contemplated by this Agreement in a timely and professional manner consistent with the standards of the industry in which CONTRACTOR operates; and

WHEREAS, CONTRACTOR was the successful bidder for an advertised Invitation to Bid identified as ITB-25-02-EN, "ESTERO ISLAND DUNE PLANTING PROJECT," which satisfies the TOWN's Procurement Policy; and

WHEREAS, Section 286.101, Florida Statutes contains a list of "foreign countries of concern" including, the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such "foreign country of concern". Any entity that does business with a state agency or political subdivision must disclose certain of their dealings with those "foreign countries of concern" to the Florida Department of Financial Services; and

WHEREAS, CONTRACTOR agrees to provide such goods and services as more particularly described in this Agreement, as well as in any bid or proposal documents issued in connection with this project.

NOW THEREFORE in consideration of the premises, and in consideration of the mutual conditions, covenants, and obligations hereafter expressed, the parties agree as follows:

- 1) **Recitals.** The foregoing recitals are true and correct, constitute a material inducement to the parties to enter into this Agreement, and are hereby ratified and made a part of this Agreement.
- 2) **Description of Work.**
 - a) The TOWN hereby retains CONTRACTOR to furnish goods and services as described in the Scope of Services, which is attached hereto as **Exhibit "A"** and incorporated herein by reference. Any conflict between the terms and conditions in the body of this Agreement and the terms and conditions set forth in **Exhibit "A"** will be resolved in favor of the body of this Agreement.
 - b) CONTRACTOR must provide all permits, labor, materials, equipment, and supervision necessary for the completion of the Scope of Services, unless specifically excluded.
 - c) CONTRACTOR must also comply with, and abide by, all requirements as contained in any invitation to bid (ITB) (here, ITB-25-02-EN), request for proposals (RFP), request for qualifications (RFQ), bid specifications, engineering plans, shop drawings, material lists, or other similar documents issued for this project by the TOWN, together with any addenda, hereinafter the "Bid Documents, as applicable." The Bid Documents, as applicable, are hereby incorporated into this Agreement by reference and are declared to be material part of this Agreement.
- 3) **Commencement and completion/Term.**
 - a) CONTRACTOR must commence work under this Agreement immediately upon receipt by CONTRACTOR of the Notice to Proceed and must and must complete the work not later than 120 calendar days thereafter.
 - b) Liquidated damages will be assessed against CONTRACTOR in the amount of \$500.00 per day, for each day beyond the Final Completion deadline that the work contemplated by this Agreement is incomplete. The Town shall have the right to deduct all liquidated damages due from the final payment request as well as any retainage.
- 4) **Payment.**
 - a) The TOWN agrees to compensate CONTRACTOR, for work actually performed under this Agreement, at the rate or basis described in **Exhibit "B"**, which is attached hereto and incorporated herein by reference. CONTRACTOR must perform all work required by the Scope of Services, but in no event will CONTRACTOR be paid more than the negotiated amounts set forth in **Exhibit "B."**
 - b) Progress payments, if any, will be made as set forth in **Exhibit "B"**.
 - c) The TOWN reserves the right to ratably withhold amounts in the event of the nonperformance of all or part of CONTRACTOR's obligations. CONTRACTOR must,

without additional compensation, correct and revise any errors, omissions, or other deficiencies in its work product, services, or materials arising from the error or omission or negligent act of CONTRACTOR.

5) **Acceptance of work product, payment, and warranty.**

- a) **Installment Payments.** Upon receipt of a periodic work product or notice that work has progressed to a point of payment in accordance with **Exhibit "B"** attached or the Bid Documents, if any, together with an invoice sufficiently itemized to permit audit, the TOWN will diligently review those documents. When it finds the work acceptable under this Agreement the installment payment, found to be due to CONTRACTOR, will be paid to CONTRACTOR within thirty (30) days after the date of receipt of the invoice, unless another payment schedule is provided in **Exhibit "B"**.
- b) **Final Payment.** Upon receipt of written notice that the work is ready for final inspection and acceptance, the TOWN will promptly make such inspection. When it finds the work acceptable under this Agreement and the contract fully performed, it will promptly issue a final certificate stating that the work provided for in this Agreement has been completed, and acceptance by the TOWN under the terms and the conditions thereof, is recommended and the entire balance, found to be due to CONTRACTOR, will be paid to CONTRACTOR within thirty (30) days after the date of the final certificate. Before issuance of final certificate, CONTRACTOR must submit an affidavit satisfactory to the TOWN that all payrolls, subcontractors, materialmen, and other similar bills and indebtedness connected with the work have been paid.
- c) **Warranty.** CONTRACTOR warrants that the data utilized by CONTRACTOR (other than as provided by the TOWN) is from a source, and collected using methodologies, which are generally recognized in CONTRACTOR's industry or profession to be a reliable basis and foundation for CONTRACTOR's work product. CONTRACTOR must notify the TOWN in writing if it appears, in CONTRACTOR's professional judgement that the data or information provided by the TOWN for use in CONTRACTOR's work product is incomplete, defective, or unreliable.
- d) **Performance Guarantee.** CONTRACTOR guarantees to repair, replace or otherwise make good to the satisfaction of the TOWN any defect in workmanship or material appearing in the work; and further guarantees the successful performance of the work for the service intended. Neither inspection nor payment, including final payment, by the TOWN will relieve CONTRACTOR from its obligations to do and complete the work in accordance with this Agreement. If the TOWN deems it inexpedient to require CONTRACTOR to correct deficient or defective work, the TOWN will make an equitable deduction from the contract price, or, in the alternative, the TOWN may seek damages.

6) **Termination.**

- a) **Termination at Will:** This Agreement may be terminated by the TOWN in whole or in part at any time without cause by the TOWN giving written notice to CONTRACTOR not

less than 30 days prior to the date of termination; provided, however, that in such event, neither party will be relieved from its rights or obligations of this Agreement through the date of the actual termination. Notice must be delivered by certified mail, return receipt requested, or in person with proof of delivery.

- b) Termination for Cause: This Agreement may be terminated by either party for cause by the TOWN or CONTRACTOR giving written notice to the other party not less than 10 days prior to the date of termination; provided, however, that in such event, neither party will be relieved from its rights or obligations of this Agreement through the date of the actual termination. Notice must be delivered by certified mail, return receipt requested, or in person with proof of delivery.

7) **Project management.**

- a) The Project Managers for this project are as follows. Any subsequent changes to the Project Manager for either party may be provided by notice as described in paragraph 8 below and does not require an amendment to this Agreement.

(1) TOWN's Project Manager is: Chadd Chustz, Environmental Projects Manager

(2) CONTRACTOR's Project Manager is: James Barron, Project Manager.

- 8) **Notices.** All notices to the parties under this Agreement must be in writing and sent certified mail to:

- a) To TOWN: Fort Myers Beach Town Council, Attention: Town Manager, 6231 Estero Blvd, FORT MYERS BEACH, Florida 33931;

b) To CONTRACTOR: EARTHBALANCE CORPORATION Attention: SARAH J LAROQUE, CRISTINE BOROWSKI, Vice President, 2570 Commerce Parkway, North Port, FL 34289

9) **Insurance.**

- a) CONTRACTOR must maintain such insurance as will fully protect both CONTRACTOR and the TOWN from any and all claims under any Workers Compensation Act or Employers Liability Laws, and from any and all other claims of whatsoever kind or nature to the damage or property, or for personal injury, including death, made by anyone whomsoever, that may arise from operations carried on under this Agreement, either by CONTRACTOR, any subcontractor, or by anyone directly or indirectly engaged or employed by either of them.

- b) The insurance coverage required by this Agreement must not be less than the amounts described in the Bid Documents. If the Bid Documents do not state an insurance requirement or the amount of insurance, then the amount of insurance required by this Agreement must not be less than:

- i) Workers' Compensation (unless exempt) with Employers' Liability with a limit of \$500,000.00 each accident, \$500,000.00 each employee, \$500,000.00 policy limit for disease;
 - ii) Commercial General Liability (CGL) insurance with a limit of not less than \$1,000,000.00 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location and project in the amount of \$1,000,000.00. Products and completed operations aggregate shall be \$1,000,000.00. CGL insurance shall be written on an occurrence form and include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x, c, u) exposures, personal injury, and advertising injury. Damage to rented premises shall be included at \$100,000.00.
 - iii) Commercial Automobile Liability Insurance with a limit of not less than \$1,000,000.00 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos) and such policy shall be endorsed to provide contractual liability coverage; and
 - iv) Fire damage liability shall be included at \$500,000.00.
- c) CONTRACTOR must furnish the TOWN with Certificates of Insurance, which are to be signed by a person authorized by that insurer to bind coverage on its behalf. The TOWN is to be specifically included as an additional insured and loss payee on all policies except Workers' Compensation. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate must be issued 30 days prior to the expiration date. The policy must provide a 30-day notification clause in the event of cancellation or modification to the policy. All certificates of insurance must be on file with and approved by the TOWN before commencement of any work activities.
- d) The insurance coverages procured by CONTRACTOR as required herein will be considered as primary insurance over and above any other insurance, or self-insurance, available to CONTRACTOR, and any other insurance, or self-insurance available to CONTRACTOR will be considered secondary to, or in excess of, the insurance coverage(s) procured by CONTRACTOR as required herein.
- 10) **General Provisions.** CONTRACTOR must comply with the following general provisions:
- a) **Bond.** If a surety bond has been required by the Bid Documents for CONTRACTOR's faithful performance and payment, and if at any time the surety is no longer acceptable to the TOWN, CONTRACTOR must, at its expense, within five (5) days after the receipt of notice from the TOWN to do so, furnish an additional bond or bonds in such form and with such Surety or Sureties as are satisfactory to the TOWN. The TOWN will not make any further payment to CONTRACTOR, nor will any further payment be deemed to be due to CONTRACTOR, until such new or additional security for the

faithful performance of the work is furnished in a manner and form satisfactory to the TOWN.

- b) **Compliance with Laws.** In providing the Scope of Services, CONTRACTOR must comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations pertaining to or regulating the provision of such services, including those now in effect and hereafter adopted.
- c) **Personal nature of Agreement; Assignment.**
 - i) The parties acknowledge that the TOWN places great reliance and emphasis upon the knowledge, expertise, training, and personal abilities of CONTRACTOR. Accordingly, this Agreement is personal and CONTRACTOR is prohibited from assigning or delegating any rights or duties hereunder without the specific written consent of the TOWN.
 - ii) If CONTRACTOR requires the services of any subcontractor or professional associate in connection with the work to be performed under this Agreement, CONTRACTOR must obtain the written approval of the TOWN Project Manager prior to engaging such subcontractor or professional associate. CONTRACTOR will remain fully responsible for the services of any subcontractors or professional associates.
- d) **Discrimination.**
 - i) CONTRACTOR shall not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, ethnicity, race, religious belief, disability, national origin, or sex. CONTRACTOR shall not exclude any person, on the grounds of age, ethnicity, race, religious belief, disability, national origin, or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under, this Agreement.
 - ii) CONTRACTOR shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management.
- e) **Independent contractor.**
 - i) CONTRACTOR is, and will be deemed to be, an independent contractor and not a servant, employee, joint adventurer, or partner of the TOWN. None of CONTRACTOR's agents, employees, or servants are, or will be deemed to be, the agent, employee, or servant of the TOWN. None of the benefits, if any, provided by the TOWN to its employees, including but not limited to, compensation insurance and unemployment insurance, are available from the TOWN to the employees, agents, or servants of CONTRACTOR. CONTRACTOR will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, and subcontractors during the performance of this Agreement. Although CONTRACTOR is an independent contractor, the work contemplated herein must meet the approval of the TOWN

and is subject to the TOWN's general right of inspection to secure the satisfactory completion thereof. CONTRACTOR must comply with all Federal, State and municipal laws, rules and regulations that are now or may in the future become applicable to CONTRACTOR, or to CONTRACTOR's business, equipment, or personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations. The TOWN will not be held responsible for the collection of or the payment of taxes or contributions of any nature on behalf of CONTRACTOR.

- ii) CONTRACTOR will bear all losses resulting to it on account of the amount or character of the work, or because of bad weather, or because of errors or omissions in its contract price.
 - iii) CONTRACTOR must utilize, and must expressly require all subcontractors to utilize, the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by CONTRACTOR and any subcontractors during the Term of this Agreement.
- f) **Indemnification.**
- i) CONTRACTOR must indemnify and hold the TOWN harmless against and from any and all claims, losses, penalties, interest, demands, judgments, costs, damages, or expenses, including attorney's fees and court costs, incurred by the TOWN, or its agents, officers, or employees, arising directly or indirectly from CONTRACTOR's performance under this Agreement or by any person on CONTRACTOR's behalf, including but not limited to those claims, losses, penalties, interest, demands, judgments, costs, damages, or expenses arising out of any accident, casualty, or other occurrence causing injury to any person or property. This includes persons employed or utilized by CONTRACTOR (including CONTRACTOR's agents, employees, and subcontractors). CONTRACTOR must further indemnify the TOWN against any claim that any product purchased or licensed by the TOWN from CONTRACTOR under this Agreement infringes a United States patent, trademark, or copyright. CONTRACTOR acknowledges that CONTRACTOR has received consideration for this indemnification, and any other indemnification of the TOWN by CONTRACTOR provided for within the Bid Documents, the sufficiency of such consideration being acknowledged by CONTRACTOR, by CONTRACTOR's execution of this Agreement. CONTRACTOR's obligation will not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance, whether such insurance is in connection with this Agreement or otherwise. Such indemnification is in addition to any and all other legal remedies available to the TOWN and not considered to be the TOWN's exclusive remedy.
 - ii) In the event that any claim in writing is asserted by a third party which may entitle the TOWN to indemnification, the TOWN must give notice thereof to CONTRACTOR, which notice must be accompanied by a copy of statement of the claim. Following the notice, CONTRACTOR has the right, but not the obligation, to participate at its sole expense, in the defense, compromise or settlement of such claim with counsel of its choice. If CONTRACTOR does not

timely defend, contest, or otherwise protect against any suit, action or other proceeding arising from such claim, or in the event the TOWN decides to participate in the proceeding or defense, the TOWN will have the right to defend, contest, or otherwise protect itself against same and be reimbursed for expenses and reasonable attorney's fees and, upon not less than ten (10) days notice to CONTRACTOR, to make any reasonable compromise or settlement thereof. In connection with any claim as aforesaid, the parties hereto must cooperate fully with each other and make available all pertinent information necessary or advisable for the defense, compromise or settlement of such claim.

- iii) The indemnification provisions of this paragraph will survive the termination of this Agreement.

- g) **Sovereign Immunity.** Nothing in this Agreement extends, or will be construed to extend, the TOWN's liability beyond that provided in section 768.28, Florida Statutes. Nothing in this Agreement is a consent, or will be construed as consent, by the TOWN to be sued by third parties in any matter arising out of this Agreement.

- h) **Public records.**
 - i) CONTRACTOR is a "Contractor" as defined by Section 119.0701(1)(a), Florida Statutes, and must comply with the public records provisions of Chapter 119, Florida Statutes, including the following:
 - (1) Keep and maintain public records required by the TOWN to perform the service.
 - (2) Upon request from the TOWN's custodian of public records, provide the TOWN 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 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 for the duration of this Agreement term and following completion of the Agreement if CONTRACTOR does not transfer the records to the TOWN.
 - (4) Upon completion of this Agreement, transfer, at no cost, to the TOWN all public records in possession of CONTRACTOR or keep and maintain public records required by the TOWN to perform the service. If CONTRACTOR transfers all public records to the TOWN upon completion of this Agreement, CONTRACTOR must destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of this Agreement, CONTRACTOR must meet all applicable requirements for retaining public records. All records stored electronically must be provided to the TOWN, upon request from the TOWN's custodian of public records, in a format that is compatible with the information technology systems of the TOWN.

- ii) "Public records" is defined in Section 119.011(12), Florida Statutes, as may, from time to time, be amended.
 - iii) If CONTRACTOR asserts any exemptions to the requirements of Chapter 119 and related law, CONTRACTOR will have the burden of establishing such exemption, by way of injunctive or other relief as provided by law.
 - iv) CONTRACTOR consents to the TOWN's enforcement of CONTRACTOR's Chapter 119 requirements, by all legal means, including, but not limited to, a mandatory injunction, whereupon CONTRACTOR must pay all court costs and reasonable attorney's fees incurred by TOWN.
 - v) CONTRACTOR's failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by CONTRACTOR will be grounds for immediate unilateral cancellation of this Agreement by the TOWN.
 - vi) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, TOWN CLERK, AT (239) 765-0202, FMBPUBLICRECORDS@FMB.GOV; MAILING ADDRESS: 6231 ESTERO BLVD, FORT MYERS BEACH, FLORIDA 33931.**
- i) **Public Records Compliance Indemnification.** Contractor agrees to indemnify and hold the County harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.
- j) **Non-Appropriation.** Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year-end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.
- k) **Federal or State Funding.** If any portion of the funding for this Agreement is derived from the State of Florida, or any department of the State of Florida, or from federal funding through the State of Florida, the provisions of this sub-paragraph shall apply,

provisions elsewhere in this Agreement to the contrary notwithstanding. CONTRACTOR shall make inquiry from the TOWN's Project Manager to determine whether Federal or State funding is applicable to this Agreement.

- i) E-Verify. CONTRACTOR must utilize, and must expressly require all subcontractors to utilize, the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by CONTRACTOR during the Term of this Agreement.
- ii) Agency. CONTRACTOR agrees and acknowledges that it, its employees, and its subcontractors are not agents or employees of the Federal Government, of the State of Florida, or of any department of the Federal Government or the State of Florida.
- iii) Indemnification. To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless the TOWN, the Federal Government, the State of Florida, any department of the Federal Government or the State of Florida, and all officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of CONTRACTOR and persons employed or utilized by CONTRACTOR in the performance of this Agreement. This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the TOWN's sovereign immunity.
- iv) Workers' Compensation Insurance. CONTRACTOR must provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, CONTRACTOR must ensure that the subcontractor(s) have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), CONTRACTOR must ensure that such employees are covered by Workers' Compensation insurance through the PEO's or other leasing entities. CONTRACTOR must ensure that any equipment rental agreements that include operators or other personnel who are employees of independent Contractors, sole proprietorships or partners are covered by insurance required under Florida's Workers' Compensation law.
- v) Liability Insurance. Contractor shall carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. CONTRACTOR shall cause the State of Florida to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the State of Florida as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general

aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Contract, and may not be shared with or diminished by claims unrelated to this Agreement. The policy/ies and coverage described herein may be subject to a deductible. CONTRACTOR shall pay all deductibles as required by the policy. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention. At all renewal periods which occur prior to final acceptance of the work, the TOWN and the State of Florida shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The TOWN and the State of Florida shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The TOWN's or the State of Florida's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the TOWN or the State of Florida may have.

- vi) Inspections. CONTRACTOR shall permit, and require its subcontractors to permit, the TOWN's and the State of Florida's authorized representatives to inspect all work, materials, payrolls, and records, to audit the books, records, and accounts pertaining to the financing and development of the Services described herein and in the bid documents.
 - vii) Auditor General Cooperation. CONTRACTOR shall comply with §20.055 (5), Florida Statutes, and shall incorporate in all subcontracts the obligation to comply with §20.055 (5), Florida Statutes.
- l) **FDEP Grant Requirements.** All or a portion of this Project is being funded by the State of Florida Department of Environmental Protection ("FDEP") through FDEP Standard Grant Agreement No. LW738 ("FDEP Grant Agreement") with the TOWN, which requires that certain terms be incorporated into agreements funded thereby. This Agreement is subject to, and CONTRACTOR shall comply with, the provisions and terms set forth in **Exhibit C** ("Contract Provisions for FDEP-Funded Agreements") attached hereto and incorporated herein by reference. Any conflict between the terms and conditions in the body of this Agreement and the terms and conditions set forth in **Exhibit C** will be resolved in favor of **Exhibit C**.
- m) **Additional Federal Funding Requirements.** All or a portion of the funding for this project may be derived from federal funding, which requires that certain terms be incorporated into agreements funded thereby. This Agreement is subject to, and CONTRACTOR shall comply with, the provisions and terms set forth in **Exhibit D** ("Federal Supplemental Conditions") attached hereto and incorporated herein by reference. Any conflict between the terms and conditions in the body of this Agreement and the terms and conditions set forth in **Exhibit D** will be resolved in favor of **Exhibit D**.

- n) **State-Funded LAP Grant Requirements.** All or a portion of this Project is being funded by the State of Florida Division of Emergency Management through State-Funded LAP Grant Agreement No. D1502 (“LAP Grant Agreement”) with the TOWN, which requires that certain terms be incorporated into agreements funded thereby. This Agreement is subject to, and CONTRACTOR shall comply with, the provisions and terms set forth in the LAP Grant Agreement attached hereto as **Exhibit E** incorporated herein by reference. Any conflict between the terms and conditions in the body of this Agreement and the terms and conditions set forth in **Exhibit E** will be resolved in favor of **Exhibit E**. Moreover, pursuant to the LAP Grant Agreement, CONTRACTOR hereby agrees that:
- i) CONTRACTOR is bound by the terms of the LAP Grant Agreement attached hereto as **Exhibit E**;
 - ii) CONTRACTOR is bound by all applicable state and federal laws and regulations, including those identified in Attachment B to the LAP Grant Agreement; and
 - iii) CONTRACTOR shall hold the Division and Recipient harmless against all claims of whatever nature arising out of the CONTRACTOR performance of work under this Agreement, to the extent allowed and required by law.
- o) **Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. CONTRACTOR hereby certifies that CONTRACTOR is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. CONTRACTOR further hereby certifies that CONTRACTOR is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. CONTRACTOR understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject CONTRACTOR to civil penalties, attorney’s fees, and/or costs. CONTRACTOR further understands that any contract with TOWN for goods or services of any amount may be terminated at the option of TOWN if CONTRACTOR (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of TOWN if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with

Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

- p) **Disclosure Requirements for “Foreign Countries of Concern”.** CONTRACTOR shall comply with the disclosure requirements set forth in section 286.101 (3) (a), F.S., which requires “Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a “foreign country of concern” if such interest, contract, grant or gift received from a “foreign country of concern” if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable “foreign country of concern” and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services”. Pursuant to section 268.101(7), F.S.: “In addition to any fine assessed under [section 286.101(7)(a), F.S.], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause.”
- q) **Public Entities Crime or Convicted Vendor List.** CONTRACTOR agrees and assumes a continuous duty to disclose to the TOWN if the CONTRACTOR or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.
- r) **Data Management; Notice of Breach.** CONTRACTOR shall cooperate with the TOWN and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports, etc., which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.
- s) **Environmental and Social Government and Corporate Activism.** The TOWN has not given preference or requested documentation from the CONTRACTOR based on CONTRACTOR’s social, political or ideological interest. CONTRACTOR agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor’s social, political or ideological interests.
- t) **No Coercion for Labor or Services.** CONTRACTOR swears under penalty of perjury that CONTRACTOR does not use coercion for labor or services as defined as follows:

- i) "Coercion" means:
 - (1) Using or threatening to use physical force against any person;
 - (2) Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
 - (3) Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
 - (4) Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
 - (5) Causing or threatening to cause financial harm to any person;
 - (6) Enticing or luring any person by fraud or deceit; or
 - (7) Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

11) **Miscellaneous Provisions.** The following miscellaneous provisions apply to this Agreement:

- a) **Binding Nature of Agreement.** This Agreement is binding upon the successors and assigns of the parties hereto.
- b) **Entire Agreement.** This Agreement states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. CONTRACTOR recognizes that any representations, statements, or negotiations made by the TOWN staff do not suffice to legally bind the TOWN in a contractual relationship unless they have been reduced to writing, authorized, and signed by the authorized TOWN representatives.
- c) **Amendment.** No modification, amendment, or alteration in the terms or conditions of this Agreement will be effective unless contained in a written document executed with the same formality as this Agreement.
- d) **Severability.** If any term or provision of this Agreement is held, to any extent, invalid or unenforceable, as against any person, entity, or circumstance during the Term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity will not affect any other term or provision of this Agreement, to the extent that the Agreement will remain operable, enforceable, and in full force and effect to the extent permitted by law.
- e) **Construction.** If any provision of this Agreement becomes subject to judicial interpretation, the court interpreting or considering such provision should not apply the presumption or rule of construction that the terms of this Agreement be more strictly construed against the party which itself or through its counsel or other agent prepared it. All parties hereto have participated in the preparation of the final form of this Agreement through review by their respective counsel, if any, or the negotiation of

specific language, or both, and, therefore, the application of such presumption or rule of construction would be inappropriate and contrary to the intent of the parties.

- f) **Headings.** All headings in this Agreement are for convenience only and are not to be used in any judicial construction or interpretation of this Agreement or any paragraph.
 - g) **Waiver.** The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement does not constitute a waiver of the provision or any portion of this Agreement, either at the time the breach or failure occurs or at any time throughout the term of this Agreement. The review of, approval of, or payment for any of CONTRACTOR's work product, services, or materials does not operate as a waiver, and should not be construed as a waiver, of any of the TOWN's rights under this Agreement, or of any cause of action the TOWN may have arising out of the performance of this Agreement.
 - h) **Force Majeure.** Notwithstanding any provisions of this Agreement to the contrary, the parties will not be held liable if failure or delay in the performance of this Agreement arises from fires, floods, strikes, embargos, acts of the public enemy, unusually severe weather, out break of war, restraint of government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. This provision does not apply if the "Scope of Services" of this Agreement specifies that performance by CONTRACTOR is specifically required during the occurrence of any of the events herein mentioned.
 - i) **Law; Venue.** This Agreement is being executed in Lee County, Florida and is governed in accordance with the laws of the State of Florida. Venue of any action hereunder will be in Lee County, Florida.
- 12) **Special Provisions.**
- a. This Agreement is a non-exclusive contract; the TOWN is not prohibited, or deemed to be prohibited, from bidding similar services either as an independent job or a component of a larger project.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this Agreement effective the date first written above.

Under penalties of perjury, and pursuant to Sec. 92.525, Fla. Stat., CONTRACTOR declares that CONTRACTOR has read the foregoing Section 10(r) above and that the facts stated in it are true.

TOWN OF FORT MYERS BEACH, a
Florida municipal corporation

WB McKannay

WILLIAM B. MCKANNAY
TOWN MANAGER
AS AUTHORIZED ON: June 16, 2025

ATTEST:

Amy Baker
Amy Baker (Aug 19, 2025 14:45:01 EDT)

(Seal)

AMY BAKER, TOWN CLERK
Date signed by TOWN: 19/08/2025

EARTHBALANCE CORPORATION
a Florida Corporation

by *Cristine Borowski*

~~SARAH J LAROQUE as its President and
authorized agent~~
CRISTINE BOROWSKI, as its Vice President
and authorizer signer
(CORPORATE SEAL)

ATTEST:

Amy Provencal
Secretary Vice President

STATE OF FLORIDA
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 8 day of AUGUST, 2025, by ~~SARAH J LAROQUE, President~~ CRISTINE BOROWSKI, Vice President of EARTHBALANCE CORPORATION, a Florida, on behalf of the corporation, and he/she is personally known to me or has produced _____ as identification.

Lisa Stansbury
Signature of Notary Public - State of Florida

Lisa Stansbury
Printed/Typed/Stamped Name of Notary
My commission expires



EXHIBIT A – SCOPE OF WORK



TOWN of FORT MYERS BEACH

ESTERO ISLAND PLANTING PROJECT TECHNICAL SPECIFICATIONS

TS-1.0 Scope of Work

The Project is located along Estero Island within the Town of Fort Myers Beach (Town). The purpose of Project is to transport, deliver, and plant a minimum 10-foot wide dune with native vegetation along Estero Island. The Work to be performed under the Contract consists of furnishing all labor, equipment, supplies, materials, transportation, fuel, power and water, providing environmental protection, and performing all operations in connection with the Estero Island Dune Planting Project.

Plants will be placed within the project design template. Mitigation will consist of using plants larger than 2-inches. The actual number of plants used will be determined at the time of construction based on the area available for planting and the plants available from the suppliers.

This Work must be completed according to the Contract documents within the time specified in the Contract and within compliance with the conditions of the Federal, State, and local permits (Permits) and the Town's approved Dune Management Plan, attached to the Bid Documents and incorporated therein. The Contractor is solely responsible for all construction means, methods, techniques, procedures, lay out, and the sequence of the Work except as set forth in section "Order of Work".

TS-2.0 Submittals

TS-2.1 Work Plan

Prior to commencement of Work the Contractor shall submit to the Town and Engineer for approval, a Work Plan to cover all specified operations. The Work Plan shall include, but not be limited to, the means and methods to be employed to accomplish site access and staging; mature dune vegetation purchase and growing schedule; planting installation, fertilizing, and watering; site restoration; best management practices; storm emergency plan; health and safety plan; environmental protection plan; pollution control plan; and manufacturers' specifications and certifications. The Work Plan shall also include the Progress Schedule, Schedule of Values, Construction Sequence, Quality Control, and Order of Work. The Town and Engineer shall review the Work Plan, and the Contractor shall make necessary revisions prior to acceptance of the Work Plan.

TS-2.2 Daily Reports

The Contractor, in addition to his responsibilities as set forth in the General Provisions, shall provide to the Town, "Daily Construction" Reports. These reports shall be completed and submitted to the Town by 1:00 p.m. on the day after the Work covered by the report.

TS-3.0 Construction Sequence

TS-3.1 Order of Work

In general, the Order of Work shall be as follows. Any changes in the Order of Work must be submitted in writing and approved by the Town and Engineer prior to initiation of the specific Work activity.

- (1) Pre-construction submittals and notifications
- (2) Mobilize
- (3) Prepare site access and staging areas
- (4) Implement best management practices
- (5) Plant dune vegetation
- (6) Adjust access points for select properties
- (7) Complete site restoration and staging areas
- (8) Demobilize

EXHIBIT A – SCOPE OF WORK



TOWN of FORT MYERS BEACH

The Contractor shall work cooperatively with the Town to provide public access to the beach during the Contract Time. Only one beach access shall be closed at a time unless approved otherwise in writing by the Town.

TS-3.2 Time of Operations

The Contractor is allowed to conduct work activities during daylight hours Monday through Friday, excluding weekends and Holidays, at the Contractor's discretion, provided that the Contractor complies with all applicable labor laws. The Contractor may request in writing with minimum 5-day notice to the Town to conduct work on weekends. The Town will review each request individually.

TS-4.0 Payment

TS-4.1 Dune Vegetation

Payment shall be made for materials and work specified in connection with the growing and purchasing of mature dune plants meeting the requirements of these specifications, and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract unit prices for Bid Item "Dune Vegetation." Payment shall be made for materials and work specified in connection with the transportation, installation, fertilization, and irrigation of mature dune plants meeting the requirements of these specifications, and all other appropriate costs in connection therewith or incidental thereto. The unit price per plant will be used to calculate the final payment based on the final number of planting units installed. The Engineer will determine the final number of planting units accepted as planting units eligible for payment. Fifty percent (50%) will be paid upon receipt of proof of the quantities and sizes required by the specifications. The remaining fifty percent (50%) will be paid after verification on installation.

TS-4.2 Adjustments

Payment shall be made for materials and work specified in connection with the replanting of dune plants to adjust beach access through the dune plantings on select properties, and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract unit prices for Bid Item "Adjustments."

TS-4.3 Warranty

Payment shall be made for materials and work specified in connection with the warranty and replanting meeting the requirements of these specifications, and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract lump sum for Bid Item "Dune Warranty." The Dune Warranty shall be eligible for payment after the two month replanting (25%), 4 month replanting (25%), and 6 months after achieving the success criteria (50%).

TS-5.0 Work Area

TS-5.1 Limits of Construction

Areas in the vicinity of the Project area contain sensitive environmental habitats. The Contractor shall avoid these habitats and is responsible for environmental protection. All Work must be confined to the Contractor's Work area. No plant or equipment may operate or transit outside the property boundary or Work limits. All construction areas shall be restored to pre-construction conditions, or better as part of demobilization. Existing vegetation shall be disturbed to the minimum extent necessary to complete the Work within the permitted Work limits.

TS-5.2 No Work Zones

No Work Zones are shown on the Contract Plans that correspond to property owners who have not provided the Town with temporary construction easements. The Contractor shall not encroach into the No Work Zones with any work, equipment, personnel or material.

EXHIBIT A – SCOPE OF WORK



TOWN of FORT MYERS BEACH

TS-5.3 Security

The Contractor is permitted to exclude the public from his immediate Work area subject to the provisions of the Construction Sequence and these Specifications as necessary to perform the Work and to operate in accordance with the General Conditions of the Contract. Enforcement shall be the Contractor's responsibility at no additional cost to the Town. The enforcement shall be coordinated with local enforcement agencies and will be subject to approval of the Town.

TS-5.4 Site Access and Staging

Site access and staging areas shall be confined to the Contractor's Work area and are shown on the Contract Plans. Procurement of any additional access routes for ingress and egress to the Work area shall be obtained by and at the expense of the Contractor. The Contractor shall confine his plant, equipment, materials, and operations of personnel to areas permitted by law, ordinances, permits and the requirements of the Contract Documents, and shall not unreasonably encumber the premises with plant, equipment, and materials. The Contractor must control noise and must control wind-blown sand, silt and dust while using the accesses. The Contractor is responsible for preparation and restoration of the site access and staging areas. The Contractor is required to submit a site access and staging area plan including restoration measures prior to their usage. The costs for, but not limited to, earthwork, grading, signage, fencing, walls, guardrails, curbing, paving, stairways, and vegetation removal and reinstallation, along with removal and installation of any other facilities are included in the lump sum price for Bid Item "Mobilization and Demobilization". Disposal of any cleared vegetation, debris and rubbish shall be in a manner acceptable to the Town and Engineer.

TS-5.5 Protection of Existing Facilities

During all phases of the Work including but not limited to staging, site access, dune vegetation planting, and site restoration, the Contractor shall implement best management practices to protect and stabilize the existing facilities within and adjacent to the Work Area and to prevent damage thereto by the Contractor's operations. Where existing facilities are damaged, they shall be immediately repaired in conformance with the best construction standards of practice.

TS-5.6 Noise

The Contractor shall conduct their operations to comply with all Federal, State, and local laws pertaining to noise. The Contractor shall use a decibel meter and keep records as necessary to verify the Work is being conducted accordingly.

TS-5.7 Existing Utilities

It shall be the responsibility of the Contractor to acquaint themselves with the exact location of existing underground structures and utilities and to avoid conflict with all existing facilities. The Contractor shall be responsible for notifying, in writing and in advance of construction activities, the Town and Engineer and all government and private agencies and entities that may have an area of responsibility, jurisdiction or involvement for any items of Work being constructed, or whom shall assume responsibility for the items after construction. This list of agencies and entities shall include, but is not limited to:

- a. Florida Power and Light
- b. Sprint
- c. Comcast
- d. Lee County Utilities

These agencies require a minimum of 48-hour written notice of activities within their jurisdiction. The Contractor shall also call Sunshine 811 before beginning any Work at the Work area.

Protection of all utilities shall be the responsibility of the Contractor who shall provide adequate protection to maintain proper service. The Contractor is to include within its line item bid prices, the

EXHIBIT A – SCOPE OF WORK



TOWN of FORT MYERS BEACH

costs to protect, and/or support, all underground utilities which may be in conflict with the construction of this Project. Attention is called to the Florida Underground Facility Damage Prevention and Safety Act, Chapter 556, Florida Statutes. This act provides for a one-call center charged with helping prevent damages to underground utilities.

Any expense of utility repair or other damage caused by the Contractor's operations shall be borne by the Contractor. Where existing utilities are damaged, they shall be immediately repaired by the Contractor in accordance with the requirements of the government, private agencies, and entities that may have an area of responsibility, jurisdiction or involvement for the utilities. If the Town of the utility elects to make such repairs with his own forces, the Contractor shall make sure that specific arrangements are made to protect the Town from all damages. Where such conflicts are unavoidable, every effort shall be made to construct the Work so as to cause as little interference as possible with the services rendered by the structure disturbed.

TS-6.0 Contractor's Equipment

The Contractor agrees to keep on the job sufficient equipment to meet the requirements of the Work. The equipment shall be in satisfactory operating condition and capable of safely and efficiently performing the Work as set forth in the specifications. The equipment to be utilized by the Contractor shall be submitted by the Contractor with their Bid.

TS-7.0 Transportation Facilities

The Contractor shall make his own investigation of available roads or other means of conveyance for transportation, load limits for bridges, barges and roads, and other road or waterside conditions affecting the transportation of all equipment to the Work area.

TS-8.0 Water and Sewer

The responsibility shall be upon the Contractor to provide and maintain, at his own expense, an adequate supply of water for his use, and to install and maintain necessary supply connections and piping for same, and necessary portable sanitary facilities but only at such locations and in such manner as may be approved by the Town and Engineer. The portable sanitary facilities shall be removed by the Contractor in like manner at his expense prior to completion of the construction and final acceptance.

TS-9.0 Dune Vegetation

TS-9.1 General

The Contractor shall purchase and grow mature, native dune vegetation in accordance with the species, sizes, and spacing as shown on the Contract Plans and these specifications. Table 1 presents the plant list for species, sizes, and spacings. The Contractor shall provide nursery grown plants that are of Florida #1, or superior quality pursuant to the current version of the Florida Department of Agriculture and Consumer Services (FDACS) Plant Grades and Standards. All plants shall be true to the growth habit of the species, and are to be fully rooted in the container, healthy, vigorous, well branched, and densely foliated. Plants shall be free from physical damage, or conditions that would interfere with thriving growth, and free of disease, insects, or insect eggs and larvae.

The dune vegetation shall be healthy and have a vigorous form that meets or exceeds these specifications. Substitutions of plant species are allowed provided they are pre-approved by the Town and they meet the requirements of these specifications and the Warranty provisions. Seeds and/or cuttings for all species shall originate from South Florida extending to Tampa along the West Coast and to West Palm Beach along the East Coast. Prior to commencement of planting, the Contractor shall provide the Town with written documentation as to the source of the planting units. Documentation shall include collection permits or contracts from FDACS, or other comparable documents.

EXHIBIT A – SCOPE OF WORK



TOWN OF FORT MYERS BEACH

Table 1. Plant List

Common Name	Scientific Name	Container Size	Height (Minimum)	Spacings (On center, Maximum)	Quantity
Dune Sunflower	<i>Helianthus debilis var. vestitus</i>	4 inches	12 inches	18 inches	46,429
Dune Panic Grass	<i>Panicum Amarum</i>	4 inches	12 inches	18 inches	52,582
Railroad Vine	<i>Ipomoea Pes-caprae</i>	1 gallon	12-inch runner	24 inches	12,854
Sea Oats	<i>Uniola paniculata</i>	4 inches	18 inches	18 inches	12,645
Sea Oats	<i>Uniola paniculata</i>	1 gallon	24 inches	24 inches	11,900

The heights for species shall be measured from the top of the root ball to the tip of the longest leaf and meet the minimum requirements in Table 1. Plants shall be nursery grown container stock with root development throughout the root ball. All plants shall be “healthy and vigorous” according to horticultural standards. The plants shall have a fully developed root ball, with white or light beige roots. Brown, black or rotting root balls shall be rejected. Plant roots shall be disease free, moist and milky white at the time of delivery and installation. Plants showing signs of stress, either from drought, pest infestation, disease or any visible mishandling shall be rejected. Plants not meeting these specifications will be rejected by the Town. Plants rejected under these specifications will not be considered as delivered to the site and; therefore, not eligible for payment.

The Contractor shall provide the Town with proof of achieving these specifications prior to commencement of planting. Plants can be delivered bare rooted in boxes to the site. Samples for each species shall be provided to the Town by the Contractor prior to commencement of planting. Upon approval, the samples will be used as a standard for future plants provided through the Contract. The Town shall be given appropriate notification by the Contractor prior to any and each plant delivery to allow for plant inspection. The Contractor shall install the dune vegetation as soon as practicable but no later than 48 hours after delivery to the Work area.

The Town may inspect plantings at place of growth or at site before planting for compliance with requirements for genus, species, variety, size, and quality. The Town retains the right to further inspect plantings for size and condition of root systems, insects, injuries, and latent defects, and to reject unsatisfactory or defective material at any time during progress of work. The rejected material will be immediately removed from site and replaced with suitable material at the Contractor’s expense.

TS-9.2 Variations in Estimated Quantities

Where the quantity is an estimated quantity, and where the actual quantity of material placed by Contractor varies by more than twenty percent (20%) for each separate species, whether due to site conditions in the Work area as determined by a pre-construction survey, or at the discretion of Town, as set forth in the Contract Documents, an equitable adjustment in the unit price may be made upon demand of either party. The equitable adjustment will be applied based upon increase or decrease in costs due solely to the variations above one hundred twenty percent (120%) or below eighty percent (80%) of the estimated quantity individually for each separate species.

EXHIBIT A – SCOPE OF WORK



TOWN of FORT MYERS BEACH

TS-10.0 Planting

The Contractor shall price the Estero Island Dune Plantings Base Bid Spreadsheets for the North, South and Central Segments as well as the Grand Total.

TS-10.1 General

The Contractor shall plant the dune vegetation in accordance with the species, sizes, and spacing as shown on the Contract Plans and these specifications. The Town shall provide the Contractor with the dune alignment, No Work Zones, and initial beach access points in plan view drawings in electronic format (CADD and PDF).

Prior to installation, the Contractor shall furnish to the Town a plan for installing, fertilizing, and watering the plants, how the required amounts of water and fertilizer are to be applied, and an itemized list of equipment that will be used during the watering and fertilizing operations they propose to use in order to meet the Warranty requirements of the Contract Documents.

The Contractor shall remove all existing exotic vegetation prior to installation of dune vegetation. Prior to planting, the Contractor shall hand rake planting areas as necessary to remove weeds, rocks, and construction debris. Construction debris, weeds, and rocks shall be removed and disposed of in an approved off-site disposal area by the Contractor. The Contractor shall smooth out any ruts, holes or other disturbance of the sand or ground surface to a stable, pre-planting condition.

All plants delivered and stored at the installation site shall be protected against desiccation, thermal stress, disease and physical damage. Plants deemed to have been improperly handled, packed, transported, and/or stored will be rejected by the Town upon inspection and replaced by the Contractor at no additional costs to the Town.

Vehicular traffic in support of planting activities may be conducted if consistent with local and state beach driving regulations and existing beach access points are utilized. The Contractor shall utilize low impact methods that do not alter dune topography, remove native beach-dune vegetation, require new beach access, disturb coastal wildlife, obstruct public access, cause excavation of the ground, or damage adjacent properties.

TS-10.2 Planting Schemes

The Town has permitted their Dune Management Plan which is included in the Contract Documents and incorporated into these specifications. The Plan includes two planting schemes for the properties along Estero Island as follows.

Scheme #1 "Sea Oat Dune"

<u>Common name</u>	<u>Scientific name</u>	<u>Percentage</u>
Sea oats (1 Gal)	<i>(Uniola paniculata)</i>	70%
Dune Sunflower	<i>(Helianthus debilis var. vestitus)</i>	15%
Dune Panic Grass	<i>(Panicum Amarum)</i>	10%
Railroad Vine	<i>(Ipomoea pes-caprae)</i>	5%

Scheme #3 "Low Dune"

<u>Common name</u>	<u>Scientific name</u>	<u>Percentage</u>
Dune panic grass	<i>(Panicum amarum)</i>	40%
Dune sunflower	<i>(Helianthus debilis var. vestitus)</i>	35%
Sea Oats (1 Gal)	<i>(Uniola paniculata)</i>	5%
Sea Oats (4 inch)	<i>(Uniola paniculata)</i>	10%
Railroad Vine	<i>(Ipomoea pes-caprae)</i>	10%

EXHIBIT A – SCOPE OF WORK



TOWN of FORT MYERS BEACH

The quantities in Table 1 reflect the planting scheme selections as shown on the Contract Plans.

TS-10.3 Layout

The Contractor shall have on site at all time during the planting Work, an experienced foreman supervising the Work. The Town shall stake-out the alignment noting there are two planting schemes and two alternate alignments to be planted depending upon property owner request. The Contractor shall provide 72-hour written notice requesting stake-out for each section:

North: Stations 2+00 to 71+00

Central: Stations 71+00 to 261+00

South: Stations: 290+00 to 374+00

The Town reserves the right to adjust the planting to respond to existing beach access points, to align with existing vegetated areas, and any unanticipated site conditions. Minor adjustments to allow for site conditions and beach access points is permitted as approved by the Town. The Town shall review the planting layout with the Contractor and make necessary adjustments prior to planting.

The Contractor shall determine location of underground utilities and perform work in a manner which will avoid possible damage to underground utilities. Hand excavate planting holes as required when working around underground utilities. Maintain or restore finish grade set by others. When conditions detrimental to plant growth are encountered, such as adverse drainage conditions or obstructions, the Contractor shall notify the Town before planting so field adjustments in the layout can be determined. As necessary, the Town shall determine the preferred way to resolve drainage conditions or adjustment of the planting layout.

Supplemental plantings shall occur in areas within existing sparsely vegetated dunes.

Plantings shall be made in shore-parallel rows. The rows shall be staggered mid-way.

TS-10.4 Installation

Installation, fertilizing and watering methods shall be determined by the Contractor. All fertilizing and watering required which is necessary for the proper establishment of the plants and to achieve the Warranty provisions shall be included in the Contract lump sum price for Bid Item "Planting."

When plantings are completed, the Town will, upon receipt of written request, make an inspection to determine acceptability. When inspected Work does not comply with the Contract Plans or these Specifications, the Contractor shall replace rejected Work and continue maintenance until reinspected by the Town and found to be acceptable. The Contractor shall remove rejected plants and materials promptly from the Work area.

TS-11.0 Adjustments

A minimum of one 10-foot wide access shall be provided through the dune plantings per property. Some properties with longer frontage shall have more than one access. The approximate access points are shown on the Contract Plans. The Town reserves the right to adjust the access points based upon private property owners requesting reasonable changes during the Contract Time. The Town will advise the Contractor of adjustments in writing within seven (7) calendar days of the initial planting. The Contractor shall as soon as practicable remove the plants from the new access point and replant them in the original access point. The adjusted plants are subject to the same Warranty provisions.

TS-12.0 Warranty

Success is defined as 90% survivability of each individual species to the density and quality described in these specifications after 6 months from date of initial planting. Upon completion and acceptance of the Work, the Contractor shall execute and deliver a written warranty covering all Work to the Town for a 6-month period.

EXHIBIT A – SCOPE OF WORK



TOWN of FORT MYERS BEACH

Two months after the initial planting, the Contractor shall, at their expense, remove all dead plants and replant the areas and if necessary, increase the planting density. Two months after the additional planting (four months after the initial planting), the Contractor shall, at their expense, remove all dead plants and replant the areas and if necessary, increase the planting density.

Survival rates can be determined by troweling up plants and looking at the shoots and roots. Plants shall be deemed surviving if they present vigorous new leaf growth and inspection of the root zone demonstrates that new roots have migrated into the surrounding soil by no less than four inches after two months and eight inches after four months.

If the 90% success criteria for each individual species is still not achieved after 6 months, the Contractor shall propose an alternative planting plan subject to review and approval by the Town. The Contractor shall, at their expense, install the alternate planting plan within 21 calendar days after receipt of notice of Town approval.

All replanting shall be included in the Contract lump sum price for Bid Item "Warranty."

TS-13.0 Environmental Protection

TS-13.1 General

For the purpose of this specification, environmental protection is defined as the retention of the environment in its natural state to the greatest possible extent during Work activities and to enhance the natural appearance in its final condition. Environmental protection requires consideration of air, water, and land, and involves noise, and solid waste management as well as other pollutants. In order to prevent any environmental pollution arising from the Work activities in the performance of this Contract, the Contractor and their Subcontractors shall comply with all applicable Federal, State and local laws and regulations concerning environmental pollution control and abatement.

TS-13.2 Resource Protection

The environmental resources within the project boundaries and those affected outside the limits of permanent Work under this Contract shall be protected during the entire period of this Contract. The Contractor shall confine his activities to areas defined by the Contract plans and specifications.

Prior to the beginning of any construction, the Contractor shall identify all land resources to be preserved within the Contractor's Work area. The Contractor shall not remove, cut, deface, injure, or destroy land resources, including trees, shrubs, vines, grasses, topsoil, and land forms without special permission from the Town and Engineer. Vegetation damaged beyond restoration shall be removed and disposed of by the Contractor in a manner approved by the Town and Engineer. Vegetation or trees that are to be removed because of damage shall be replaced at the Contractor's expense by nursery-grown plants or trees of the same species or a species approved by the Town and Engineer. The size and quality of nursery-grown plants or trees shall also be approved by the Town and Engineer. No ropes, cables, or guys shall be fastened to or attached to any trees for anchorage unless specifically authorized. Where such special emergency use is permitted, the Contractor shall provide effective protection for land and vegetation resources at all times.

TS-13.3 Storage Facilities

The Contractor's storage areas required in the performance of the Work shall be located upon existing cleared portions of the job site or areas to be cleared and shall require written approval of the Town. The Contractor shall not store oil or fuel on-site, or equipment that is not required for the daily Work activities. Under no condition shall oil or fuel be discharged on-site or into adjacent waters.

EXHIBIT A – SCOPE OF WORK



TOWN of FORT MYERS BEACH

TS-13.4 Post-Work Cleanup or Obliteration

The Contractor shall obliterate all signs of Work areas, waste materials, or any other vestiges of construction as directed by Town and Engineer. The Project area will be restored to near natural conditions.

TS-13.5 Spillage

Special measures shall be taken to prevent chemicals, fuels, oils, greases, bituminous materials, waste washing, herbicides and insecticides, and concrete drainage from entering public waters.

TS-13.6 Disposal

Disposal of any materials, waste, effluent, trash, garbage, oil, grease, chemicals, etc., in areas adjacent to streams or other waters of the State shall not be permitted. If any waste material is dumped in unauthorized areas, the Contractor shall remove the material and restore the area to its original condition before being disturbed. If necessary, contaminated ground shall be excavated, disposed of as directed by the Town, and replaced with suitable fill material, compacted and finished with topsoil and planted as required to re-establish vegetation.

TS-13.7 Sea Turtle and Shorebird Protection

The Town will contract with agency approved sea turtle and shorebird monitors as necessary during their respective nesting seasons to conduct daily monitoring. The Contractor is responsible for cooperating with the Town and their monitors during the Work. The Contractor shall abide by the Permits and Dune Management Plan for sea turtle and shorebird protection including but not limited to hours of operation, waiting to begin work from the landward toe of the dune seaward until daily clearance is provided by the monitors, operating vehicles on the beach and dune, equipment storage, access and staging, and heavy equipment usage.

TS-14.0 Owner and Engineer's Approval of Work

By approving any payment, the Town and Engineer shall not thereby be deemed to have represented that they made exhaustive or continuous on-site inspection to check the quality or the quantity of the Work, or that they have reviewed the means, methods and techniques, sequences, and procedures of construction, or that they have made any examination to ascertain how or for what purpose the Contractor has used the money paid or to be paid to them on account of the Agreement price. The Town and Engineer may have a representative on site at different times to observe operations of Contractor. The presence of the Town and Engineer or its designated representative(s) shall not relieve the Contractor of responsibility for the proper execution of the Work in accordance with the specifications or permits applicable to the Work. In case of any doubt or difference of opinion as to the items to be furnished hereunder, the decision of Town shall be final and binding on all parties.

TS-15.0 Private Property

The Contractor shall not occupy private land outside of any easements or rights of way unless the Contractor obtains expressed consent by the property owner. In the event that the Contractor uses private property for any purpose without first having obtained the necessary approvals from the property owner or provided the necessary agreement(s) to the Town, the Town will direct the Contractor in writing to immediately cease using such property. The Town reserves the right to require that any agreement between the Contractor and the property owner for the use of private lands be furnished in writing.

At a minimum, the written agreement should contain the lot legal description and street address and the names, addresses, and telephone numbers for both the legal lot owner and the Contractor. The written agreement must also provide times for completion, erosion control measures, and how the Contractor will completely restore to the owner's satisfaction and how the owner will approve of the Work. This written agreement shall be submitted to and approved by the Town prior to construction.

EXHIBIT A – SCOPE OF WORK



TOWN of FORT MYERS BEACH

The Contractor shall restore all damages to surface and underground facilities resulting from its construction operations to a condition equal to, or better than, the original condition. Prior to application for final payment, the Contractor shall provide documentation from the property owner of each piece of private property that was utilized by the Contractor, stating that each property owner is satisfied with the manner in which the Contractor has restored the property. Final payment or reduction in retainage shall not be paid until such documentation is received by the Town.

EXHIBIT B – PROJECT COST

TS-4.0 Payment

TS-4.1 Dune Vegetation

Payment shall be made for materials and work specified in connection with the growing and purchasing of mature dune plants meeting the requirements of these specifications, and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract unit prices for Bid Item "Dune Vegetation." Payment shall be made for materials and work specified in connection with the transportation, installation, fertilization, and irrigation of mature dune plants meeting the requirements of these specifications, and all other appropriate costs in connection therewith or incidental thereto. The unit price per plant will be used to calculate the final payment based on the final number of planting units installed. The Engineer will determine the final number of planting units accepted as planting units eligible for payment. Fifty percent (50%) will be paid upon receipt of proof of the quantities and sizes required by the specifications. The remaining fifty percent (50%) will be paid after verification on installation.

TS-4.2 Adjustments

Payment shall be made for materials and work specified in connection with the replanting of dune plants to adjust beach access through the dune plantings on select properties, and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract unit prices for Bid Item "Adjustments."

TS-4.3 Warranty

Payment shall be made for materials and work specified in connection with the warranty and replanting meeting the requirements of these specifications, and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract lump sum for Bid Item "Dune Warranty." The Dune Warranty shall be eligible for payment after the two month replanting (25%), 4 month replanting (25%), and 6 months after achieving the success criteria (50%).

EXHIBIT B – PROJECT COST



TOWN of FORT MYERS BEACH

ESTERO ISLAND DUNE PLANTINGS BASE BID NORTH SEGMENT

Item	Unit	Quantity	Unit Price	Extended Price
1. Dune Vegetation				
1A. Sea Oats (1-gal)	EA	7,030 (Estimated)	\$7.25	\$50,967.50
1B. Sea Oats (4 inch)	EA	2,515 (Estimated)	\$2.65	\$6,664.75
1C. Dune Sunflower	EA	10,196 (Estimated)	\$2.65	\$27,019.40
1D. Dune Panic Grass	EA	11,090 (Estimated)	\$2.65	\$29,388.50
1E. Railroad Vine	EA	2,919 (Estimated)	\$7.25	\$21,162.75
2. Adjustments	EA	10	\$500.00	\$5,000.00
3. Warranty	LS	1	\$4,000.00	\$4,000.00
Base Bid Total				\$144,202.90

Name of Bidder: EarthBalance Corporation
 (This form to be returned)

EXHIBIT B – PROJECT COST



TOWN of FORT MYERS BEACH

DUNE PLANTINGS ALTERNATIVE NORTH SEGMENT HAZARD MITIGATION PLAN

Item	Unit	Quantity	Unit Price	Extended Price
I. Dune Vegetation				
1A. Bitter Panic Grass (2 inch)	EA	10,414 (Estimated)	\$1.70	\$17,703.80
1B. Sea Oats (2 inch)	EA	10,386 (Estimated)	\$1.70	\$17,656.20
1C. Railroad Vine (2 inch)	EA	2,722 (Estimated)	\$1.70	\$4,627.40
1D. West Coast Dune Sunflower (2 inch)	EA	9,678 (Estimated)	\$1.70	\$16,452.60
Adjustment	EA	10	\$500.00	\$5,000.00
Warranty	LS	1	\$4,000.00	\$4,000.00

Note: This bid form is to establish unit pricing for 2-inch plant sizes as required by the Town's Hazard Mitigation Grant for Dune Vegetation. Pricing for 2-inch plants will not be considered in the selection process.

Name of Bidder: EarthBalance Corporation

(This form to be returned)

EXHIBIT B – PROJECT COST



TOWN of FORT MYERS BEACH

ESTERO ISLAND DUNE PLANTINGS BASE BID CENTRAL SEGMENT

Item	Unit	Quantity	Unit Price	Extended Price
1. Dune Vegetation				
1A. Sea Oats (1-gal)	EA	2,902 (Estimated)	\$7.25	\$21,039.50
1B. Sea Oats (4 inch)	EA	6,033 (Estimated)	\$2.65	\$15,987.45
1C. Dune Sunflower	EA	21,580 (Estimated)	\$2.65	\$57,187.00
1D. Dune Panic Grass	EA	24,712 (Estimated)	\$2.65	\$65,486.80
1E. Railroad Vine	EA	5,917 (Estimated)	\$7.25	\$82,898.25
2. Adjustments	EA	20	\$500.00	\$10,000.00
3. Warranty	LS	1	\$4,000.00	\$4,000.00
Base Bid Total				\$216,599.00

Name of Bidder: EarthBalance Corporation

(This form to be returned)

EXHIBIT B – PROJECT COST



TOWN of FORT MYERS BEACH

ESTERO ISLAND DUNE PLANTINGS BASE BID SOUTH SEGMENT

Item	Unit	Quantity	Unit Price	Extended Price
1. Dune Vegetation				
1A. Sea Oats (1-gal)	EA	1,969 (Estimated)	\$7.25	\$14,275.25
1B. Sea Oats (4 inch)	EA	4,096 (Estimated)	\$2.65	\$10,854.40
1C. Dune Sunflower	EA	14,653 (Estimated)	\$2.65	\$38,830.45
1D. Dune Panic Grass	EA	16,780 (Estimated)	\$2.65	\$44,467.00
1E. Railroad Vine	EA	4,018 (Estimated)	\$7.25	\$29,130.50
2. Adjustments	EA	15	\$500.00	\$7,500.00
3. Warranty	LS	1	\$4,000.00	\$4,000.00
Base Bid Total				\$149,057.60

Name of Bidder: EarthBalance Corporation

(This form to be returned)

EXHIBIT B – PROJECT COST



TOWN of FORT MYERS BEACH

**ESTERO ISLAND DUNE PLANTINGS
BASE BID
GRAND TOTAL**

Segment	Extended Price
North	\$144,202.90
Central	\$216,599.00
South	\$149,057.60
Base Bid Total	\$509,859.50

Name of Bidder: EarthBalance Corporation

(This form to be returned)

EXHIBIT C – CONTRACT PROVISIONS FOR FDEP FUNDED AGREEMENTS

CONTRACT PROVISIONS FOR FDEP FUNDED AGREEMENTS

The Project is being funded by the State of Florida Department of Environmental Protection ("FDEP") through FDEP Standard Grant Agreement No. 23LE1 ("FDEP Grant Agreement") with the Town of Fort Myers Beach, which requires that certain terms be incorporated into agreements funded thereby. These requirements are in addition to, and do not modify or reduce, any other requirement or obligation in the Agreement.

1. Public Entity Crimes. Pursuant to Section 287.133(3)(a), Florida Statutes: A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. Contractor represents that in entering into the Agreement, the Contractor has not been placed on the convicted vendor list within the last 36 months. If the Contractor is placed on the convicted vendor list during the term of this Agreement, the Contractor shall immediately notify the Town and shall be cause for unilateral cancellation of the Agreement.

2. Discriminatory Vendors. Pursuant to Section 287.134(3)(a), Florida Statutes: An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity. Contractor represents that in entering into the Agreement, the Contractor has not been placed on the discriminatory vendor list within the last 36 months. If the Contractor is placed on the discriminatory vendor list during the term of this Agreement, the Contractor shall immediately notify the Town and shall be cause for unilateral cancellation of the Agreement.

3. Antitrust Violator Vendors. Pursuant to Section 287.137(3)(a), Florida Statutes: A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity; may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity. Contractor represents that in entering into the Agreement, the Contractor has not been placed on the antitrust violator vendor list within the last 36 months. If the Contractor is placed on the antitrust violator vendor list during the term of this Agreement, the Contractor shall immediately notify the Town and shall be cause for unilateral cancellation of the Agreement.

4. Compliance with FDEP Security and Safety Requirements and Processes. Contractor and its employees, agents, and subcontractors shall comply with any security and safety requirements and processes, if provided by FDEP, for work done at the Project location.

EXHIBIT C – CONTRACT PROVISIONS FOR FDEP FUNDED AGREEMENTS

5. **Contractual Costs.** Nonconsumable and/or nonexpendable personal property or equipment costing \$5,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in Chapter 274, F.S., and Chapter 69I-73, F.A.C. Contractor shall be responsible for maintaining appropriate property records for this Agreement and any subcontracts that include the purchase of equipment as part of the delivery of services. Contractor shall comply with this requirement and ensure that this requirement is imposed upon any subcontractors under this Agreement in writing.

6. **Statutory Notices Relating to Unauthorized Employment and Subcontracts.** FDEP considers the employment by Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the Agreement. Contractor shall include this provision in all contracts issued as a result of the Agreement.

7. **Compliance with Federal, State and Local Laws.** Contractor and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement. All employees, subcontractors, or agents performing work under the Agreement must comply with all security and administrative requirements of FDEP and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement. Contractor shall include this provision in all contracts issued as a result of the Agreement.

8. **Record Keeping.** Contractor shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. Contractor shall grant the FDEP, the State of Florida, or their authorized representatives access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. Contractor shall similarly require each of its subcontractors to maintain and allow access to such records for audit purposes.

9. **Compliance with Section 20.055, Florida Statutes.** the CONTRACTOR understands its duty, pursuant to section 20.055(5), F.S. to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. CONTRACTOR will comply with this duty and impose this requirement, in writing, on its subcontractors.

10. **No Third-Party Rights in FDEP Grant Agreement.** Contractor is advised that the FDEP Grant Agreement does not create any third-party rights, and no third parties shall rely upon any of the rights and obligations created under the FDEP Grant Agreement.

11. **Insurance Requirements.** At all times during the Agreement the Contractor, at its sole expense, shall maintain insurance coverage of such types and with such terms and minimum limits described below. Contractor understands and agrees that funds for the Project are conditioned upon their compliance with the insurance requirements of the Agreement. Failure to maintain the minimum insurance required herein shall be grounds for immediate termination of the Agreement. Contractor must provide proof of insurance upon request. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Agreement. All insurance policies shall be through insurers licensed and authorized to issue policies in Florida, or alternatively, Contractor may provide coverage through a self-insurance program established and operating under the laws of Florida. The minimum insurance requirements applicable to this Agreement are set forth

EXHIBIT C – CONTRACT PROVISIONS FOR FDEP FUNDED AGREEMENTS

below. However, if any other provision of the Agreement or bid documents requires insurance coverage in greater amounts or of broader scope, the greater requirements shall apply.

- a. **Commercial General Liability Insurance.** The Contractor shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Agreement. The "State of Florida Department of Environmental Protection, its employees and officers" shall be named as an additional insured on any general liability policies. The minimum limits shall be \$ 250,000 for each occurrence and \$500,000 policy aggregate.
- b. **Commercial Automobile Insurance.** If the Contractor's duties include the use of a commercial vehicle, the Contractor shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The "State of Florida Department of Environmental Protection, its employees and officers" shall be named as an additional insured on any automobile insurance policy. The minimum limits shall be as follows: 200,000/300,000 Automobile Liability for Company-Owned Vehicles, if applicable 200,000/300,000 Hired and Non-owned Automobile Liability Coverage.
- c. **Workers' Compensation and Employer's Liability Coverage.** The Contractor shall provide workers' compensation, in accordance with Chapter 440, F.S. and employer liability coverage with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Agreement.
- d. **Other Insurance.** None.

13. Incorporation into Subcontracts. Contractor shall provide its subcontractors with a copy of this Exhibit, and the Contractor's obligations hereof shall be incorporated into each of Contractor's contracts with its subcontractor as obligations of the subcontractor. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth herein.

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

The supplemental conditions contained in this section are intended to cooperate with, to supplement, and to modify the general conditions and other specifications. In cases of disagreement with any other section of this contract, the Supplemental Conditions shall govern. This is an acknowledgement that FEMA financial assistance may be used to fund all or a portion of this contract.

Pursuant uniform requirements of federal awards (2 CFR Part 200.23) the definition of CONTRACTOR is an entity that receives a Contract / Purchase Order.

Compliance with Federal Law, Regulations and Executive Orders: The Sub-Recipient (Town) agrees to include in the subcontract that (i) the subcontractor is bound by the terms of the Federally-Funded Subaward and Grant Agreement, (ii) the subcontractor is bound by all applicable state and Federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

Specifically, the Contractor shall be responsible for being knowledgeable and performing any and all services under this contract in accordance with the following governing regulations along with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

- 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 44 C.F.R. Part 206
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- FEMA Public Assistance Program and Policy Guide

Access to Records: The contractor agrees to provide the Town, the Florida Department of Emergency Management, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. (3) The contractor agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract. (4) In compliance with section 1225 of the Disaster Recovery Act of 2018, the Town and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

Affirmative Socioeconomic Steps If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Changes: To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allowable, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.

DHS Seal, Logo, and Flags: The contractor shall not use the DHS seal(s), logos, crests, or reproductions

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

of flags or likenesses of DHS agency officials without specific FEMA pre- approval. The contractor shall include this provision in any subcontracts.

Domestic Preference for Procurements 200.322 As appropriate and to the extent consistent with law, the non-Federal entity 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: "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. "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; aggregates such as concrete; glass, including optical fiber; and lumber.

License and Delivery of Works Subject to Copyright and Data Rights: The Contractor grants to the Town, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the Town or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the Town data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the Town.

No Obligation by Federal Government: The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.**Prohibition on Covered Telecommunications Equipment or Services**

(a) Definitions. As used in this clause, the terms **backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services** have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for covered Telecommunications Equipment or Services As used in this clause –

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

(iii) Enter into, extend, or renew contracts with entities 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; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing — (i). A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii). Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to: (i). Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii). Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph(e), in all subcontracts and other contractual instruments.

Program Fraud and False or Fraudulent Statements or Related Acts: The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

Rights to Inventions Made Under a Contract or Agreement: Exempt from FEMA Public Assistance Funding

Suspension and Debarment: (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. (3) This certification is a material representation of fact relied upon by the Town. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Town, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Procurement of Recovered Materials (§200.323) (Over \$10,000): In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired— Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Termination for Cause and Convenience (over \$10,000): See Standard Purchase Order and/or Contract Terms and Conditions

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

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

Contractors must sign and submit a certification to the Town with each bid or offer exceeding \$100,000. See Certifications and Assurances and the end of this document.

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) (over \$100,000): Where applicable, all contracts awarded by the solicitor in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages.** The Town or FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1

"Further Compliance with the Contract Work Hours and Safety Standards Act.

- (2) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- (3) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

Clean Air Act (over \$150,000): 1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act (over \$150,000): 1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Administrative, Contractual, or Legal Remedies (over \$250,000): Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.

(4) CONSTRUCTION ACTIVITIES

Equal Employment Opportunity Clause (§60-1.4): Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4.

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

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

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

FEDERAL CONTRACT PROVISIONS AND

union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

Davis Bacon Act: Exempt under FEMA Public Assistance Funding

Copeland Anti-Kickback Act: Exempt under FEMA Public Assistance Funding

STATE OF FLORIDA PROVISIONS DEPARTMENT OF ENVIRONMENTAL PROTECTION BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM

Applicable Laws - The Town and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Town shall include this provision in all contracts issued.

Data Collection: The Project shall be conducted in accordance with the terms and conditions set forth under this Agreement, all applicable Department permits and the eligible Project task items established below. All data collection and processing, and the resulting product deliverables, shall comply with the standards and technical specifications contained in the Department's Monitoring Standards for Beach Erosion Control Projects (2014) and all associated state and federal permits, unless otherwise specified in the approved scope of work for an eligible Project item. The monitoring standards may be found at: [Project Monitoring \(floridadep.gov\)](http://ProjectMonitoring.floridadep.gov)

In order to comply with Florida Auditor General report 2014-064 regarding conflicts of interest and to be consistent with Section 287.057(17)(a)(I), F.S., **all monitoring data and statistical analysis must be provided directly and concurrently from the monitoring contractor to the Florida Department of Environmental Protection/Town/permittee/engineering consultant.** The Town's engineering

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

FEDERAL CONTRACT PROVISIONS AND

consultant must provide an adequate mitigation plan, consistent with Section 287.057(17)(a)(I), F.S., including a description of organizational, physical, and electronic barriers to be used by the Town's engineering consultant, that addresses conflicts of interest when contracting multi-disciplinary firms for Project engineering and post-construction environmental monitoring services, or when the Project engineering consultant firm subcontracts for post-construction environmental monitoring. Environmental monitoring includes hardbottom, seagrass, and mangrove resources.

Equal Employment Opportunity: No person on the ground of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of, otherwise subjected to discrimination.

Inspector General Cooperation: The Parties agree to comply with Section 20.055(5), Florida Statutes, for the inspector general to have access to any records, data and other information deemed necessary to carry out his or her duties and incorporate into all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

Lobbying: No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch or a state agency.

Local Preference: Pursuant to Section 255.0991, F.S. local vendor preference is not applicable

Physical Access and Inspection: Grantor personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:

- i. The Town shall provide access to any location or facility on which Town is performing work, or storing or staging equipment, materials or documents.
- ii. The Town shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
- iii. The Town shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.

Record Retention: A. The contractor shall maintain and retain sufficient records demonstrating its compliance with the terms of the Agreement for a period of at least five (5) years after final payment is

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

FEDERAL CONTRACT PROVISIONS AND

made and shall allow the Town, the State, or its authorized representatives access to such records for audit purposes upon request.

Statutory Notices Relating to Unauthorized Employment: The Town shall consider the employment by any Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement

Statutory Notices Relating to Subcontracts: Pursuant to Sections 287.133 and 287.134, F.S., the following restrictions apply to persons placed on the convicted vendor list or the discriminatory vendor list:

- i. **Public Entity Crime.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- ii. **Discriminatory Vendors.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- iii. **Notification.** The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

FEDERAL CONTRACT PROVISIONS AND

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
and VOLUNTARY EXCLUSION**

Contractor Covered Transactions

- (1) The prospective subcontractor of the Sub-recipient, Town, certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-recipient's subcontractor is unable to certify to the above statement, the prospective contract shall attach an explanation to this form.

CONTRACTOR

By: _____
Signature

Name and Title

Street Address

City, State, Zip

UEI Unique Entity Identifier (for SAM.gov verification)

Date

Sub-Recipient Name: Town of Fort Myers Beach

DEM Contract Number: TBD

FEMA Project Number: TBD

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

TOWN OF FORT MYERS BEACH ANTICIPATED DISADVANTAGED, MINORITY, WOMEN OR VETERAN PARTICIPATION STATEMENT																					
<small>Status will be verified. Unverifiable statuses will require the PRIME to either provide a revised statement or provide source documentation that validates a status.</small>																					
A. PRIME VENDOR/CONTRACTOR INFORMATION																					
PRIME NAME		PRIME FBD NUMBER		CONTRACT DOLLAR AMOUNT																	
<small>IS THE PRIME A FLORIDA-CERTIFIED DISADVANTAGED, MINORITY OR WOMEN BUSINESS ENTERPRISE? (DBE/MBE/WBE) OR HAVE A SMALL DISADVANTAGED BUSINESS BA CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION? A SERVICE DISABLED VETERAN?</small>	VETERAN	Y	N	IS THE ACTIVITY OF THIS CONTRACT ...																	
	DBE?	Y	N	CONSTRUCTION?	Y N																
	MBE?	Y	N	CONSULTATION?	Y N																
	WBE?	Y	N	OTHER?	Y N																
SDB BA?	Y	N																			
IS THIS SUBMISSION A REVISION?		Y	N	IF YES, REVISION NUMBER _____																	
B. IF PRIME HAS SUBCONTRACTOR OR SUPPLIER WHO IS A DISADVANTAGED MINORITY, WOMEN-OWNED, SMALL BUSINESS CONCERN OR SERVICE DISABLED VETERAN, PRIME IS TO COMPLETE THIS NEXT SECTION																					
DBE M/WBE VETERAN	SUBCONTRACTOR OR SUPPLIER NAME	TYPE OF WORK OR SPECIALTY	ETHNICITY CODE (See Below)	SUB/SUPPLIER DOLLAR AMOUNT	PERCENT OF CONTRACT DOLLARS																
TOTALS:																					
C. SECTION TO BE COMPLETED BY PRIME VENDOR/CONTRACTOR																					
NAME OF SUBMITTER		DATE		TITLE OF SUBMITTER																	
EMAIL ADDRESS OF PRIME (SUBMITTER)		TELEPHONE NUMBER		FAX NUMBER																	
<small>NOTE: This information is used to track and report anticipated DBE or MBE participation in federally funded contracts. The anticipated DBE or MBE amount is voluntary and will not become part of the contractual terms. This form must be submitted at time of response to a solicitation. If and when awarded a County contract, the prime will be asked to update the information for the grant compliance files.</small>																					
<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>ETHNICITY</th> <th>CODE</th> </tr> </thead> <tbody> <tr><td>Black American</td><td>BA</td></tr> <tr><td>Hispanic American</td><td>HA</td></tr> <tr><td>Native American</td><td>NA</td></tr> <tr><td>Subcont. Asian American</td><td>SAA</td></tr> <tr><td>Asian-Pacific American</td><td>APA</td></tr> <tr><td>Non-Minority Women</td><td>NMW</td></tr> <tr><td>Other not of any other group listed</td><td>O</td></tr> </tbody> </table>						ETHNICITY	CODE	Black American	BA	Hispanic American	HA	Native American	NA	Subcont. Asian American	SAA	Asian-Pacific American	APA	Non-Minority Women	NMW	Other not of any other group listed	O
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Asian-Pacific American	APA																				
Non-Minority Women	NMW																				
Other not of any other group listed	O																				
D. SECTION TO BE COMPLETED BY TOWN OF FORT MYERS BEACH																					
DEPARTMENT NAME		FMS CONTRACT # (FB/RFP or PO/REQ)		GRANT PROGRAM/CONTRACT																	
ACCEPTED BY:					DATE																

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

Agreement Number: D1502

STATE-FUNDED LAP GRANT AGREEMENT

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

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

- A. The Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein; and
- B. The Division has received these grant funds from the State of Florida, and has the authority to subgrant these funds to the Recipient upon the terms and conditions below; and
- C. The Division has statutory authority to disburse the funds under this Agreement.

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

(1) LAWS, RULES, REGULATIONS, AND POLICIES

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

(2) CONTACT

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

a. In accordance with section 215.971(2), Florida Statutes, the Division's Grant Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the Division's liaison with the Recipient. As part of his/her duties, the Grant Manager for the Division shall:

- i. Monitor and document Recipient performance; and,
- ii. Review and document all deliverables for which the Recipient requests

payment.

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

**Berenice Hernandez Avila
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399
Telephone: 850-815-4206**

Email: Berenice.Hernandez@em.myflorida.com

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

**Cheri Russ
2525 Estero Boulevard
Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: cheri.russ@fmbgov.com**

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

(3) TERMS AND CONDITIONS

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

(4) EXECUTION

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

(5) MODIFICATION

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

(6) SCOPE OF WORK

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

(7) PERIOD OF AGREEMENT

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

This Agreement shall begin upon execution by both parties and shall end on **March 31, 2026** unless terminated earlier in accordance with the provisions of Paragraph (16) TERMINATION. In accordance with section 215.971(1)(d), Florida Statutes, the Recipient may expend funds authorized by this Agreement "only for allowable costs resulting from obligations incurred during" the period of agreement.

(8) FUNDING

- a. This is a one-time grant Agreement, subject to the availability of legislatively appropriated funds.
- b. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with either chapter 216, Florida Statutes, or the Florida Constitution.
- c. The Division will grant funds to the Recipient only for allowable costs that will be incurred by the Recipient in the successful completion of each deliverable or for loss of revenue.
- d. The Division will review any request for grant funding by comparing the documentation provided by the Recipient against a performance measure, outlined in Attachment A, which clearly delineates:
 - i. The required minimum acceptable level of service to be performed; and,
 - ii. The criteria for evaluating the successful completion of each deliverable.
- e. The Division's Grant Manager, as required by section 215.971(2)(c), Florida Statutes, shall reconcile and verify all funds received against all funds expended during the period of agreement and produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the Recipient.
- f. For the purposes of this Agreement, the term "improper payment" means or includes:
 - i. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and,
 - ii. Any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.
- g. All funds shall be placed in an interest-bearing account and the interest shall be returned to the Division quarterly until the completion of all deliverables. The interest shall be returned to the Division's General Revenue Fund.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

(9) RECORDS

a. As a condition of receiving state financial assistance, and as required by sections 20.055(6)(c) and 215.97(5)(b), Florida Statutes, the Division, the Chief Inspector General of the State of Florida, the Florida Auditor General, or any of their authorized representatives, shall enjoy the right of access to any documents, financial statements, papers, or other records of the Recipient which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Recipient's personnel for the purpose of interview and discussion related to such documents. For the purposes of this section, the term "Recipient" includes employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement.

b. The Recipient shall maintain all records related to this Agreement for the period of time specified in the appropriate retention schedule published by the Florida Department of State. Information regarding retention schedules can be obtained at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>.

c. Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) provides the citizens of Florida with a right of access to governmental proceedings and mandates three basic requirements: (1) all meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and (3) minutes of the meetings must be taken and promptly recorded. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the open government requirements. However, the Government in the Sunshine Law applies to private entities that provide services to governmental agencies and that act on behalf of those agencies in the agencies' performance of their public duties. If a public agency delegates the performance of its public purpose to a private entity, then, to the extent that private entity is performing that public purpose, the Government in the Sunshine Law applies. For example, if a volunteer fire department provides firefighting services to a governmental entity and uses facilities and equipment purchased with public funds, then the Government in the Sunshine Law applies to board of directors for that volunteer fire department. Thus, to the extent that the Government in the Sunshine Law applies to the Recipient based upon the funds provided under this Agreement, the meetings of the Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board may be subject to open government requirements. These meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with chapter 119, Florida Statutes.

d. Florida's Public Records Law provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. Unless specifically exempted from disclosure by the Legislature, all materials made or received by a governmental agency (or a private entity acting on behalf of such an agency) in conjunction with official business which are used to

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

perpetuate, communicate, or formalize knowledge qualify as public records subject to public inspection. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the public record requirements. However, when a public entity delegates a public function to a private entity, the records generated by the private entity's performance of that duty become public records. Thus, the nature and scope of the services provided by a private entity determine whether that entity is acting on behalf of a public agency and is therefore subject to the requirements of Florida's Public Records Law.

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

IF THE RECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE RECIPIENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (850) 815-4156, Records@em.myflorida.com, or 2555 Shumard Oak Boulevard, Tallahassee, FL 32399.

(10) AUDITS

a. In accounting for the receipt and expenditure of funds under this Agreement, the Recipient shall follow Generally Accepted Accounting Principles ("GAAP"). As defined by 2 C.F.R. §200.49, GAAP "has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB)."

b. When conducting an audit of the Recipient's performance under this Agreement, the Division shall use Generally Accepted Government Auditing Standards ("GAGAS"). As defined by 2 C.F.R. §200.50, GAGAS, "also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits."

c. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of this Agreement, the Recipient shall be held liable for reimbursement to the Division of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty (30) days after the Division has notified the Recipient of such non-compliance.

d. The Recipient shall have all audits completed by an independent auditor, which is defined in section 215.97(2)(i), Florida Statutes, as "an independent certified public accountant licensed

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under chapter 473.” The independent auditor shall state that the audit complied with the applicable provisions noted above. The audits must be received by the Division no later than nine (9) months from the end of the Recipient’s fiscal year.

e. The Recipient shall send copies of reporting packages required under this paragraph directly to each of the following:

i. The Division of Emergency Management

DEMSingle_Audit@em.myflorida.com

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General

2555 Shumard Oak Boulevard

Tallahassee, Florida 32399-2100

ii. The Auditor General

Room 401, Claude Pepper Building

111 West Madison Street

Tallahassee, Florida 32399-1450

(11) REPORTS

a. The Recipient shall provide the Division with quarterly reports and a close-out report. These reports shall include the current status and progress by the Recipient and all Sub-Recipients and subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to any other information requested by the Division.

b. Quarterly reports are due to the Division no later than thirty (30) days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30, and December 31.

c. The close-out report is due sixty (60) days after termination of this Agreement or sixty (60) days after completion of the activities contained in this Agreement, whichever occurs first.

d. If all required reports and copies are not sent to the Division or are not completed in a manner acceptable to the Division, the Division may withhold further payments or FEMA Public Assistance funds until they are completed or may take other action as stated in Paragraph (15) REMEDIES. “Acceptable to the Division” means that the work product was completed in accordance with the Budget and Scope of Work.

e. The Recipient shall provide additional program updates or information that may be required by the Division.

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f. The Recipient shall obtain engineering inspection reports for any new construction or installation. The Recipient shall furnish the reports to the Division within fifteen (15) days of receipt of the completed report.

(12) MONITORING

a. The Recipient shall monitor its performance under this Agreement, as well as that of its subcontractors and/or consultants who are paid from funds provided under this Agreement, to ensure that time schedules are being met, the Schedule of Deliverables and Scope of Work are being accomplished within the specified time periods, and other performance goals are being achieved. A review shall be done for each function or activity in Attachment A to this Agreement and reported in the quarterly report.

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

(13) LIABILITY

a. Unless Recipient is a state agency or subdivision, as defined in section 768.28, Florida Statutes, the Recipient is solely responsible to parties it deals with in carrying out the terms of this Agreement and shall hold the Division harmless against all claims of whatever nature by third parties arising from the work performed under this Agreement. For purposes of this Agreement, Recipient agrees that it is not an employee or agent of the Division but is an independent contractor.

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

(14) DEFAULT

If any of the following events occur ("Events of Default"), all obligations on the part of the Division to make further payment of funds shall, if the Division elects, terminate and the Division has the option to exercise any of its remedies set forth in Paragraph (15) REMEDIES. However, the Division may make

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

payments or partial payments, if applicable, after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment:

a. If any warranty or representation made by the Recipient in this Agreement or any previous agreement with the Division is or becomes false or misleading in any respect, or if the Recipient fails to keep or perform any of the obligations, terms or covenants in this Agreement or any previous agreement with the Division and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;

b. If material adverse changes occur in the financial condition of the Recipient at any time during the period of agreement, and the Recipient fails to cure this adverse change within thirty (30) days from the date written notice is sent by the Division.

c. If any reports required by this Agreement have not been submitted to the Division or have been submitted with incorrect, incomplete or insufficient information;

d. If the Recipient has failed to perform and complete on time any of its obligations under this Agreement.

(15) REMEDIES

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

a. Terminate this Agreement, provided that the Recipient is given at least thirty (30) days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in paragraph (2) CONTACT herein;

b. Begin an appropriate legal or equitable action to enforce performance of this Agreement;

c. Withhold or suspend payment of all or any part of a request for payment;

d. Require that the Recipient refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.

e. Exercise any corrective or remedial actions, to include but not be limited to:

i. request additional information from the Recipient to determine the reasons for or the extent of non-compliance or lack of performance,

ii. issue a written warning to advise that more serious measures may be taken if the situation is not corrected,

iii. advise the Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or

iv. require the Recipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible;

f. Exercise any other rights or remedies which may be available under law.

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Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Recipient, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Recipient.

(16) TERMINATION.

a. The Division may terminate this Agreement for cause after thirty (30) days written notice. Cause can include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform on time, and refusal by the Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under chapter 119, Florida Statutes, as amended.

b. The Division may terminate this Agreement for convenience or when it determines, in its sole discretion, that continuing the Agreement would not produce beneficial results in line with the further expenditure of funds, by providing the Recipient with thirty (30) calendar days prior written notice.

c. The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of this Agreement.

d. In the event this Agreement is terminated, the Recipient will not incur new obligations for the terminated portion of this Agreement after the Recipient has received the notification of termination. The Recipient will cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Recipient shall not be relieved of liability to the Division because of any breach of this Agreement by the Recipient. The Division may, to the extent authorized by law, withhold payments to the Recipient for the purpose of set-off until the exact amount of damages due the Division from the Recipient is determined.

(17) SUBCONTRACTS

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

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

(18) ATTACHMENTS

a. All attachments to this Agreement are incorporated as if set out fully.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

b. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.

c. This Agreement has the following attachments:

Exhibit 1 - Funding Sources

Attachment A – Proposed Budget and Scope of Work

Attachment B – Program Statutes and Regulations

Attachment C – Statement of Assurances

Attachment D – Warranties and Representations

Attachment E – Certification Regarding Debarment

Attachment F – Foreign Country of Concern Affidavit

(19) PAYMENTS

a. Invoices shall be submitted at least quarterly and shall include the supporting documentation for all costs of the project or services. The final invoice shall be submitted within sixty (60) days after the expiration date of the agreement. An explanation of any circumstances prohibiting the submittal of quarterly invoices shall be submitted to the Division grant manager as part of the Recipient's quarterly reporting as referenced in paragraph (11) REPORTS of this Agreement.

b. If the Recipient is a county or municipality that is a rural community or rural area of opportunity as those terms are defined in section 288.0656(2), Florida Statutes, the Division may issue payment of submitted invoices for verified and eligible performance that has been completed in accordance with the terms and conditions set forth in this Agreement to the extent that federal or state law, rule, or other regulation allows such payments. The Recipient may elect in writing to exercise this provision as long as the Recipient is a county or municipality which is a rural community or rural area of opportunity, as defined in section 288.0656(2), Florida Statutes, and demonstrates financial hardship. A county or municipality located within a financially constrained county, as defined in section 288.67(1), Florida Statutes, is deemed to have demonstrated a financial hardship for the purposes of this provision.

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

(20) REPAYMENTS

All refunds, repayments, or interest due to the Division under this Agreement are to be made payable to the order of "Division of Emergency Management," and mailed directly to the following address:

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

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

(21) MANDATED CONDITIONS

a. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Recipient in this Agreement, in any later submission or response to a Division request, or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations, and materials is incorporated by reference. The inaccuracy of the submissions or any material changes shall, at the option of the Division and with thirty (30) days written notice to the Recipient, cause the termination of this Agreement and the release of the Division from all its obligations to the Recipient.

b. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of the conflict, and shall be severable, but shall not invalidate any other provision of this Agreement.

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

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

e. The Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and local government services, and telecommunications.

f. Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

contract with a public entity, and may not transact business with any public entity in excess of \$25,000.00 for a period of thirty-six (36) months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

g. Any Recipient which is not a local government or state agency, and which receives funds under this Agreement from the state government, certifies, to the best of its knowledge and belief, that it and its principals:

i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;

ii. Have not, within a five-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offenses enumerated in paragraph (21)(g)(ii) of this certification; and

iv. Have not within a five-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

If the Recipient is unable to certify to any of the statements in this certification, then the Recipient shall attach an explanation to this Agreement.

In addition, the Recipient shall send to the Division (by email or by facsimile transmission) the completed "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" (Attachment E) for each intended subcontractor that Recipient plans to fund under this Agreement. The form must be received by the Division before the Recipient enters into a contract with any subcontractor.

h. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with Chapter 216, Florida Statutes, or the Florida Constitution.

i. 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.

j. Use of grant funds for travel is not authorized.

k. The Division reserves the right to unilaterally cancel this Agreement if the Recipient refuses to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, which the Recipient created or received under this Agreement.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

l. If the Recipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to the Division or be applied against the Division's obligation to pay the contract amount.

m. The State of Florida will not intentionally award publicly funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Division shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Division.

n. The Recipient is subject to Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) with respect to the meetings of the Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board. All of these meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with chapter 119, Florida Statutes.

o. All expenditures of state financial assistance shall be in compliance with the laws, rules and regulations applicable to expenditures of State funds, including but not limited to, the Reference Guide for State Expenditures.

p. This Agreement may be charged only with allowable costs resulting from obligations that will be incurred during the period of agreement.

q. Any balances of unobligated cash that have been advanced or paid that are not authorized to be retained for direct program costs in a subsequent period must be refunded to the State.

r. Section 287.05805, Florida Statutes, requires that any state funds provided for the purchase of or improvements to real property are contingent upon the contractor or political subdivision granting to the state a security interest in the property at least to the amount of state funds provided for at least five (5) years from the date of purchase or the completion of the improvements or as further required by law.

s. The Division may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

t. The Recipient shall attest in Attachment F of this agreement, it is not an entity owned by the government of a Foreign Country of Concern, no government of a Foreign Country of Concern has a controlling interest in the entity, and the entity has not been organized under the laws of or has its principal place of business in a Foreign Country of Concern pursuant to Section 287.138, Florida Statutes.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

(22) LOBBYING PROHIBITION

a. Section 216.347, Florida Statutes, prohibits "any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency."

b. No funds or other resources received from the Division under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

(23) COPYRIGHT, PATENT AND TRADEMARK

EXCEPT AS PROVIDED BELOW, ANY AND ALL PATENT RIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY RESERVED TO THE STATE OF FLORIDA. ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE RECIPIENT TO THE STATE OF FLORIDA.

a. If the Recipient has a pre-existing patent or copyright, the Recipient shall retain all rights and entitlements to that pre-existing patent or copyright unless this Agreement provides otherwise.

b. If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with it, the Recipient shall refer the discovery or invention to the Division for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Recipient shall notify the Division. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Recipient to the State of Florida.

c. Within thirty (30) days of execution of this Agreement, the Recipient shall disclose all intellectual properties relating to the performance of this Agreement that he or she knows or should know could give rise to a patent or copyright. The Recipient shall retain all rights and entitlements to any pre-existing intellectual property that is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under Paragraph (b), have the right to all patents and copyrights that accrue during performance of this Agreement.

d. If the Recipient qualifies as a state university under Florida law, then, pursuant to section 1004.23, Florida Statutes, any invention conceived exclusively by the employees of the Recipient shall become the sole property of the Recipient. In the case of joint inventions, that is inventions made jointly by one or more employees of both parties hereto, each party shall have an equal, undivided interest in and to such joint inventions. The Division shall retain a perpetual, irrevocable, fully paid, nonexclusive license, for its use and the use of its contractors of any resulting patented, copyrighted or trademarked

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

work products, developed solely by the Recipient, under this Agreement, for Florida government purposes.

(24) LEGAL AUTHORIZATION.

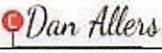
The Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Recipient also certifies that the undersigned person has the authority to legally execute and bind Recipient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

(25) ASSURANCES.

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

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

RECIPIENT: Town of Fort Myers Beach, Florida

By:  _____

Name and Title: Dan Allers Mayor

Date: 1/31/2024

FID# 65-0632342

**STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT**

By:  _____

Name and Title: **Kevin Guthrie, Director, or Ian Guidicelli, Response Bureau Chief,
as Authorized Representative.**

Date: 3/5/2024

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

EXHIBIT – 1

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

SUBJECT TO S. SB 2500 (2023), ITEM 2676A:

State Project -

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

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

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

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

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

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

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

ATTACHMENT A

Proposed Budget and Scope of Work

I. PROPOSED BUDGET

Project	Anticipated Expenditure Amount
Beach Renourishment	\$8,000,000.00
Legislative Appropriation Funds	\$8,000,000.00
Total Expenditures	\$8,000,000.00

II. BACKGROUND

As documented by the Hurricane Ian and Nicole Grant Recovery Program, \$350 million dollars were appropriated to help local governments mitigate local and county revenue losses and operating deficits; make infrastructure repairs and replacements including road and sewer and water facilities; conduct beach nourishment; and complete debris removal. Funding can be requested by local governments, independent special districts, and school boards, including charter schools.

The Town of Fort Myers Beach sustained significant damage to their beaches due to major Hurricane Ian. The Town of Fort Myers Beach is awarded a one-time advance payment of \$8,000,000 for their Beach Renourishment Project excluding Cat-G project areas. They will place and grade beach compatible sand along the central and south segments of Estero Island which was lost due to major Hurricane Ian.

Below is the project that will be funded under this funding agreement:

Beach Renourishment:

The Town of Fort Myers Beach seeks to contract with a qualified contractor to purchase, transport, place, and grade beach compatible sand along segments of Estero Island, Fort Myers Beach, FL. The Town of Fort Myers Beach will contract professional services for the design, engineering, monitoring, environmental and willing costs associated with the beach renourishment. Funds will be used to dredge sand to place on beach for beach restoration for damage caused by major Hurricane Ian. Additionally, a dune will be built along the central and south segments of Estero Island where the FEMA Cat-B project Emergency Berm was created from 182S-210. The Town also experienced additional sand loss due to major Hurricane Ian along Estero Island, the mitigation work consists of filling in scour holes and filling in beach public access areas that got eroded out. Cat-G project areas will not be funded under this agreement.

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III. SCOPE OF WORK

- A. Funds have been allocated to the Recipient for the Beach Renourishment Project on Estero Island, Florida. Funds shall be utilized in accordance with all local, state, and federal regulations.
- B. Eligible costs include all eligible costs under State Department of Environmental Protection Agreement Number 23LE4 excluding Cat-G project areas. Eligible costs include engineering reports, permitting, inspections, required environmental studies, design and construction costs for beach management, the creation of sand dunes, filling scours, and dredging along Estero Island.
- C. The project's measurable outcome is Estero Island Beach Restoration to satisfy Florida Department of Environmental Protection Agreement Number 23LE4 excluding Cat-G project areas.
- D. The Recipient shall provide an initial timeline. Table SW-1, "Initial Timeline and Estimated Allocation Schedule" or other similar instrument as approved by the Division may be used.

IV. TASK PRODUCTS

- A. Per Scope-of-Work Item III.D, Recipient shall prepare an initial timeline with key milestone activities/tasks schedule, including estimated start and end dates for each activity. Table SW-1 may be used to meet this deliverable.
- B. The Recipient shall provide the Division with copies of before photographs to document site conditions, site work progress, and completed site work.
- C. The Recipient shall provide the Division with the procurement documents, if the Recipient went out to bid for the projects listed and receipts for all purchases.
- D. The Recipient shall provide the Division with copies of pertinent site work regulatory reviews and permits for all projects under this agreement.
- E. The Recipient shall provide the Division with copies of all task products submitted to the Florida Department of Environmental Protection Agreement Number 23LE4.
- F. The Recipient shall provide the Division with copies of bid-ready construction documents and specifications for review and comment by the Division as applicable for all projects under this agreement. The site work documents shall be signed by the applicable registered or licensed design professional(s) of record.

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- G. The Recipient shall provide the Division with copies of as-built documents for review by the Division as applicable for all projects under this agreement. The site work documents shall be signed by the applicable registered or licensed design professional(s) of record.
- H. The Recipient shall provide a completion report. The completion report shall demonstrate that the project meets the requirements for the projects.

V. FINANCIAL CONSEQUENCES

If Recipient fails to comply with any term of the grant, the Division shall take one or more of the following actions, as appropriate in the circumstances:

1. Temporarily withhold cash payments pending correction of the deficiency by the recipient;
2. Disallow all or part of the cost of the activity or action not in compliance;
3. Withhold further funding; or,
4. Take other remedies that may be legally available.

VI. SCHEDULE OF WORK

- A. No later than 30 days after the agreement's execution date, the Recipient shall provide the Division with Task Product IV.A for review and approval. Failure to supply the required documentation, or disapproval of this documentation by the Division, shall result in denial or reduction of funds at the sole discretion of the Division.
- B. By April 30, 2024, and at least on a quarterly basis thereafter, Recipient shall report on progress in relation to the initial timeline and submit an invoice for work accomplished in accordance with the Division approved cost allocation table referenced in Task Product IV.A.
- C. By mutually agreed upon date(s), the Recipient shall provide the Division with Task Products IV.B through F for review and approval. Failure to supply the required documentation, or disapproval of this documentation by the Division, shall result in denial or reduction of funds at the sole discretion of the Division.
- D. By March 31, 2026, the Recipient shall provide a copy of the certificate of occupancy or completion or other appropriate written acceptance of completed work, or certification letter from the civil engineer showing that work meets specification of design, close-out documentation and final payment invoice.

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Table SW-1. Initial Timeline and Estimated Allocation Schedule			
Project Name(s): Beach Renourishment			
PROJECT PHASE	Start Date	End Date	LAP Funds (FY 2023-2024)
Board Contract Approval			
Architectural & Engineering Services Firm Selection			
Site Survey and Soil Testing			
Spatial Needs Assessment			
Preliminary Design, 100% complete			
Permits			
Regulatory Review			
Bid Document(s) Development & Award			
Notice to Proceed/Mobilization			
Construction Project Management & Special Inspections			
Construction 25% Complete			
Construction 50% Complete			
Construction 100% Complete			
Sub-Totals		\$8,000,000	
TOTAL Estimated Project Cost			

A/E - Architectural and Engineering; DEM – Division of Emergency Management; FY - Fiscal Year

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

Attachment B

Program Statutes and Regulations

Section 215.422, Florida Statutes	Payments, warrants, and invoices; processing time limits; dispute limitation; agency or judicial branch compliance
Section 215.97, Florida Statutes	Florida Single Audit Act
Section 215.971, Florida Statutes	Agreements funded with federal and state assistance
Section 216.347, Florida Statutes	Disbursement of grant and aids appropriations for lobbying prohibited
Section 216.3475, Florida Statutes	Maximum rate of payment for services funded under General Appropriations Act or awarded on a noncompetitive basis
Section 287.056, Florida Statutes	Purchases from purchasing agreement and state term contract
Section 287.057, Florida Statutes	Procurement of commodities or contractual services
CFO MEMORANDUM NO. 04 (2005-06)	Compliance Requirements for Agreements
Section 553.844, Florida Statutes	Requirements for Roofs and Opening Protection
SB 2500 (2023), ITEM 2676A	Requirements for Hurricane Recovery Grant Program

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

Attachment C
Statement of Assurances

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

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

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;

- (2) Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualified handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973;
 - (3) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff/termination; rates of pay or other forms of compensation; and election for training and apprenticeship;
 - (g) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties pursuant to Section 112.313 and Section 112.3135, Florida Statutes;
 - (h) It will comply with the Anti-Kickback Act of 1986, 41 U.S.C. Section 51 which outlaws and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities;
 - (i) It will comply with the provisions of 18 U.S.C. 594, 598, 600-605 (further known as the Hatch Act) which limits the political activities of employees;
 - (j) It will comply with the flood insurance purchase and other requirements of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4002-4107, including requirements regarding the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance;
- For sites located within Special Flood Hazard Areas (SFHA), the Recipient must include a FEMA Model Acknowledgement of Conditions of Mitigation of Property in a Special Flood Hazard Area with FEMA Grant Funds executed by the title holder with the closeout request verifying that certain SFHA requirements were satisfied on each of the properties. The Model Acknowledgement can be found at www.fema.gov/governmental/grant/sfha_conditions.shtml
- (k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Agreement to comply with the "Uniform Federal Accessibility Standards," (AS) which is Appendix A to 41 CFR Section 101-19.6 for general type buildings and Appendix A to 24 CFR, Part 40 for residential structures. The Recipient will be responsible for conducting inspections to ensure compliance with these specifications by the contractor;
 - (1) It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (U.S.C. 470), Executive Order 11593, 24 CFR, Part 800, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. 469a-1, et seq.) by:

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- (1) Consulting with the State Historic Preservation Office to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR, Section 800.8) by the proposed activity; and
- (2) Complying with all requirements established by the State to avoid or mitigate adverse effects upon such properties.
- (3) Abiding by the terms and conditions of the "Programmatic Agreement Among the Federal Emergency Management Agency, the Florida State Historic Preservation Office, the Florida Division of Emergency Management and the Advisory Council on Historic Preservation, (PA)" which addresses roles and responsibilities of Federal and State entities in implementing Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(E), and implementing regulations in 36 CFR, Part 800.
- (4) When any of the Recipient's projects funded under this Agreement may affect a historic property, as defined in 36 CFR, Part 800.16 (l)(1), the Federal Emergency Management Agency (FEMA) may require the Recipient to review the eligible scope of work in consultation with the State Historic Preservation Office (SHPO) and suggest methods of repair or construction that will conform with the recommended approaches set out in the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings 1992 (Standards), the Secretary of the Interior's Guidelines for Archeological Documentation (Guidelines) (48 Federal Register 44734-37), or any other applicable Secretary of Interior standards. If FEMA determines that the eligible scope of work will not conform with the Standards, the Recipient agrees to participate in consultations to develop, and after execution by all parties, to abide by, a written agreement that establishes mitigation and recondition measures, including but not limited to, impacts to archeological sites, and the salvage, storage, and reuse of any significant architectural features that may otherwise be demolished.
- (5) The Recipient agrees to notify FEMA and the Division if any project funded under this Agreement will involve ground disturbing activities, including, but not limited to: subsurface disturbance; removal of trees; excavation of footings and foundations, and installation of utilities (such as water, sewer, storm drains, electrical, gas, leach lines and septic tanks) except where these activities are restricted solely to areas previously disturbed by the installation, replacement or maintenance of such utilities. FEMA will request the SHPO's opinion on the potential that archeological properties may be present and be affected by such activities. The SHPO will advise the Recipient on any feasible steps to be accomplished to avoid any National Register eligible archeological property or will make recommendations for the development of a treatment plan for the recovery or archeological data from the property.

If the Recipient is unable to avoid the archeological property, develop, in consultation with SHPO, a treatment plan consistent with the Guidelines and take into account the Advisory Council on Historic Preservation (Council) publication "Treatment of Archeological Properties". The Recipient shall forward information regarding the treatment plan to FEMA, the SHPO and the Council for review. If the SHPO and the Council do not object within fifteen (15) calendar days of receipt of the treatment plan, FEMA may direct the Recipient to implement the treatment plan. If either the Council or the SHPO object, Recipient shall not proceed with the project until the objection is resolved.
- (6) The Recipient shall notify the Division and FEMA as soon as practicable: (a) of any changes in the approved scope of work for a National Register eligible or listed property; (b) of all changes to a project that may result in a supplemental DSR or modify a HMGP project for a National Register eligible or listed property; (c) if it appears that a project funded under this Agreement will affect a previously unidentified property that may be eligible for inclusion in the National Register or affect

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a known historic property in an unanticipated manner. The Recipient acknowledges that FEMA may require the Recipient to stop construction in the vicinity of the discovery of a previously unidentified property that may be eligible for inclusion in the National Register or upon learning that construction may affect a known historic property in an unanticipated manner. The Recipient further acknowledges that FEMA may require the Recipient to take all reasonable measures to avoid or minimize harm to such property until FEMA concludes consultation with the SHPO. The Recipient also acknowledges that FEMA will require, and the Recipient shall comply with, modifications to the project scope of work necessary to implement recommendations to address the project and the property.

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

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- (z) It will assist the awarding agency in assuring compliance with the Preservation of Archeological and Historical Preservation Act of 1966, 16 U.S.C. 469a, et seq.;
- (aa) It will comply with the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794, regarding non-discrimination;
- (bb) It will comply with the environmental standards which may be prescribed pursuant to the Safe Drinking Water Act of 1974, 42 U.S.C. 300f-300j, regarding the protection of underground water sources;
- (cc) It will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Property Acquisition Policies Act of 1970, 42 U.S.C. 4621-4638, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs;
- (dd) It will comply with the Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287, related to protecting components or potential components of the national wild and scenic rivers system;
- (ee) It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice);
- (ff) It will comply with the Coastal Barrier Resources Act of 1977, 16 U.S.C. 3510;
- (gg) It will assure project consistency with the approved State program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451-1464; and
- (hh) It will comply with the Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661-666.
- (ii) With respect to demolition activities, it will:
 - (1) Create and make available documentation sufficient to demonstrate that the Recipient and its demolition contractor have sufficient manpower and equipment to comply with the obligations as outlined in this Agreement.
 - (2) Return the property to its natural state as though no improvements had ever been contained thereon.
 - (3) Furnish documentation of all qualified personnel, licenses and all equipment necessary to inspect buildings located in the Recipient's jurisdiction to detect the presence of asbestos and lead in accordance with requirements of the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection and the County Health Department.
 - (4) Provide documentation of the inspection results for each structure to indicate:
 - a. Safety Hazard Present
 - b. Health Hazards Present
 - c. Hazardous Materials Present
 - (5) Provide supervision over contractors or employees employed by the Recipient to remove asbestos and lead from demolished or otherwise applicable structures.
 - (6) Leave the demolished site clean, level and free of debris.

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- (7) Notify the Division promptly of any unusual existing condition which hampers the contractor's work.
- (8) Obtain all required permits.
- (9) Provide addresses and marked maps for each site where water wells and septic tanks are to be closed along with the number of wells and septic tanks located on each site. Provide documentation of closures.
- (10) Comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).
- (11) Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act (42 U.S.C. 1857h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR, Part 15 and 61). This clause shall be added to any subcontracts.
- (12) Provide documentation of public notices for demolition activities.

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Attachment D
Warranties and Representations

Financial Management

Recipient's financial management system must include the following:

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

Competition

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

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Codes of Conduct

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

Business Hours

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

Licensing and Permitting

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

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Attachment E

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

Subcontractor Covered Transactions

- (1) The prospective subcontractor, _____, of the Recipient certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

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

SUBCONTRACTOR:

By: _____
Signature

Recipient's Name

Name and Title

DEM Contract Number

Street Address

Project Number

City, State, Zip

Date

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

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

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

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

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

¹ As defined in Section 287.138 (1)(d), Florida Statutes.

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

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