

RESOLUTION 21-08

**A RESOLUTION OF THE CITY OF PANAMA CITY BEACH,
FLORIDA, APPROVING A SUBRECIPIENT AGREEMENT
RELATING TO CARES ACT FUNDING.**

BE IT RESOLVED that the appropriate officers of the City are authorized to accept and deliver on behalf of the City that certain Subrecipient Agreement between the City and Bay County, relating to CARES Act funding, in substantially the form attached and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 8th day of October, 2020.

CITY OF PANAMA CITY BEACH

By: _____



Mark Sheldon, Mayor

ATTEST:



Lynne Fasone, City Clerk

SUBRECIPIENT AGREEMENT RELATING TO CARES ACT FUNDING

THIS AGREEMENT is made by and between Bay County, a political subdivision of the State of Florida (hereinafter referred to as the "County") with administrative offices located at 840 W. 11th Street, and THE CITY OF PANAMA CITY BEACH, (hereinafter referred to as "Subrecipient") with administrative offices at 17007 Panama City Beach Parkway, Panama City Beach, FL 32413, (each being at times referred to as "Party" or "Parties").

WITNESSETH:

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

WHEREAS, Title V of the CARES Act created the Coronavirus Relief Fund (hereinafter referred to as the "CRF"), and \$150 billion dollars was appropriated to the Fund for Fiscal Year 2020 to provide direct assistance to state, tribal, territorial, and local governments to fund certain necessary and allowable expenses incurred due to the public health emergency with respect to COVID-19; and

WHEREAS, the U.S. Department of the Treasury ("USDOT") is authorized to distribute funding from the CRF utilizing a population-based formula as set forth in the CARES Act; and

WHEREAS, the State of Florida was allocated \$8,328,221,072, of which 55% was reserved for the state and 45% was reserved for distribution to eligible local government jurisdictions within the state that exceed 500,000 in population; and

WHEREAS, on June 10, 2020, the Governor of the State of Florida announced that the State would disburse up to \$1,275,285,790 billion dollars to counties with a population below 500,000 using a phased approach through the Florida Department of Emergency Management ("FDEM"); and

WHEREAS, on or about June 23, 2020, the County and FDEM entered into *CARES Act Funding Agreement No. Y2280* providing an initial disbursement of 25% of the County's total CRF allocation directly to the County and, pursuant to which, the County may provide for the sub-award of such funds to eligible subrecipients, including Subrecipient, for eligible expenditures under the CARES Act; and

WHEREAS, the purpose of this Agreement is to provide for the sub-award of a portion of the financial assistance obtained by County under *CARES Act Funding Agreement No. Y2280* to assist Subrecipient with funding such necessary expenses incurred due to the COVID-19 public health emergency as are described in this Agreement and the attachments hereto, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payment hereinafter set forth, the receipt and sufficiency of which is hereby acknowledged, the County and Subrecipient agree as follows:

Section 1. Recitals. The recitals contained in the preamble of this Agreement are declared to be true and correct and are hereby incorporated into this Agreement.

Section 2. Compliance.

A. By executing this Agreement, the Subrecipient does hereby agree to fully comply with the terms and conditions set forth in this Agreement and all attachments and exhibits hereto, the *CARES Act Funding Agreement No. Y2280*, attached hereto as **Attachment A** between the County and FDEM governing distribution of the County's CRF allocation (collectively, such agreements shall hereinafter be referred to as the "FDEM Agreements"), Title V of the CARES Act and all implementing rules, regulations, and guidance related to same, the Subrecipient Expenditure Plan, attached hereto as **Attachment B**, and all other applicable federal, state, and local laws, rules, regulations, and guidance.

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

C. In addition to the foregoing, performance under this Agreement shall be subject to the provisions of 2 C.F.R. Part 200 entitled "Uniform Administrative Requirements, Cost Principals and Audit Requirements for Federal Awards."

Section 3. Term.

A. This Agreement shall begin upon the date last executed by the Parties (the "Effective Date") and shall remain in effect until December 30, 2020 (the "Expiration Date") unless earlier terminated in accordance with Section 8, except the provisions contained within Sections 7, 9, 10, 12, 16.1 and 16.2 shall survive the termination of this Agreement.

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

Section 4. Funding.

A. Subject to the terms and conditions of this Agreement, the County shall pay the Subrecipient, on a cost reimbursement basis, up to a maximum of \$_____ to implement the projects and/or activities described in the SEP. It is understood and agreed that any additional funds necessary in connection with the projects and/or activities described in the SEP above and beyond this amount are the sole responsibility of the Subrecipient. Advance payment of funds to the Subrecipient under this Agreement shall not be permitted unless expressly described in the SEP. Subrecipient shall be reimbursed on a cost reimbursement basis for eligible and allowable costs incurred by Subrecipient in the implementation of the projects and/or activities described in the SEP as such costs are incurred. Eligible and allowable costs are defined as costs that:

1. are necessary expenditures incurred due to the public health emergency with respect to the COVID-19;

2. were not accounted for in the Subrecipient's budget most recently approved as of March 27, 2020;
3. were incurred during the Covered Period;
4. are described in the SEP; and
5. are otherwise in accordance with the terms and conditions of this Agreement, the FDEM Agreements, Title V of the CARES Act, and all other applicable laws, rules, regulations, and guidance.

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

B. All reimbursement requests shall be submitted to the County at the following address: 840 W. 11th Street, Panama City, FL 32401, ATTN: Ashley Stukey, Budget Officer. To be eligible for reimbursement under this Agreement, Subrecipient shall submit sufficient documentation to the satisfaction of the County demonstrating that Subrecipient is legally obligated to pay the costs for which reimbursement is sought. All reimbursement requests must include a certification, signed by an official who is authorized to legally bind the Subrecipient, that reads as follows:

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

C. All requests for reimbursement under this Agreement shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. All costs must be incurred on or before November 30, 2020, and a final payment request should be submitted to the County no later than such date to ensure the County and FDEM have adequate time to process the request. For a cost to have been "incurred," performance or delivery must occur during the Covered Period but payment of funds need not be made during that time (though payment shall occur within 90 days of a cost being incurred).

D. The County requires detailed documentation of all costs for which reimbursement is sought under this Agreement ("Supporting Documentation"). The minimum requirements regarding such Supporting Documentation are set forth in **Attachment D**, Supporting Documentation Requirements. Each payment request submitted by the Subrecipient shall be accompanied by sufficient Supporting Documentation substantiating all costs incurred and for which reimbursement is sought, to the satisfaction of the County. In the event the County determines the Supporting Documentation submitted by the Subrecipient is insufficient to enable it to evaluate the allowability and eligibility of costs, the Subrecipient shall furnish additional Supporting Documentation to the satisfaction of the County.

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

County, which shall describe the nature of the projects and/or activities being funded.

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

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

Section 5. Accounting; Duplication of Benefits.

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

B. Subrecipient hereby certifies and affirms that the projects and/or activities to be funded under this Agreement shall not result in a prohibited duplication of the benefits obtained by Subrecipient, any sub-sub recipient (as defined in 2 C.F.R. §§ 200.92-93), or any individual or entity that is a beneficiary of such projects and/or activities from other Non-Title V CARES Act programs, other local, state, or federal funding sources (e.g. the Stafford Disaster Relief and Emergency Assistance Act, etc.), private insurance, or other private organizations. It is Subrecipient's responsibility and obligation to implement processes and procedures to select and subsequently monitor all sub-subrecipients, individuals, and entities receiving funds under this Agreement to ensure compliance with this paragraph. All agreements entered into between Subrecipient and any sub-subrecipient, individual, or entity providing for the subaward or payment of funds under this Agreement shall contain provisions permitting the Subrecipient to recapture funds provided under this Agreement in the event an impermissible duplication of benefit is discovered. Subrecipient acknowledges and agrees that it has an affirmative obligation to promptly identify and report any duplication of benefits to the County. In the event that the Subrecipient recovers costs incurred under this Agreement and reimbursed by the County from another source, the Subrecipient shall reimburse the County for all recovered funds originally provided under this Agreement. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the payment(s) are recovered by the Subrecipient to the date repayment is made to the County by the Subrecipient.

Section 6. Availability of Funds. The County's performance and obligation to pay Subrecipient under this Agreement is expressly contingent upon the County's actual receipt of applicable funding from FDEM. Authorization for continuation and completion of the projects

and/or activities described in the SEP and payment associated therewith may be rescinded by the County at its discretion, upon proper notice to Subrecipient, if the funding from FDEM contemplated under this Agreement is reduced or eliminated.

Section 7. Reporting Requirements.

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

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

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

B. Final Report. Within twenty (20) days following the final cash payment to Subrecipient under this Agreement, Subrecipient shall submit a "Final Project Report," in which the Subrecipient shall describe the status of the Subrecipient's implementation of all projects and/or activities undertaken under this Agreement. The Final Project Report shall further include an accounting of all costs and expenses incurred by Subrecipient and such other information as the County deems necessary to facilitate close out of the FDEM Agreements and permit the County to meet all of its obligations and requirements under same.

Section 8. Default; Termination.

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

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

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

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

Section 9. Remedies.

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

1. Temporarily withhold cash payments to the Subrecipient pending correction of the deficiency by the Subrecipient or more severe enforcement action by the County or FDEM.
2. Disallow (i.e., deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
3. Wholly or partly suspend or terminate this Agreement.
4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 or other applicable federal regulations (or recommend such a proceeding be initiated by FDEM or the USDOT).
5. Withhold future requests for reimbursement to Subrecipient under any other Agreement between the Parties providing for the subaward of funds from the CRF.
6. Demand a refund, either in whole or in part, of the funds provided to the Subrecipient under this Agreement for non-compliance with the material terms of this Agreement. The Subrecipient, upon such written notification from the County shall refund, and shall forthwith pay to the County, the amount of money demanded by the County. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from the County by the Subrecipient to the date repayment is made by the Subrecipient to the County.
7. Take any other remedy that may be available to the County at law or equity.
8. Costs of the Subrecipient resulting from obligations incurred by the Subrecipient during a suspension or after termination of the Agreement are not allowable unless the County expressly authorizes them in the notice of suspension or termination. Other Subrecipient costs during suspension or after termination that are necessary and not reasonably avoidable are allowable if the following apply:
 - a. The costs result from obligations which were properly incurred by the Subrecipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of termination, are non-cancellable; and
 - b. The cost would be allowable if the Agreement were not suspended or expired normally at the end of the funding period in which the termination takes place.

B. In addition to the remedies available in the paragraphs above, the Subrecipient is subject to any CARES Act-specific remedies for noncompliance outlined in the CARES Act and any implementing laws, rules, regulations, and guidance.

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

D. The Parties acknowledge and agree that the remedies provided in this Section are separate and apart from the indemnification provisions set forth in Section 16.1 hereof and that sovereign immunity shall not be a defense to any of the contractual obligations imposed on the Parties in this Section.

Section 10. Audits; Monitoring.

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

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

C. Upon completion of the audit required in this Section, Subrecipient shall promptly transmit a copy of the audit report to the County. Subrecipient's failure to have an audit conducted in accordance with this Section or failure to implement corrective action in response to any audit findings may result in the County's imposition of remedies as provided in Section 9 hereof.

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

Section 11. Subcontracts; Subawards.

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

B. The Subrecipient may subcontract work under this Agreement as necessary without the prior written consent of the County, subject to the any conditions or limitations imposed by

applicable state and federal law. Regardless of any subcontract, the Subrecipient is ultimately responsible for all projects, programs, activities, and services undertaken by subcontractors under this Agreement. The Subrecipient agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the Subrecipient that the County shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract and that the Subrecipient shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

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

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

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

affirmative steps identified above.

9. The requirements described in subparagraphs (1) through (5) above outline the affirmative steps that the Subrecipient must take; the requirements do not preclude the Subrecipient from undertaking additional steps to involve small and minority businesses and women's business enterprises.
10. The requirement to divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises, does not authorize the Subrecipient to break a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds so as to utilize streamlined acquisition procedures (e.g. "project splitting").

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

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

Section 12. Closeout.

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

1. The right of the County or FDEM to disallow costs and recover funds on the basis of a later audit or other review;
2. The obligation of the Subrecipient to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments; or

3. The Subrecipient's obligations regarding audits, property management and disposition (if applicable), and records retention.

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

Section 13. State Lobbying Prohibition; Conflicts of Interest. Pursuant to §216.347, Florida Statutes, disbursement of grant funding pursuant to a contract or grant to any person or organization is prohibited unless the terms of the contract or grant prohibit the expenditure of funds for the purposes of lobbying the Legislature, the judicial branch, or a state agency. In addition, the Subrecipient hereby certifies that no funds received pursuant to this agreement will be used to directly or indirectly influence legislation or any other official action by the Florida Legislature or any state agency.

Section 14. Unauthorized Employment. The employment of unauthorized aliens by any Subrecipient/subcontractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act (INA). If the Subrecipient/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral termination of this agreement. The Subrecipient shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this agreement.

Section 15. Non-Discrimination.

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

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

https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists.

Section 16. Miscellaneous Provisions.

16.1 Liability: To the fullest extent permitted by law, Subrecipient shall indemnify, defend, protect, and hold the County, and its officers, employees, contractors, and agents, free and harmless from and against any and all claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses and expenses (including, without limitation, attorney's fees and costs during negotiation, through litigation and all appeals therefrom), or death of or injury to any person or damage to any property whatsoever, arising out of or resulting from this Agreement or Subrecipient's performance of the projects and/or activities contemplated in the SEP. Nothing herein is intended to serve as a waiver of sovereign immunity by either Party and nothing herein

shall be construed as consent to be sued by third parties in any matter arising out of this Agreement.

16.2 Public Records. The Parties acknowledge that this Agreement and any related financial records, audits, reports, plans, correspondence, and other documents may be subject to disclosure to members of the public pursuant to Chapter 119, Florida Statutes, as amended. In the event a Party fails to abide by the provisions of Chapter 119, Florida Statutes, the other Party may, without prejudice to any right or remedy and after giving that party, seven (7) days written notice, during which period the Party fails to allow access to such documents, terminate this Agreement.

IF THE SUBRECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUBRECIPIENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:

**Bay County
Office of the County Manager
840 W. 11th Street
Panama City, FL 32401
(850) 248-8140**

16.3 Assignment. This Agreement or any interest herein shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties, without the prior written consent of the other party.

16.4 All Prior Agreements Superseded.

A. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or Agreements whether oral or written.

B. It is further agreed that no modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

16.5 Headings. Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

16.6 Survival. All provisions, which by their inherent character, sense, and context are intended to survive termination of this Agreement, shall survive the termination of this Agreement.

16.7 Interpretation. For the purpose of this Agreement, the singular includes the plural and

the plural shall include the singular. References to statutes or regulations shall include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to. Words not otherwise defined that have well-known technical or industry meanings, are used in accordance with such recognized meanings. References to persons include their respective permitted successors and assigns and, in the case of governmental persons, persons succeeding to their respective functions and capacities.

1. If the either party discovers any material discrepancy, deficiency, ambiguity, error, or omission in this Agreement, or is otherwise in doubt as to the meaning of any provision of the Agreement, it shall immediately notify the other party and request clarification of the its interpretation of this Agreement.
2. This Agreement shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all of the terms and provisions hereof.

16.8 Severability. The invalidity or non-enforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance hereof shall be construed to be enforced as if this Agreement did not contain such invalid or unenforceable portion of provision.

16.9 Further Documents. The parties shall execute and deliver all documents and perform further actions that may be reasonably necessary to effectuate the provisions of this Agreement.

16.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and the parties stipulate that venue for any matter which is the subject of this Agreement shall be in the County of Bay.

16.11 Notices. All notices required or made pursuant to this Agreement by either party to the other shall be in writing and delivered by hand or by United States Postal Service, first class mail, postage prepaid, return receipt requested, addressed to the following:

<u>COUNTY</u>	<u>SUBRECIPIENT</u>
County Manager	City Manager
840 W 11 th Street	17007 PCB Parkway
Panama City, FL 32401	Panama City Beach, FL 32413

Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this section.

16.12 No Waiver. The failure of a party to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of any other provision or of either party's right to thereafter enforce the same in accordance with this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have made and executed this agreement on the respective dates under each signature:

BAY COUNTY, FLORIDA, a political subdivision of the State of Florida acting by and through its duly authorized Board of County Commissioners.

By: _____
Philip "Griff" Griffiths, Chairman


Approved as to form:

CLERK OF COURT

Bill Kinsaul

Office of the County Attorney

SUBRECIPIENT:

By: 

Anthony O'Rourke, City Manager

Date: October 8, 2020

ATTEST:

By: 

Lynne Fasone, City Clerk

ATTACHMENT A

CARES ACT FUNDING AGREEMENT

Between

Florida Division of Emergency Management and Bay County, Florida

Agreement No.: Y2280

**ATTACHMENT B
SUBRECIPIENT EXPENDITURE PLAN**

**ATTACHMENT C
FEDERAL PROVISIONS APPLICABLE TO SUBRECIPIENT**

This Agreement is funded, in whole or in part, by Federal funds and, therefore, the Subrecipient will be required to comply with the following provisions as applicable:

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

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

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

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

E. **Debarment and Suspension:** A contract award must not be made under this Agreement to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. Part 180 and 2 C.F.R. Part 3000 regarding Debarment and Suspension. The Subrecipient agrees and certifies that neither it, nor its principals, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency; and, that the Subrecipient shall not enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction. The Subrecipient is responsible for reviewing the status of all proposed

subcontractors and sub-awardees in the System for Award Management (SAM) at <https://sam.gov/SAM/> before entering into any subcontract or sub-award under this Agreement. The Subrecipient shall include language incorporating the requirements of this Section in all subcontracts or lower tier agreements executed under this Agreement.

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

G. Certification Regarding Lobbying (44 C.F.R. Part 18): The Subrecipient agrees to comply with, and include in subcontracts and subawards, the following provisions:

1. The Subrecipient certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. The Subrecipient certifies that no funds provided under this Agreement have been used or will be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.
3. Pursuant to 2 C.F.R. §200.450 and 2 C.F.R. §200.454(e), the Subrecipient is hereby prohibited from using funds provided by this Agreement for membership dues to any entity or organization engaged in lobbying activities.
4. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities."

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

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

J. Americans with Disabilities Act (ADA): Subrecipient agrees to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, governmental services, and telecommunications.

K. Solid Waste Disposal Act: Pursuant to 2 C.F.R. §200.322, Subrecipient and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

L. Equal Employment Opportunity: In accordance with 41 C.F.R. §60-1.4(b), during the performance of this agreement, Subrecipient agrees as follows:

1. Subrecipient will not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. Recipient will take affirmative measures to ensure that applicants are employed, and employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. Subrecipient will not discharge or in any other manner discriminate against an employee or applicant for employment because the employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or other 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. Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement, a notice advising the labor union of the Subrecipient's commitments under this provision and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. Subrecipient will comply with Executive Order 11246 of September 24, 1965, and the rules, regulations, and relevant orders of the Secretary of Labor.
6. Subrecipient will furnish all information and reports required by EO 11246 and the rules,

regulations, and relevant orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administrative agency and the Secretary of Labor for purposes of investigations to ascertain compliance with such rules, regulations and orders.

7. In the event of Subrecipient's non-compliance with the nondiscrimination clauses set for the herein or with any other rules, regulations, or orders, this agreement may be canceled, terminated, or suspended, in whole or in part, and Subrecipient may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with EO 11246 and such other sanctions as may be imposed and remedies invoked in EO 11246 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The Subrecipient shall include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub-subrecipient or vendor. The Subrecipient will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Subrecipient becomes involved in, or is threatened with, litigation with a sub-subrecipient or vendor as a result of such direction, the Subrecipient may request the United States to enter into such litigation to protect the interests of the United States.

M. Contracting with Small and Minority Businesses, Women's Business Enterprises and Labor Surplus Area Firms: Subrecipient's award of subcontracts should reflect the diversity of the citizens of the State of Florida. In accordance with 2 C.F.R. § 200.321, the Subrecipient and its subcontractors must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Subrecipient agrees to use affirmative steps, and to require its subcontractors to utilize affirmative steps, to ensure that minority businesses and women's business enterprises are used when possible. Such affirmative steps shall at a minimum include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, or women's business enterprises;
5. Utilizing services and assistance, as appropriate, of such organizations as the Small Business Administration, the Minority Business Development Agency of the Department of the Commerce, the Florida Department of Management Services (Office of Supplier Diversity), the Florida Department of Transportation, Minority Business Development Center, and Local Government M/DBE programs; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above in subparagraphs (1) through (5).
7. As used herein, the term "minority and women business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. Prior to award of any subcontract under this agreement, Subrecipient shall document its

efforts made to comply with the requirements of this paragraph. Subrecipient shall state that it is an Equal Opportunity employer in all solicitations or advertisements for subcontractors or employees who shall perform work under this Agreement.

8. The requirements outlined in subparagraphs (1) through (5) above do not impose an obligation to set aside either the solicitation or award of a contract to these types of firms. Rather, the requirement only imposes an obligation to carry out and document the six affirmative steps identified above.
9. The requirements described in subparagraphs (1) through (5) above outline the affirmative steps that the Subrecipient must take; the requirements do not preclude the Subrecipient from undertaking additional steps to involve small and minority businesses and women's business enterprises.
10. The requirement to divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises, does not authorize Subrecipient to break a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds so as to utilize streamlined acquisition procedures (e.g., "project splitting").

ATTACHMENT D
SUPPORTING DOCUMENTATION REQUIREMENTS

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

Subrecipient should prepare an Excel spreadsheet with a reimbursement request summary. Each line should have a unique sequence number which will correlate to the supporting documentation. That unique number should appear on the supporting documentation pages.

The minimum documentation should include:

Procurement of goods/services:

Check copy; Invoice or other proof of payment; and Justification of procurement method.

Payroll:

Payroll register with check number, check date, employee name, total hours worked, and total fringe benefits; Timesheet(s); and Fringe Benefit rate calculation.

Equipment:

Description; record of usage; time used; equipment rate/basis.

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