Flagler County Board of County Commissioners
Special Meeting Agenda

October 19, 2020 • 2:00 p.m.

Government Services Building 2, Board Chambers, 1769 E. Moody Blvd., Bunnell, FL 32110

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1. **Pledge to the Flag and Moment of Silence**

2. **Chair Comments**

3. **Discussion, Approval/Adoption of the items addressed for Florida Governmental Utility Authority (FGUA) closing process**

4. **Adjournment**

Section 286.0105, Florida Statutes states that if a person decides to appeal any decision made by a board agency, or commission with respect to any matter considered at a meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act, persons needing assistance to participate in this meeting should contact the (386) 313-4001 at least 48 hours prior to the meeting.

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS
SPECIAL MEETING / AGENDA ITEM # 3

SUBJECT: Overview of Florida Government Utility Authority (FGUA) Transfer and Status of Closing Documents and Actions.

DATE OF MEETING: October 19, 2020

OVERVIEW/SUMMARY: The Board of County Commissioners ("BCC") approved proceeding with transferring all of its utility assets and customer territories to the Florida Governmental Utility Authority ("FGUA") on July 13, 2020. That approval included a purchase and sale agreement, an Interlocal Agreement governing the FGUA operation of the utility after closing, a resolution granting the County a seat on the FGUA board of directors, and granting general authority for County Administration and the County Attorney to do all things necessary to proceed to a transfer.

The parties are working toward closing during the fourth quarter of this year. The parties have been working on a substantial number of complex aspects of the transfer of the utility assets. This includes issues related to managing the financial flow to end the outstanding debt, to accommodate the loan FGUA is receiving for the entire system we are transferring, and true-ups of various accounts.

Financial Matters - One of the items we want the Board to consider is approving a master resolution that will enable all of the financial transfers and settlements needed to conclude the transaction. This resolution provides the authorization for County staff and the Clerk to consummate the transaction with respect to the financial particulars. The resolution identifies each loan being satisfied (USDA Loan for the Beverly Beach system, the FDEP Revolving Loans for Plantation Bay, and to the Sterling National Bank for a competitively bid loan for Plantation Bay). The Resolution also allows the closing out of certain accounts in the utility fund, vesting authorization in the Chair of the Board, the Clerk, the County Administrator, the County Financial Services Director, and the County Attorney. Finally, it authorizes the retention of Jay Glover of PFM Financial Advisors for handling defeasance of the utility debts.

Also, in connection with these financial matters, we are including for your approval budget resolutions and budget amendments to appropriate grant funding with a 25% local match for emergency generators the County is obtaining for the utility system. These budgetary actions have to be done regardless of whether there is a utility system transfer, but we want to get this detail out of the way now to smooth our path to closing. These resolutions and budget amendments are attached along with their separate supporting memo.

Mr. John Brower, Financial Services Director will handle this part of the agenda presentation and answer the Board's questions.

Real Estate – There are a number of real estate issues we are working on with all of the property, including easements for utility lift stations, pipe in ground, treatment ponds and so forth. For one of the key parts, we are exchanging land with ICI to obtain better land for treating effluent. The exchange resolution was advertised for this meeting, but we will need to postpone it as the work is still in progress. The Board will not be able to adopt it, but the Resolution will be discussed as a preview for when this is before the Board for final action. The title of the resolution is Approve Resolution to Exchange Property with the WL Residential Land, LLC for Parcels within and Adjoining Plantation Bay Development of Regional Impact to Facilitate the

County Sale of Utility Assets to FGUA. There also is an associated amendment to the DRI to allow this exchange, but for the same reasons, final action will be postponed.

Further, we have encountered an issue with the main utility site. Our acquisition of the site occurred in 2015 and we have an owner's title policy. Unexplainably, another party filed a deed in 2016, which covers about 6 acres of our land. This deed that partially overlaps our property was actually signed in 1984 but was not recorded for 32 years. We are still working on sorting that issue out, and our effort will continue up to the time of this special meeting. We will update you on the most recent facts that we uncover. We are preparing a claim on our title insurance policy and will obtain any authorizations at the Board meeting that we need.

Tim Telfer, Resiliency and Resource Stewardship Manager, will summarize the property exchange and other title issues.

Utility Regulatory Matters – Also noticed for this meeting is an amendment to our regulatory ordinance. It is attached. Briefly, the Ordinance Amendment exempts FGUA from the County's utility regulatory processes. It also allows CDD's and community associations to extend centralized wastewater service to areas lacking such services to prevent proliferation of septic tanks or package plants in order to promote environmental quality of surface and shallow aquifer water. The Board will not be able to adopt it at this time but you will be able to discuss it in advance of its presentation for final approval.

Al Hadeed, County Attorney will discuss this item.

Other Contractual Matters – The purchase and sale agreement will need to be amended after the parties complete their due diligence. The amendment would update title descriptions of property being conveyed and developer agreements, contracts and leases being assumed by FGUA. Also, there will be formal assignments from our Interlocal Agreements with Volusia County, the City of Palm Coast, Flagler Beach and Beverly Beach that will be presented at a future time for approval.

Al Hadeed, County Attorney will address these items.

DEPARTMENT CONTACTS:

Al Hadeed, County Attorney (386) 313-4005;
E. John Brower, Financial Services Director (386) 313-4036
Tim Telfer, Resiliency and Resource Stewardship Manager (386) 313-4066

RECOMMENDATION: (1) Approve Resolution Authorizing Financial Transactions and Associated Budgetary Actions; (2) Approve Budgetary Resolutions and Amendments; (3) Continue the Exchange of Property Resolution and the Proposed DRI Amendment until advertised again; (4) Continue Utility Ordinance Amendment; and (5) Continue authorization for County Administrator and County Attorney to take all actions necessary to close the transfer of the County's utility assets to FGUA.

ATTACHMENTS:

1. Master Resolution Authorizing Financial Transfers and Settlements and Closing Accounts
2. Budget Resolutions and Amendments and Staff Memorandum Regarding Amending the Adopted FY 20-21 Budget for Wellfield Generators
3. Draft Property Exchange Resolution
4. Draft Utility Ordinance Amendment

RESOLUTION NO. 2020-[__]

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA AUTHORIZING THE PREPAYMENT OF CERTAIN DEBT OBLIGATIONS WITH RESPECT TO ITS UTILITY SYSTEM AS DESBRIBED HEREIN; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners (the "County Commission" or the "Board") of Flagler County, Florida (the "County") previously authorized the sale of certain of the County's utility assets pursuant to that certain Interlocal Agreement for the Purchase and Sale of Utility Assets, dated July 16, 2020 by and between the County, as Seller and the Florida Governmental Utility Authority ("FGUA"), as Purchaser (the "Agreement"); and

WHEREAS, the purchase by FGUA of the Utility System (as defined in the Agreement") is scheduled to occur in the near future (the "Closing") and the parties are working toward completing the transaction in the fourth quarter of 2020; and

WHEREAS, pursuant to the terms of the Agreement the outstanding balance due on Utility System related debt is to be paid at the Closing; and

WHEREAS, debt of the Utility System includes (i) Drinking Water State Revolving Fund Construction Loan Agreement DW180520, Clean Water State Revolving Fund Construction Loan Agreement WW180502 and Clean Water State Revolving Fund Loan Agreement WW180500 loans from the Florida Department of Environmental Protection, (the "FDEP Loans"), (ii) a loan from Sterling National Bank in connection with the issuance by the County of its Utility System Revenue Note, Series 2019 (the "Sterling Loan"), and (iii) a loan from the USDA Rural Development in connection with the issuance by the County of its Water and Sewer System Revenue Bond, Series 2013 (the "USDA Loan" and together with the FDEP Loans and the Sterling Loan, the "Utility Debt"); and

WHEREAS, the loan documents relating to the Sterling Loan do not provide for early prepayment prior to October 1, 2023, however Sterling National Bank has agreed to an early prepayment of the Sterling Loan with a prepayment premium equal to two percent (2%) of the outstanding principal amount of the Sterling Loan (the "Prepayment Premium"); and

WHEREAS, under the USDA Loan, the loan documents do not provide for prepayment except on a payment date, however, the USDA Rural Development has agreed to prepayment at any time;

WHEREAS, the final pay off of the USDA Loan can only be made via check or cashier's check; and

WHEREAS, logistically because of the manner of payment required on the USDA Loan, payment may need to be made by the County prior to Closing, to be reimbursed with the proceeds from the sale of the Utility System at Closing; and

WHEREAS, the County's Utility System includes advances in its accounts that need to be closed out as part of the transaction.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant the provisions of the Constitution and the laws of the State of Florida, Chapter 125, Florida Statutes, as amended, Resolution No. 2020 - 47 adopted by the County on July 13, 2020, and other applicable provisions of law.

A. **FINDINGS.** It is hereby found, ascertained, determined and declared that:

B. The WHEREAS clauses recited above are hereby incorporated herein as a part of this Resolution.

C. It is in the best interest of the County to approve prepayment of the outstanding balance of the Sterling Loan with the Prepayment Premium, as it will result in savings to the County.

D. It is in the best interests of the County to prepay the USDA Loan from certain funds and accounts of the County to be reimbursed from the loan secured by FGUA in connection with the Closing.

E. It is the best interests of the County to close out the advances in all of the utility accounts of the Utility System.

SECTION 2. AUTHORIZATION OF STERLING LOAN PREPAYMENT PREMIUM; PREPAYMENT OF THE UTILITY DEBT AND CLOSE OUT OF UTILITY ACCOUNT ADVANCES. The County hereby authorizes as part of the Closing the tender of the Prepayment Premium in connection with satisfying in full the Sterling Loan, additionally authorizes prepayment of the Utility Debt as described herein and in the Agreement, and further authorizes close out of utility accounts as a result of the Closing.

SECTION 3. AUTHORIZATION OF EARLY PAYMENT OF THE USDA LOAN FROM COUNTY FUNDS. The Board hereby authorizes the County to transfer funds internally from the County's Utility System reserves and/or the County General Fund to accommodate payment in full of the USDA Loan prior to Closing. All or a portion of such funds

and accounts are to be reimbursed from the loan proceeds secured by FGUA in connection with its acquisition of the County Utility System.

SECTION 4. **GENERAL AUTHORIZATIONS**. The Chair and any member of the Board, the County Administrator, the County Attorney, the Clerk of the Circuit Court and Comptroller of the County and the Chief Financial Officer and such persons' designees are each designated as agents of the County in connection with the matters and are authorized and empowered, collectively or individually, to take all actions and steps and to execute all instruments, documents, and contracts on behalf of the County that are necessary or desirable in connection with the Closing, not inconsistent with the terms and provisions of this Resolution and the Agreement.

SECTION 5. **MEMBERS OF THE COUNTY COMMISSION EXEMPT FROM PERSONAL LIABILITY.** No recourse under or upon any obligation, covenant or agreement of this Resolution, shall be had against any member of the Board, the County Administrator, the County Attorney or the Chief Financial Officer of the County, as such, of the County, past, present or future, either directly or through the County it being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the members of the Board, the County Administrator, the County Attorney or the Chief Financial Officer of the County, as such, under or by reason of the obligations, covenants or agreements contained in this Resolution or implied therefrom, and (b) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such member of the Board, the County Administrator, the County Attorney or Chief Financial Officer of the County, as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution, on the part of the County.

SECTION 6. **FINANCIAL ADVISORY SERVICES.** The County is hereby authorized to execute an engagement letter with PFM Financial Advisors LLC ("PFM") to provide financial advisory services to the County in connection with transactions contemplated herein. The County is hereby authorized to pay the fees of PFM in connection with such services.

SECTION 7. **SEVERABILITY.** If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall not affect any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

SECTION 8. **APPLICABLE PROVISIONS OF LAW.** This Resolution shall be governed by and construed in accordance with the laws of the State of Florida.

SECTION 9. **RULES OF INTERPRETATION.** Unless expressly indicated otherwise, references to sections or articles are to be construed as references to sections or articles of this instrument as originally executed. Use of the words "herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Resolution and not solely to the particular portion in which any such word is used.

SECTION 10. CAPTIONS. The captions and headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

SECTION 11. REPEALER. All resolutions or parts thereof in conflict herewith, if any, are hereby repealed.

SECTION 12. NO THIRD PARTY BENEFICIARIES. Except such other persons as may be expressly described in this Resolution, nothing in this Resolution, expressed or implied, is intended or shall be construed to confer upon any person, other than the County, any right, remedy or claim, legal or equitable, under and by reason of this Resolution, or any provision thereof, all provisions thereof being intended to be and being for the sole and exclusive benefit of the County.

SECTION 13. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption and authentication as provided by law.

DULY, ADOPTED this 19th day of October, 2020.

BOARD OF COUNTY COMMISSIONERS
FLAGLER COUNTY, FLORIDA

(SEAL)

_____
David Sullivan, Chair

ATTEST:

_____
Tom Bexley,
Clerk of the Circuit Court and Comptroller

Approved as to form:

By: _____
Albert Hadeed, Esquire
County Attorney.

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS
SPECIAL MEETING / AGENDA ITEM # 3 – ATTACHMENT 2

SUBJECT: Consideration to Amend the Adopted FY 20-21 Budget for Unanticipated Grant Revenue for Hazard Mitigation Grant Program (HMGP) for Wellfield Generators at the Beverly Beach and Plantation Bay Utilities.

DATE OF MEETING: October 19, 2020

OVERVIEW/SUMMARY: Due to the effects of Hurricane Irma, Flagler County was deemed eligible to receive Hazard Mitigation Grant Program funding for various projects throughout the county. All HMGP grants require a 25% local match. This specific grant will allow the county to add a generator at the wellfields of both the Beverly Beach and Plantation Bay Utilities.

FUNDING INFORMATION: Grant funding will be appropriated with approval of the attached Unanticipated Revenue Resolutions (URR). The local grant match of 25% will be appropriated with approval of Budget Transfers 21-102 and 21-103 from the each Utility's Reserves. The Beverly Beach Utility Reserve will be $676,590 and the Plantation Bay Utility Reserve will be $1,076,232.

DEPARTMENT CONTACT: Heidi Petito General Services, (383) 313-4125
E. John Brower Financial Services Director, (386) 313-4036

RECOMMENDATION: Request the board approve the attached Unanticipated Revenue Resolution and Budget Transfer 21-102 and Budget Transfer 21-103.

ATTACHMENTS:
1. Unanticipated Revenue Resolution Plantation Bay
2. Unanticipated Revenue Resolution Beverly Beach
3. Budget Transfer 21-102
4. Budget Transfer 21-103
5. HMGP Wellfield Generator Grant Agreement

RESOLUTION NO. 2020 - ___

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY TO AMEND THE PLANTATION BAY UTILITY FUND 407 FOR THE FISCAL YEAR 2020-21 TO RECOGNIZE AND APPROPRIATE UNANTICIPATED REVENUE.

WHEREAS, the Flagler County Board of County Commissioners has received $41,644 from the Florida Department of Emergency Management (FDEM); and

WHEREAS, Chapter 129, Florida Statutes, authorizes the Board of County Commissioners to amend, by resolution, its budget to provide for the receipt and expenditure of unanticipated funds.

NOW, THEREFORE, BE IT RESOLVED by the Flagler County Board of County Commissioners, in meeting assembled on the 19th day of October 2019, that the Plantation Bay Utility Fund 407 be amended, as follows:

PLANTATION BAY UTILITY FUND 407

FUNDING SOURCES:

407-0000-331.31-01	Water Supply System/FDEM HMGP	**$41,644**

EXPENDITURES:

407-8418-533.34-10 Project # 075733 Other Cont. Services	**$16,649**
407-8418-533.64-10 Project # 075733 Capital Equipment	**$24,995**

BOARD OF COUNTY COMMISSIONERS
FLAGLER COUNTY, FLORIDA.

BY:_____
David C. Sullivan, Chair

ATTEST:

_____
Tom Bexley, Clerk of the Circuit
Court and Comptroller

APPROVED AS TO FORM:

_____
Al Hadeed, County Attorney

RESOLUTION NO. 2020 - ___

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY TO AMEND THE BEVERLY BEACH UTILITY FUND 404 FOR THE FISCAL YEAR 2020-21 TO RECOGNIZE AND APPROPRIATE UNANTICIPATED REVENUE.

WHEREAS, the Flagler County Board of County Commissioners has received $41,644 from the Florida Department of Emergency Management (FDEM); and

WHEREAS, Chapter 129, Florida Statutes, authorizes the Board of County Commissioners to amend, by resolution, its budget to provide for the receipt and expenditure of unanticipated funds.

NOW, THEREFORE, BE IT RESOLVED by the Flagler County Board of County Commissioners, in meeting assembled on the 19th day of October 2019, that the Beverly Beach Utility Fund 404 be amended, as follows:

BEVERLY BEACH UTILITY FUND 404

FUNDING SOURCES:

404-0000-331.31-01	Water Supply System/FDEM HMGP	**$41,644**

EXPENDITURES:

404-8418-533.34-10 Project # 075733 Other Cont. Services	**$ 8,999**
404-8418-533.64-10 Project # 075733 Capital Equipment	**$32,645**

BOARD OF COUNTY COMMISSIONERS
FLAGLER COUNTY, FLORIDA.

BY:_____
David C. Sullivan, Chair

ATTEST:

_____
Tom Bexley, Clerk of the Circuit
Court and Comptroller

APPROVED AS TO FORM:

_____
Al Hadeed, County Attorney

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS
BUDGET TRANSFER REQUEST FORM

BTR 21 - 102
DATE: 10/12/20
PREPARED BY: BE

FUND: Bunnell Flagler County Utility
DEPARTMENT / DIVISION: Reserves -Reserves

PAGE 1 OF 1

EXPLANATION: Transfer funds from Reserves for HMGP local match for Wellfield Generators.

LINE NO.	FUND NO.	DEPT. NO.	SUB. NO.	ACCT NO.	PROJ NO.	AMOUNT FROM (DR.)	AMOUNT TO (CR.)	BUDGET WAS	BUDGET WILL BE	ACCOUNT/CENTER DESCRIPTION PROJECT # DESCRIPTION
1	407	5000	587	9810		**13,882**		1,090,114	1,076,232	Reserve for Contingency
2	407	8418	533	6410	075733		**13,882**	-	13,882	Equipment HMGP Irma Wellfield Generators
3									-	
4									-	
5									-	
6									-	
7									-	
8									-	
9									-	
TOTAL						**$13,882.00**	**$13,882.00**	**$1,090,114.00**	**$1,090,114.00**	

Financial Service Director's APPROVAL _____ DISAPPROVAL _____ DATE: _____

Administrator's APPROVAL _____ DISAPPROVAL _____ DATE: _____

Board Action at Meeting: APPROVAL _____ DISAPPROVAL _____ DATE: _____

POSTED BY: _____ DATE POSTED: _____ cc: _____

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS
BUDGET TRANSFER REQUEST FORM

BTR 21 - 103
DATE: 10/12/20
PREPARED BY: BE

FUND: Utility Enterprise Fund
DEPARTMENT / DIVISION: Reserves -Reserves

PAGE 1 OF 1

EXPLANATION: Transfer funds from Reserves for HMGP local match for Wellfield Generators.

LINE NO.	FUND NO.	DEPT. NO.	SUB. NO.	ACCT NO.	PROJ NO.	AMOUNT FROM (DR.)	AMOUNT TO (CR.)	BUDGET WAS	BUDGET WILL BE	ACCOUNT/CENTER DESCRIPTION PROJECT # DESCRIPTION
1	404	5000	587	9850		**13,882**		690,472	676,590	Reserve-Future Capital OL
2	404	8418	533	6410	075733		**13,882**	-	13,882	Equipment HMGP Irma Wellfield Generators
3									-	
4									-	
5									-	
6									-	
7									-	
8									-	
9									-	
TOTAL						**$13,882.00**	**$13,882.00**	**$690,472.00**	**$690,472.00**	

Financial Service Director's APPROVAL _____ DISAPPROVAL _____ DATE: _____

Administrator's APPROVAL _____ DISAPPROVAL _____ DATE: _____

Board Action at Meeting: APPROVAL _____ DISAPPROVAL _____ DATE: _____

POSTED BY: _____ DATE POSTED: _____ cc: _____

SUB-RECIPIENT AGREEMENT CHECKLIST

DIVISION OF EMERGENCY MANAGEMENT
MITIGATION BUREAU

REQUEST FOR REVIEW AND APPROVAL	
SUB-RECIPIENT:	Flagler County Board of Commissioners
PROJECT #:	4337-94-R
PROJECT TITLE:	Generator Project
CONTRACT #:	H0180
MODIFICATION #:	NA

SUB-RECIPIENT REPRESENTATIVE (POINT OF CONTACT)	
	Ms. Heidi Petito, Director of General Services Flagler County Board of Commissioners 1769 E. Moody Boulevard Building #5 Bunnell, Florida 32110

Enclosed is your copy of the proposed contract/modification between **Flagler County Board of Commissioners** and the Florida Division of Emergency Management (FDEM).

	COMPLETE
☐	This form is required to be included with all Reviews, Approvals, and Submittal
☐	Two (2) Copies printed for Approval
☐	Printed Single-sided *(If your policy is to copy two-sided please contact me and I will send you two original one-sided copies for signature)*
☐	Reviewed and Approved
☐	Signed and Dated by Official Representative (*blue ink*)
☐	**Copy of the organization's resolution or charter** that specifically identifies the person or position that is authorized to sign, if not Chairman, Mayor, Chief
☐	Attachment I - Federal Funding Accountability and Transparency Act (FFATA) completed, signed, and dated (☐ N/A for Modifications)
☐	Two Signed and dated Originals mailed to FDEM - Tallahassee Florida Division of Emergency Management Mitigation Bureau – HMGP 2555 Shumard Oak Boulevard Tallahassee, Florida 32399-2100 Attention – Grant Specialist –Veronica S. Ash, FCCM, Office 330-B

If you have any questions regarding this contract, or who is authorized to sign it, please contact your Project Manager at (850) 815-4578 or email me at Renee.singh@em.myflorida.com.

Agreement Number: __H0180____

Project Number: __4337-94-R_____

FEDERALLY-FUNDED SUBAWARD AND GRANT AGREEMENT

2 C.F.R. §200.92 states that a "subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract."

As defined by 2 C.F.R. §200.74, "pass-through entity" means "a non-Federal entity that provides a subaward to a Sub-Recipient to carry out part of a Federal program."

As defined by 2 C.F.R. §200.93, "Sub-Recipient" means "a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program."

As defined by 2 C.F.R. §200.38, "Federal award" means "Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity."

As defined by 2 C.F.R. §200.92, "subaward" means "an award provided by a pass-through entity to a Sub-Recipient for the Sub-Recipient to carry out part of a Federal award received by the pass-through entity."

The following information is provided pursuant to 2 C.F.R. §200.331(a)(1):

Sub-Recipient's name:	FLAGLER COUNTY BOARD OF COMMISSIONERS
Sub-Recipient's unique entity identifier:	59-6000605
Federal Award Identification Number (FAIN):	FEMA-DR-4337-FL
Federal Award Date:	March 15, 2019
Subaward Period of Performance Start and End Date:	Upon Execution thru March 31, 2021
Amount of Federal Funds Obligated by this Agreement:	$83,287.50
Total Amount of Federal Funds Obligated to the Sub-Recipient by the pass-through entity to include this Agreement:	$83,287.50
Total Amount of the Federal Award committed to the Sub-Recipient by the pass-through entity	$83,287.50
Federal award project description (see FFATA):	Generator Project
Name of Federal awarding agency:	Federal Emergency Management Agency
Name of pass-through entity:	FL Division of Emergency Management
Contact information for the pass-through entity:	Renee.singh@em.myflorida.com
Catalog of Federal Domestic Assistance (CFDA) Number and Name:	97.039 Hazard Mitigation Grant Program
Whether the award is R&D:	N/A
Indirect cost rate for the Federal award:	N/A

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 Flagler County Board of Commissioners, (hereinafter referred to as the "Sub-Recipient").

For the purposes of this Agreement, the Division serves as the pass-through entity for a Federal award, and the Sub-Recipient serves as the recipient of a subaward.

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

A. The Sub-Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein;

B. The State of Florida received these grant funds from the Federal government, and the Division has the authority to subgrant these funds to the Sub-Recipient upon the terms and conditions outlined below; and,

C. The Division has statutory authority to disburse the funds under this Agreement.

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

(1) APPLICATION OF STATE LAW TO THIS AGREEMENT

2 C.F.R. §200.302 provides: “Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds.” Therefore, section 215.971, Florida Statutes, entitled “Agreements funded with federal or state assistance”, applies to this Agreement.

(2) LAWS, RULES, REGULATIONS AND POLICIES

a. The Sub-Recipient's performance under this Agreement is subject to 2 C.F.R. Part 200, entitled “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.”

b. As required by Section 215.971(1), Florida Statutes, this Agreement includes:

i. A provision specifying a scope of work that clearly establishes the tasks that the Sub-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 Sub-Recipient fails to perform the minimum level of service required by the agreement.

iv. A provision specifying that the Sub-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 Sub-Recipient is entitled under the terms and conditions of the agreement must be refunded to the Division.

c. In addition to the foregoing, the Sub-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.

(3) CONTACT

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

i. Monitor and document Sub-Recipient performance; and,

ii. Review and document all deliverables for which the Sub-Recipient requests payment.

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

Renee Singh, Project Manager
Division of Emergency Management
Bureau of Mitigation
2702 Directors Row
Orlando, Florida 32809-5631
Telephone: (850) 815-4578
Email: Renee.singh@em.myflorida.com

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

Heidi Petito, Director of General Services
Flagler County Board of Commissioners
1769 E Moody Boulevard, Building #5
Bunnell, Florida 32110
Telephone: (386) 313-4185
Email: hpetito@flaglercounty.org

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.

(4) TERMS AND CONDITIONS

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

(5) EXECUTION

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

(6) 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.

(7) SCOPE OF WORK.

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

(8) PERIOD OF AGREEMENT.

This Agreement shall begin upon execution by both parties and shall end on **March 31, 2021**, unless terminated earlier in accordance with the provisions of Paragraph (17) of this Agreement. Consistent with the definition of "period of performance" contained in 2 C.F.R. §200.77, the term "period of agreement" refers to the time during which the Sub-Recipient "may incur new obligations to carry out the work authorized under" this Agreement. In accordance with 2 C.F.R. §200.309, the Sub-Recipient may receive reimbursement under this Agreement only for "allowable costs incurred during the period of performance." In accordance with section 215.971(1)(d), Florida Statutes, the Sub-Recipient may expend funds authorized by this Agreement "only for allowable costs resulting from obligations incurred during" the period of agreement.

(9) FUNDING

a. This is a cost-reimbursement Agreement, subject to the availability of funds.

b. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an 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 reimburse the Sub-Recipient only for allowable costs incurred by the Sub-Recipient in the successful completion of each deliverable. The maximum reimbursement amount for each deliverable is outlined in Attachment A of this Agreement ("Budget and Scope of Work"). The maximum reimbursement amount for the entirety of this Agreement is **$83,287.50.**

d. As required by 2 C.F.R. §200.415(a), any request for payment under this Agreement must include a certification, signed by an official who is authorized to legally bind the Sub-Recipient, which 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)."

e. The Division will review any request for reimbursement by comparing the documentation provided by the Sub-Recipient against a performance measure, outlined in Attachment A, that 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.

f. The performance measure required by section 215.971(1)(b), Florida Statutes, remains consistent with the requirement for a "performance goal", which is defined in 2 C.F.R. §200.76 as "a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared." It also remains consistent with the requirement, contained in 2 C.F.R. §200.301, that the Division and the Sub-Recipient "relate financial data to performance accomplishments of the Federal award."

g. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for overtime expenses in accordance with 2 C.F.R. §200.430 ("Compensation—personal services") and 2 C.F.R. §200.431 ("Compensation—fringe benefits"). If the Sub-Recipient seeks reimbursement for overtime expenses for periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause (*see* 29 U.S.C. §207(e)(2)), then the Division will treat the expense as a fringe benefit. 2 C.F.R. §200.431(a) defines fringe benefits as "allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages." Fringe benefits are allowable under this Agreement as long as the benefits are reasonable and are required by law, Sub-Recipient-employee agreement, or an established policy of the Sub-Recipient. 2 C.F.R. §200.431(b) provides that the cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

i. They are provided under established written leave policies;

ii. The costs are equitably allocated to all related activities, including Federal awards; and,

iii. The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

h. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for travel expenses in accordance with 2 C.F.R. §200.474. As required by the Reference Guide for State Expenditures, reimbursement for travel must be in accordance with section 112.061, Florida Statutes, which includes submission of the claim on the approved state travel voucher. If the Sub-Recipient seeks reimbursement for travel costs that exceed the amounts stated in section 112.061(6)(b),

Florida Statutes ($6 for breakfast, $11 for lunch, and $19 for dinner), then the Sub-Recipient must provide documentation that:

i. The costs are reasonable and do not exceed charges normally allowed by the Sub-Recipient in its regular operations as a result of the Sub-Recipient's written travel policy; and,

ii. Participation of the individual in the travel is necessary to the Federal award.

i. 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 grant agreement period and produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the Sub-Recipient.

j. As defined by 2 C.F.R. §200.53, 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.

(10)<u>RECORDS</u>

a. As required by 2 C.F.R. §200.336, the Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the Division, or any of their authorized representatives, shall enjoy the right of access to any documents, papers, or other records of the Sub-Recipient which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Sub-Recipient's personnel for the purpose of interview and discussion related to such documents. Finally, the right of access is not limited to the required retention period but lasts as long as the records are retained.

b. As required by 2 C.F.R. §200.331(a)(5), 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 Sub-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 Sub-Recipient's personnel for the purpose of interview and discussion related to such documents.

c. As required by Florida Department of State's record retention requirements (Chapter 119, Florida Statutes) and by 2 C.F.R. §200.333, the Sub-Recipient shall retain sufficient records to show its compliance with the terms of this Agreement, as well as the compliance of all subcontractors or consultants paid from funds under this Agreement, for a period of <u>five</u> (5) fiscal years from the date of

completion of grant cycle or project. The following are the only exceptions to the five (5) year requirement:

i. If any litigation, claim, or audit is started before the expiration of the 5-year period, then the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

ii. When the Division or the Sub-Recipient is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

iii. Records for real property and equipment acquired with Federal funds must be retained for 5 years after final disposition.

iv. When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 5-year retention requirement is not applicable to the Sub-Recipient.

v. Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

vi. Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

d. In accordance with 2 C.F.R. §200.334, the Federal awarding agency must request transfer of certain records to its custody from the Division or the Sub-Recipient when it determines that the records possess long-term retention value.

e. In accordance with 2 C.F.R. §200.335, the Division must always provide or accept paper versions of Agreement information to and from the Sub-Recipient upon request. If paper copies are submitted, then the Division must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

f. As required by 2 C.F.R. §200.303, the Sub-Recipient shall take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or the Division designates as sensitive or the Sub-Recipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

g. 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) 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 Sub-Recipient based upon the funds provided under this Agreement, the meetings of the Sub-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.

h. Florida's Public Records Law provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. Unless specifically exempted from disclosure by the Legislature, all materials made or received by a governmental agency (or a private entity acting on behalf of such an agency) in conjunction with official business which are used to perpetuate, communicate, or formalize knowledge qualify as public records subject to public inspection. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the public record requirements. However, when a public entity delegates a public function to a private entity, the records generated by the private entity's performance of that duty become public records. Thus, the nature and scope of the services provided by a private entity determine whether that entity is acting on behalf of a public agency and is therefore subject to the requirements of Florida's Public Records Law.

i. The Sub-Recipient shall maintain all records for the Sub-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.

(11)<u>AUDITS</u>

a. The Sub-Recipient shall comply with the audit requirements contained in 2 C.F.R. Part 200, Subpart F.

b. In accounting for the receipt and expenditure of funds under this Agreement, the Sub-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)."

c. When conducting an audit of the Sub-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."

d. 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 Sub-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 days after the Division has notified the Sub-Recipient of such non-compliance.

e. The Sub-Recipient shall have all audits completed by an independent auditor, which is defined in section 215.97(2)(i), Florida Statutes, as "an independent certified public accountant licensed under chapter 473." The independent auditor shall state that the audit complied with the applicable provisions noted above. The audit must be received by the Division no later than nine months from the end of the Sub-Recipient's fiscal year.

f. The Sub-Recipient shall send copies of reporting packages for audits conducted in accordance with 2 C.F.R. Part 200, by or on behalf of the Sub-Recipient, to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

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

g. The Sub-Recipient shall send the Single Audit reporting package and Form SF-SAC to the Federal Audit Clearinghouse by submission online at:

http://harvester.census.gov/fac/collect/ddeindex.html

h. The Sub-Recipient shall send any management letter issued by the auditor to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

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

(12)REPORTS

a. Consistent with 2 C.F.R. §200.328, the Sub-Recipient shall provide the Division with quarterly reports and a close-out report. These reports shall include the current status and progress by the Sub-Recipient and all 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 15 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 60 days after termination of this Agreement or 60 days after completion of the activities contained in this Agreement, whichever first occurs.

d. If all required reports and copies are not sent to the Division or are not completed in a manner acceptable to the Division, then the Division may withhold further payments until they are completed or may take other action as stated in Paragraph (16) REMEDIES. "Acceptable to the Division" means that the work product was completed in accordance with the Budget and Scope of Work.

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

f. The Sub-Recipient shall provide additional reports and information identified in Attachment F.

(13)MONITORING.

a. The Sub-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, monitoring procedures may include, but not be limited to, on-site visits by Division staff, limited scope audits, and/or other procedures. The Sub-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 Sub-Recipient is appropriate, the Sub-Recipient agrees to comply with any additional instructions provided by the Division to the Sub-Recipient regarding such audit. The Sub-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 Sub-Recipient throughout the contract term to ensure timely completion of all tasks.

(14)LIABILITY

a. Unless Sub-Recipient is a State agency or subdivision, as defined in section 768.28(2), Florida Statutes, the Sub-Recipient is solely responsible to parties it deals with in carrying out the terms of this Agreement; as authorized by section 768.28(19), Florida Statutes, Sub-Recipient shall hold the Division harmless against all claims of whatever nature by third parties arising from the work performance under this Agreement. For purposes of this Agreement, Sub-Recipient agrees that it is not an employee or agent of the Division, but is an independent contractor.

b. As required by section 768.28(19), Florida Statutes, any Sub-Recipient which is a state agency or subdivision, as defined in section 768.28(2), 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 Sub-Recipient 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 any contract.

(15)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 terminate and the Division has the option to exercise any of its remedies set forth in Paragraph (16); however, the Division may make payments or partial payments after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment if:

a. Any warranty or representation made by the Sub-Recipient in this Agreement or any previous agreement with the Division is or becomes false or misleading in any respect, or if the Sub-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. Material adverse changes occur in the financial condition of the Sub-Recipient at any time during the term of this Agreement, and the Sub-Recipient fails to cure this adverse change within thirty days from the date written notice is sent by the Division;

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

d. The Sub-Recipient has failed to perform and complete on time any of its obligations under this Agreement.

(16)REMEDIES.

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

a. Terminate this Agreement, provided that the Sub-Recipient is given at least thirty 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 (3) 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 Sub-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 Sub-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 Sub-Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or

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

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

Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Sub-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 Sub-Recipient.

(17)TERMINATION.

a. The Division may terminate this Agreement for cause after thirty 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 Sub-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 Sub-Recipient with thirty calendar day's 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 the Agreement.

d. In the event that this Agreement is terminated, the Sub-Recipient will not incur new obligations for the terminated portion of the Agreement after the Sub-Recipient has received the

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

(18)PROCUREMENT

a. The Sub-Recipient shall ensure that any procurement involving funds authorized by the Agreement complies with all applicable federal and state laws and regulations, to include 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200 (entitled "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards").

b. As required by 2 C.F.R. §200.318(i), the Sub-Recipient shall "maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price."

c. As required by 2 C.F.R. §200.318(b), the Sub-Recipient shall "maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders." In order to demonstrate compliance with this requirement, the Sub-Recipient shall document, in its quarterly report to the Division, the progress of any and all subcontractors performing work under this Agreement.

d. Except for procurements by micro-purchases pursuant to 2 C.F.R. §200.320(a) or procurements by small purchase procedures pursuant to 2 C.F.R. §200.320(b), if the Sub-Recipient chooses to subcontract any of the work required under this Agreement, then the Sub-Recipient shall forward to the Division a copy of any solicitation (whether competitive or non-competitive) at least fifteen (15) days prior to the publication or communication of the solicitation. The Division shall review the solicitation and provide comments, if any, to the Sub-Recipient within three (3) business days. Consistent with 2 C.F.R. §200.324, the Division will review the solicitation for compliance with the procurement standards outlined in 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200. Consistent with 2 C.F.R. §200.318(k), the Division will not substitute its judgment for that of the Sub-Recipient. While the Sub-Recipient does not need the approval of the Division in order to publish a competitive solicitation, this review may allow the Division to identify deficiencies in the vendor requirements or in the commodity or service specifications. The Division's review and comments shall not constitute an approval of the solicitation. Regardless of the Division's review, the Sub-Recipient remains bound by all applicable laws, regulations, and agreement terms. If during its review the Division identifies any deficiencies, then the Division shall communicate those deficiencies to the Sub-Recipient as quickly as possible within the three (3) business day window outlined above. If the Sub-Recipient publishes a competitive solicitation after receiving comments from the Division that the solicitation is deficient, then the Division may:

i. Terminate this Agreement in accordance with the provisions outlined in paragraph (17) above; and,

ii. Refuse to reimburse the Sub-Recipient for any costs associated with that solicitation.

e. Except for procurements by micro-purchases pursuant to 2 C.F.R. §200.320(a) or procurements by small purchase procedures pursuant to 2 C.F.R. §200.320(b), if the Sub-Recipient chooses to subcontract any of the work required under this Agreement, then the Sub-Recipient shall forward to the Division a copy of any contemplated contract prior to contract execution. The Division shall review the unexecuted contract and provide comments, if any, to the Sub-Recipient within three (3) business days. Consistent with 2 C.F.R. §200.324, the Division will review the unexecuted contract for compliance with the procurement standards outlined in 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200. Consistent with 2 C.F.R. §200.318(k), the Division will not substitute its judgment for that of the Sub-Recipient. While the Sub-Recipient does not need the approval of the Division in order to execute a subcontract, this review may allow the Division to identify deficiencies in the terms and conditions of the subcontract as well as deficiencies in the procurement process that led to the subcontract. The Division's review and comments shall not constitute an approval of the subcontract. Regardless of the Division's review, the Sub-Recipient remains bound by all applicable laws, regulations, and agreement terms. If during its review the Division identifies any deficiencies, then the Division shall communicate those deficiencies to the Sub-Recipient as quickly as possible within the three (3) business day window outlined above. If the Sub-Recipient executes a subcontract after receiving a communication from the Division that the subcontract is non-compliant, then the Division may:

i. Terminate this Agreement in accordance with the provisions outlined in paragraph (17) above; and,

ii. Refuse to reimburse the Sub-Recipient for any costs associated with that subcontract.

f. The Sub-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 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.

g. As required by 2 C.F.R. §200.318(c)(1), the Sub-Recipient shall "maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts."

h. As required by 2 C.F.R. §200.319(a), the Sub-Recipient shall conduct any procurement under this agreement "in a manner providing full and open competition." Accordingly, the Sub-Recipient shall not:

i. Place unreasonable requirements on firms in order for them to qualify to do business;

ii. Require unnecessary experience or excessive bonding;

iii. Use noncompetitive pricing practices between firms or between affiliated companies;

iv. Execute noncompetitive contracts to consultants that are on retainer contracts;

v. Authorize, condone, or ignore organizational conflicts of interest;

vi. Specify only a brand name product without allowing vendors to offer an equivalent;

vii. Specify a brand name product instead of describing the performance, specifications, or other relevant requirements that pertain to the commodity or service solicited by the procurement;

viii. Engage in any arbitrary action during the procurement process; or,

ix. Allow a vendor to bid on a contract if that bidder was involved with developing or drafting the specifications, requirements, statement of work, invitation to bid, or request for proposals.

i. "[E]xcept in those cases where applicable Federal statutes expressly mandate or encourage" otherwise, the Sub-Recipient, as required by 2 C.F.R. §200.319(b), shall not use a geographic preference when procuring commodities or services under this Agreement.

j. The Sub-Recipient shall conduct any procurement involving invitations to bid (i.e. sealed bids) in accordance with 2 C.F.R. §200.320(c) as well as section 287.057(1)(a), Florida Statutes.

k. The Sub-Recipient shall conduct any procurement involving requests for proposals (i.e. competitive proposals) in accordance with 2 C.F.R. §200.320(d) as well as section 287.057(1)(b), Florida Statutes.

l. For each subcontract, the Sub-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. Additionally, the Sub-Recipient shall comply with the requirements of 2 C.F.R. §200.321 ("Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms").

(19)<u>ATTACHMENTS</u>

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

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

c. This Agreement has the following attachments:

i. Exhibit 1 - Funding Sources

ii. Attachment A – Budget and Scope of Work

iii. Attachment B – Program Statutes and Regulations

iv. Attachment C – Statement of Assurances

v. Attachment D – Request for Advance or Reimbursement

vi. Attachment E – Justification of Advance Payment

vii. Attachment F – Quarterly Report Form

viii. Attachment G – Warranties and Representations

ix. Attachment H – Certification Regarding Debarment

x. Attachment I – Federal Funding Accountability and Transparency Act

xi. Attachment J – Mandatory Contract Provisions

(20)PAYMENTS

a. Any advance payment under this Agreement is subject to 2 C.F.R. §200.305 and, as applicable, section 216.181(16), Florida Statutes. All advances are required to be held in an interest-bearing account. If an advance payment is requested, the budget data on which the request is based and a justification statement shall be included in this Agreement as Attachment E. Attachment E will specify the amount of advance payment needed and provide an explanation of the necessity for and proposed use of these funds. No advance shall be accepted for processing if a reimbursement has been paid prior to the submittal of a request for advanced payment. After the initial advance, if any, payment shall be made on a reimbursement basis as needed.

b. 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 Sub-Recipient's quarterly reporting as referenced in Paragraph (12) of this Agreement.

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 subparagraph (9)b. of this Agreement, all obligations on the part of the Division to make any further payment of funds shall terminate, and the Sub-Recipient shall submit its closeout report within thirty days of receiving notice from the Division.

(21)REPAYMENTS

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

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

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

(22)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 Sub-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 are incorporated by reference. The inaccuracy of the submissions or any material changes shall, at the option of the Division and with thirty days written notice to the Sub-Recipient, cause the termination of this Agreement and the release of the Division from all its obligations to the Sub-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. The Sub-Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and local government services, and telecommunications.

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

excess of $25,000.00 for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

f. Any Sub-Recipient which is not a local government or state agency, and which receives funds under this Agreement from the federal 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 proposal been convicted of or had a civil judgment rendered against them 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 (22) f. ii. of this certification; and,

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

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

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

i. The Division reserves the right to unilaterally cancel this Agreement if the Sub-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 Sub-Recipient created or received under this Agreement.

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

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

contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Division.

l. All unmanufactured and manufactured articles, materials and supplies which are acquired for public use under this Agreement must have been produced in the United States as required under 41 U.S.C. 10a, unless it would not be in the public interest or unreasonable in cost.

(23)LOBBYING PROHIBITION

a. 2 C.F.R. §200.450 prohibits reimbursement for costs associated with certain lobbying activities.

b. 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.”

c. 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.

d. The Sub-Recipient certifies, by its signature to this Agreement, that to the best of his or her knowledge and belief:

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

ii. 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 Sub-Recipient shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities."

iii. The Sub-Recipient shall require that this certification be included in the award documents for all subawards (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Sub-Recipients shall certify and disclose.

iv. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(24)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; AND, ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE SUB-RECIPIENT TO THE STATE OF FLORIDA.

a. If the Sub-Recipient has a pre-existing patent or copyright, the Sub-Recipient shall retain all rights and entitlements to that pre-existing patent or copyright unless the 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 Sub-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 Sub-Recipient shall notify the Division. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Sub-Recipient to the State of Florida.

c. Within thirty days of execution of this Agreement, the Sub-Recipient shall disclose all intellectual properties relating to the performance of this Agreement which he or she knows or should know could give rise to a patent or copyright. The Sub-Recipient shall retain all rights and entitlements to any pre-existing intellectual property which is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under Paragraph (24) b., have the right to all patents and copyrights which accrue during performance of the Agreement.

d. If the Sub-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 Sub-Recipient shall become the sole property of the Sub-Recipient. In the case of joint inventions, that is inventions made jointly by one or more employees of both parties hereto, each party shall have an equal, undivided interest in and to such joint inventions. The Division shall retain a perpetual, irrevocable, fully-paid, nonexclusive license, for its use and the use of its contractors of any resulting patented, copyrighted or trademarked work products, developed solely by the Sub-Recipient, under this Agreement, for Florida government purposes.

(25)LEGAL AUTHORIZATION.

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

(26)EQUAL OPPORTUNITY EMPLOYMENT

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

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

i. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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, 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.

ii. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

iii. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

iv. 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.

v. 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.

vi. 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.

vii. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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.

b. The Sub-Recipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

c. The Sub-Recipient agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

d. The Sub-Recipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the Sub-Recipient agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Sub-Recipient under the program with respect to which the failure or refund occurred until satisfactory

assurance of future compliance has been received from such Sub-Recipient; and refer the case to the Department of Justice for appropriate legal proceedings.

(27)COPELAND ANTI-KICKBACK ACT

The Sub-Recipient hereby agrees that, unless exempt under Federal law, it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, the following clause:

> i. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
>
> ii. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
>
> iii. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(28)CONTRACT WORK HOURS AND SAFETY STANDARDS

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

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

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds $150,000, then any such contract must include the following provision:

> Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

(30)SUSPENSION AND DEBARMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following provisions:

i. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

ii. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

iii. This certification is a material representation of fact relied upon by the Division. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Division, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

iv. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(31)BYRD ANTI-LOBBYING AMENDMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following clause:

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

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

a. If the Sub-Recipient, with the funds authorized by this Agreement, seeks to procure goods or services, then, in accordance with 2 C.F.R. §200.321, the Sub-Recipient shall take the following

affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible:

i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs i. through v. of this subparagraph.

b. The requirement outlined in subparagraph a. above, sometimes referred to as "socioeconomic contracting," does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms. Rather, the requirement only imposes an obligation to carry out and document the six affirmative steps identified above.

c. The "socioeconomic contracting" requirement outlines the affirmative steps that the Sub-Recipient must take; the requirements do not preclude the Sub-Recipient from undertaking additional steps to involve small and minority businesses and women's business enterprises.

d. The requirement to divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises, does not authorize the Sub-Recipient 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").

(33)ASSURANCES.

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

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

SUB-RECIPIENT: FLAGLER COUNTY BOARD OF COMMISSIONERS

By: _____

Name and Title: Jerry Cameron, County Administrator

Date: _____

STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT

By: _____

Name and Title: Jared Moskowitz, Director

Date: _____

EXHIBIT – 1

THE FOLLOWING FEDERAL RESOURCES ARE AWARDED TO THE SUB-RECIPIENT UNDER THIS AGREEMENT:

Federal Program
Federal agency: Federal Emergency Management Agency: Hazard Mitigation Grant
Catalog of Federal Domestic Assistance title and number: 97.039
Award amount: $83,287.50

THE FOLLOWING COMPLIANCE REQUIREMENTS APPLY TO THE FEDERAL RESOURCES AWARDED UNDER THIS AGREEMENT:

- 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 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
- Sections 1361(A) of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c, as amended by the National Flood Insurance Reform Act of 1994, Public Law 103-325 and the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264
- 31 CFR Part 205 Rules and Procedures for Funds Transfers

Federal Program:

1. Sub-Recipient is to use funding to perform the following eligible activities:
   - Other projects that reduce future disaster losses
2. Sub-Recipient is subject to all administrative and financial requirements as set forth in this Agreement, or will be in violation of the terms of the Agreement.

Attachment A

Budget and Scope of Work

STATEMENT OF PURPOSE:

The purpose of this Scope of Work is to provide protection to two well field locations in Flagler County, Florida, funded through the Hazard Mitigation Grant Program (HMGP) **DR-4337-94-R**, as approved by the Florida Division of Emergency Management (Division) and the Federal Emergency Management Agency (FEMA). The project is for the purchase and installation of an emergency generator system to reduce and/or mitigate the damage that might otherwise occur from severe weather or other hazards.

The Sub-Recipient, Flagler County Board of County Commissioners agrees to administer and complete the project per scope of work as submitted by the Sub-Recipient and subsequently approved by the Division and FEMA. The Sub-Recipient shall complete the work in accordance with all applicable Federal, State and Local Laws, Regulations, and Codes.

PROJECT OVERVIEW:

As a Hazard Mitigation Grant Program (HMGP) project, the Sub-Recipient, Flagler County Board of County Commissioners proposes to install generators at Eagle Lakes Well Field and Plantation Bay Utilities Well Field in Flagler County Florida.

The HMGP project shall provide protection to the facility and shall be accomplished by the installation of permanent generators within ten feet of the well field on a concrete pad. The generators shall ensure each well field is able to provide, at minimum, uninterrupted critical functions in the event of future power outages. A transfer switch shall allow for quick and easy transition of power supply to mitigate or eliminate any potential loss of service duration. The project shall help resolve any possible health concerns caused by the lack of potable water due to loss of power at the well fields.

The generator shall be protected against a 500-year flood event by implementing specific activities or by locating the generator outside the Special Flood Hazard Area (SFHA) and shall be protected against wind with a rated enclosure based on its location requirements. Activities shall be completed in strict compliance with Federal, State and Local Rules and Regulations.

Project Locations:

ID#	Station	Location	Coordinates
1)	Eagle Lakes Well Field	3410 Old Kings Road, South, Flagler Beach, FL 32110	29.437189, -81.159189
2)	Plantation Bay Utilities Well Field	1600 South Old Dixie Highway, Bunnell, FL 32110	29.396667, -81.188572

TASKS & DELIVERABLES:

A) Tasks:

1) The Sub-Recipient shall procure the services of a qualified and licensed Florida contractor and execute a contract with the selected bidder to complete the scope of work as approved by the Division and FEMA. The Sub-Recipient shall select the qualified, licensed Florida contractor in accordance with the Sub-Recipient's procurement policy as well as all Federal and State Laws and Regulations. All procurement activities shall contain sufficient source documentation and be in accordance with all applicable regulations.

   The Sub-Recipient shall be responsible for furnishing or contracting all labor, materials, equipment, tools, transportation and supervision and for performing all work per sealed engineering designs and construction plans presented to the Division by the Sub-Recipient and subsequently approved by the Division and FEMA.

The Sub-Recipient and contractor shall be responsible for maintaining a safe and secure worksite for the duration of the work. The contractor shall maintain all work staging areas in a neat and presentable condition.

The Sub-Recipient shall ensure that no contractors or subcontractors are debarred or suspended from participating in federally funded projects.

The selected contractor shall have a current and valid occupational license/business tax receipt issued for the type of services being performed.

The Sub-Recipient shall provide documentation demonstrating the results of the procurement process. This shall include a rationale for the method of procurement and selection of contract type, contractor selection and/or rejection and bid tabulation and listing, and the basis of contract price.

The Sub-Recipient shall provide an executed "Debarment, Suspension, Ineligibility, Voluntary Exclusion Form" for each contractor and/or subcontractor performing services under this agreement.

Executed contracts with contractors and/or subcontractors shall be provided to the Division by the Sub-Recipient within 10 days of execution.

The Sub-Recipient shall provide copies of professional licenses for contractors selected to perform services. The Sub-Recipient shall provide a copy of a current and valid occupational license or business tax receipt issued for the type of services to be performed by the selected contractor.

2) The Sub-Recipient shall monitor and manage the procurement and installation of all products in accordance with the HMGP application and associated documentation as presented to the Division by the Sub-Recipient and subsequently approved by the Division and FEMA. The Sub-Recipient shall ensure that all applicable State, Local and Federal Laws and Regulations are followed and documented, as appropriate.

The Sub-Recipient shall fully perform the approved project, as described in the application, in accordance with the approved scope of work indicated herein, the estimate of costs indicated herein, the allocation of funds indicated herein, and all applicable terms and conditions. The Sub-Recipient shall not deviate from the approved project terms and conditions.

Upon completion of the work, the Sub-Recipient shall schedule and participate in a final inspection of the completed project by the local municipal or county building department (official), or other approving official, as applicable. The official shall inspect and certify that all installation was in accordance with the manufacturer's specifications. Any deficiencies found during this final inspection shall be corrected by the Sub-Recipient prior to Sub-Recipient's submittal of the final inspection request to the Division.

Upon completion of Task 2, the Sub-Recipient shall submit the following documents with sufficient supporting documentation, and provide a summary of all contract scope of work and scope of work changes, if any. Additional documentation shall include:

a) Copy of permit(s), notice of commencement.

b) Local Building Official Inspection Report and Final Approval.

c) A copy of electrical designs, specifications and/or drawings elaborated to complete the scope.

d) Signed and Sealed copy of the As-built plans, as applicable.

e) Certified Letter of Completion, as applicable:

    1. Affirming that the project has been completed in conformance with the approved project drawings, specifications, and scope.

    2. Certifying Compliance with all applicable codes.

f) All Product Specifications / Data Sheet(s) (technical standards) satisfying protection requirements on all products utilized.

g) Proof of compliance with Project Conditions and Requirements contained herein.

3) During the course of this agreement, the Sub-Recipient shall submit requests for reimbursement. Adequate and complete source documentation shall be submitted to support all costs (federal share and local share) related to the project. In some cases, all project activities may not be fully complete prior to requesting reimbursement of costs incurred in completion of this scope of work; however, a partial reimbursement may be requested.

The Sub-Recipient shall submit an Affidavit signed by the Sub-Recipient's project personnel with each reimbursement request attesting to the completion of the work, that disbursements or payments were made in accordance with all agreement and regulatory conditions, and that reimbursement is due and has not been previously requested.

The Sub-Recipient shall maintain accurate time records. The Sub-Recipient shall ensure invoices are accurate and any contracted services were rendered within the terms and timelines of this agreement. All supporting documentation shall agree with the requested billing period. All costs submitted for reimbursement shall contain adequate source documentation which may include but not be limited to: cancelled checks, bank statements, Electronic Funds Transfer, paid bills and invoices, payrolls, time and attendance records, contract and subcontract award documents.

Construction Expense: The Sub-Recipient shall pre-audit bills, invoices, and/or charges submitted by the contractors and subcontractors and pay the contractors and subcontractors for approved bills, invoices, and/or charges. Sub-Recipient shall ensure that all contractor/subcontractor bills, invoices, and/or charges are legitimate and clearly identify the activities being performed and associated costs.

Project Management Expenses: The Sub-Recipient shall pre-audit source documentation such as payroll records, project time sheets, attendance logs, etc. Documentation shall be detailed information describing tasks performed, hours devoted to each task, and the hourly rate charged for each hour including enough information to calculate the hourly rates based on payroll records. Employee benefits shall be clearly shown.

The Division shall review all submitted requests for reimbursement for basic accuracy of information. Further, the Division shall ensure that no unauthorized work was completed prior to the approved project start date by verifying vendor and contractor invoices. The Division shall verify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measures are in compliance with the approved scope of work prior to processing any requests for reimbursement.

Review and approval of any third party in-kind services, if applicable, shall be conducted by the Division in coordination with the Sub-Recipient. Quarterly Reports shall be submitted by the Sub-Recipient and received by the Division at the times provided in this agreement prior to the processing of any reimbursement.

The Sub-Recipient shall submit to the Division requests for reimbursement of actual construction and managerial costs related to the project as identified in the project application, and plans. The requests for reimbursement shall include:

a) Contractor, subcontractor, and/or vendor invoices which clearly display dates of services performed, description of services performed, location of services performed, cost of services performed, name of service provider and any other pertinent information;

b) Proof of payment from the Sub-Recipient to the contractor, subcontractor, and/or vendor for invoiced services;

c) Clear identification of amount of costs being requested for reimbursement as well as costs being applied against the local match amount.

The Sub-Recipient's final request for reimbursement shall include the final construction project cost. Supporting documentation shall show that all contractors and subcontractors have been paid.

B) Deliverables:

Mitigation Activities consist of installing generators at two well fields within ten feet of the well field on new concrete pads. The project sites are Eagle Lakes Well Field, 3410 Old Kings Road South, Flagler Beach, FL 32110 and Plantation Bay Utilities Well Field at 1600 South Old Dixie Highway, Bunnell, FL 32110.

The generator shall be protected against a 500-year flood event by implementing specific activities or by locating the generator outside the SFHA and shall be protected against wind with a rated enclosure based on its location requirements. Activities shall be completed in strict compliance with Federal, State and Local Rules and Regulations.

Provided the Sub-Recipient performs in accordance with the Scope of Work outlined in this Agreement, the Division shall reimburse the Sub-Recipient based on the percentage of overall project completion.

PROJECT CONDITIONS AND REQUIREMENTS:

C) Engineering:

1) The Sub-Recipient shall submit to the Division an official letter stating that the project is 100% complete and ready for the Division's Final Inspection of the project.
2) The Sub-Recipient shall provide a copy of the Notice of Commencement, and any local official Inspection Report and/or Final Approval, as applicable.
3) The Sub-Recipient shall submit a final copy of the completed project's As-built drawings and all necessary supporting documentation, and provide a summary of all contract scope of work changes, as applicable.
4) The Sub-Recipient shall submit a final copy of any electrical designs, specifications and/or drawings elaborated to complete the job.
5) The Sub-Recipient shall submit a certified letter of completion from Engineer of Record, as applicable. The Sub-Recipient's Engineer of Record shall provide a formal certificate or letter affirming that the project has been completed in conformance with the approved project drawings, specifications, scope, and applicable codes.
6) The Sub-Recipient shall submit all Product Specifications / Data Sheet(s) (technical standards) satisfying protection requirements on all products utilized.
7) All installations shall be done in strict compliance with the Florida Building Code or Miami Dade Specifications. All materials shall be certified to exceed the wind and impact standards of the current local codes.
8) The Sub-Recipient shall follow all applicable State, Local and Federal Laws, Regulations and requirements, and obtain (before starting project work) and comply with all required permits and approvals. Failure to obtain all appropriate Federal, State, and Local permits and clearances may jeopardize federal funding.

D) Environmental:

1) The Sub-Recipient shall follow all applicable state, local and federal laws, regulations and requirements, and obtain (before starting project work) and comply with all required permits and approvals. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding. If project is delayed for a year or more after the date of the categorical exclusion (CATEX), then coordination with and project review by regulatory agencies must be redone.
2) Any change, addition or supplement to the approved mitigation measure or scope of work that alters the project (including other work not funded by FEMA, but done substantially at the same time) shall

require resubmission to the Division and FEMA for revaluation of compliance with the National Environmental Protection Act (NEPA) and Section 106 of the National Historic Preservation Act (NHPA) prior to initiation of any work. Non-compliance with these requirements may jeopardize FEMA's ability to fund this project. A change in the scope of work shall be approved by the Division and FEMA in advance regardless of the budget implications.

3) If any ground disturbance activities occur during construction, the Sub-Recipient shall monitor ground disturbance during construction, and if any potential archeological resources are discovered, shall immediately cease construction in that area and notify the Division and FEMA.

4) Construction vehicles and equipment used for this project shall be maintained in good working order to minimize pollutant emissions.

E) <u>Programmatic:</u>

1) The Sub-Recipient must notify the Division as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower costs or earlier completion.

2) The Division and FEMA shall approve a change in the scope of work in advance, regardless of the budget implementations.

3) The Sub-Recipient must "obtain prior written approval for any budget revision which would result in a need for additional funds" [44 CFR 13(c)], from the Division and FEMA.

4) Any extension of the Period of Performance shall be submitted to FEMA 60 days prior to the expiration date. Therefore, any request for a Period of Performance Extension shall be in writing and submitted, along with substantiation of new expiration date and a new schedule of work, to the Division a minimum of seventy (70) days prior to the expiration date, for Division processing to FEMA.

5) The Sub-Recipient must avoid duplication of benefits between the HMGP and any other form of assistance, as required by Section 312 of the Stafford Act, and further clarification in 44 CFR 206.191.

6) A copy of the executed subcontract agreement must be forwarded to the Division within 10 days of execution.

7) Project approval is with the condition that the tasks, deliverables, and conditions be accomplished and submitted 30 days prior to the Period of Performance date, for review and approval by the Division, for submittal to FEMA for Closeout.

This is FEMA project number **4337-94-R.** It is funded under HMGP, FEMA-4337-DR-FL and must adhere to all program guidelines established for the HMGP in accordance with the PAS Operational Agreement for Disaster 4337.

FEMA awarded this project March 15, 2019; this Agreement shall begin upon execution by both parties, and the Period of Performance for this project shall end on **March 31, 2021**.

F) <u>FINANCIAL CONSEQUENCES:</u>

If the Sub-Recipient fails to comply with any term of the award, 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 Sub-Recipient;

2) Disallow all or part of the cost of the activity or action not in compliance;

3) Wholly or partly suspend or terminate the current award for the Sub-Recipient's program;

4) Withhold further awards for the program; or

5) Take other remedies that may be legally available.

SCHEDULE OF WORK

State and Local Contracting:	3	Months
Design / Permitting:	3	Months
Bidding and Contracting:	3	Months
Construction / Installation:	12	Months
State and Local Inspection:	2	Months
Closeout:	1	Month
Total Period of Performance:	**24**	**Months**

BUDGET

Line Item Budget*

	Project Cost	Federal Share	Non-Federal Share
Materials:	$105,850.00	$79,387.50	$26,462.50
Labor:	$4,000.00	$3,000.00	$1,000.00
Fees:	$1,200.00	$900.00	$300.00
Initial Agreement Amount:	**$111,050.00**	**$83,287.50**	**$27,762.50**
***Contingency Funds:	$0.00	$0.00	$0.00
Project Total:	**$111,050.00**	**$83,287.50**	**$27,762.50**

**Any line item amount in this Budget may be increased or decreased 10% or less without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.*

****** This project has an estimated $0.00 in contingency funds.*** *Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.*

Project Management costs are included for this project in the amount of $0.00

Funding Summary

Federal Share:	$**83,287.50**	(75%)
Non-Federal Share:	$**27,762.50**	(25%)
Total Project Cost:	**$111,050.00**	**(100%)**

Attachment B

Program Statutes and Regulations

The parties to this Agreement and the Hazard Mitigation Grant Program (HMGP) are generally governed by the following statutes and regulations:

(1) The Robert T. Stafford Disaster Relief and Emergency Assistance Act;

(2) 44 CFR Parts 7, 9, 10, 13, 14, 17, 18, 25, 206, 220, and 221, and any other applicable FEMA policy memoranda and guidance documents;

(3) State of Florida Administrative Plan for the Hazard Mitigation Grant Program;

(4) Hazard Mitigation Assistance Guidance- February 27, 2015 Update; and

(5) All applicable laws and regulations delineated in Attachment C of this Agreement.

In addition to the above statutes and regulations, the Sub-recipient must comply with the following:

The Sub-recipient shall fully perform the approved hazard mitigation project, as described in the Application and Attachment A (Budget and Scope of Work) attached to this Agreement, in accordance with approved scope of work indicated therein, the estimate of costs indicated therein, the allocation of funds indicated therein, and the terms and conditions of this Agreement. The Sub-recipient shall not deviate from the approved project and the terms and conditions of this Agreement. The Sub-recipient shall comply with any and all applicable codes and standards in performing work funded under this Agreement, and shall provide any appropriate maintenance and security for the project.

Any development permit issued by, or development activity undertaken by, the Sub-recipient and any land use permitted by or engaged in by the Sub-recipient, shall be consistent with the local comprehensive plan and land development regulations prepared and adopted pursuant to Chapter 163, Part II, Florida Statutes. Funds shall be expended for, and development activities and land uses authorized for, only those uses which are permitted under the comprehensive plan and land development regulations. The Sub-recipient shall be responsible for ensuring that any development permit issued and any development activity or land use undertaken is, where applicable, also authorized by the Water Management District, the Florida Department of Environmental Protection, the Florida Department of Health, the Florida Game and Fish Commission, and any Federal, State, or local environmental or land use permitting authority, where required. The Sub-recipient agrees that any repair or construction shall be in accordance with applicable standards of safety, decency, and sanitation, and in conformity with applicable codes, specifications and standards.

The Sub-recipient will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms with the approved plans and specifications and will furnish progress reports and such other information to HMGP as may be required.

If the hazard mitigation project described in Attachment A includes an acquisition or relocation project, then the Sub-recipient shall ensure that, as a condition of funding under this Agreement, the owner of the affected real property shall record in the public records of the county where it is located the following covenants and restrictions, which shall run with and apply to any property acquired, accepted, or from which a structure will be removed pursuant to the project.

(1) The property will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;

(2) No new structure will be erected on property other than:
   a. a public facility that is open on all sides and functionally related to a designed open space;
   b. a restroom; or

(3) A structure that the Director of the Federal Emergency Management Agency approves in writing before the commencement of the construction of the structure;

(4) After the date of the acquisition or relocation no application for disaster assistance for any purpose will be made to any Federal entity and no disaster assistance will be provided for the property by any Federal source; and

(5) If any of these covenants and restrictions is violated by the owner or by some third party with the knowledge of the owner, fee simple title to the Property described herein shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida without further notice to the owner, its successors and assigns, and the owner, its successors and assigns shall forfeit all right, title and interest in and to the property.

HMGP Contract Manager will evaluate requests for cost overruns and submit to the regional Director written determination of cost overrun eligibility. Cost overruns shall meet Federal regulations set forth in 44 CFR 206.438(b).

The National Environmental Policy Act (NEPA) stipulates that additions or amendments to a HMGP Sub-Recipient Scope of Work (SOW) shall be reviewed by all State and Federal agencies participating in the NEPA process.

As a reminder, the Sub-recipient must obtain prior approval from the State, before implementing changes to the approved project Scope of Work (SOW). Per the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments:

(1) For Construction projects, the grantee must “obtain prior written approval for any budget revision which result in a need for additional funds” (44 CFR 13(c));

(2) A change in the Scope of Work must be approved by FEMA in advance regardless of the budget implications; and

(3) The Sub-recipient must notify the State as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower cost or earlier completion. Any extensions of the period of performance must be submitted to FEMA sixty days prior to the project expiration date.

The Sub-recipient assures that it will comply with the following statutes and regulations to the extent applicable:

(1) 53 Federal Register 8034
(2) Federal Acquisition Regulations 31.2
(3) Section 1352, Title 31, US Code
(4) Chapter 473, Florida Statutes
(5) Chapter 215, Florida Statutes
(6) Section 768.28, Florida Statutes
(7) Chapter 119, Florida Statutes
(8) Section 216.181(6), Florida Statutes
(9) Cash Management Improvement Act of 1990
(10) American with Disabilities Act
(11) Section 112.061, Florida Statutes
(12) Immigration and Nationality Act
(13) Section 286.011, Florida Statutes

(14) 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
(15) Uniform Relocation Assistance and Real Property Acquisitions Act of 1970
(16) Title I of the Omnibus Crime Control and Safe Streets Act of 1968
(17) Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act
(18) Omnibus Crime Control and Safe Streets Act of 1968, as amended
(19) Victims of Crime Act (as appropriate)
(20) Section 504 of the Rehabilitation Act of 1973, as amended
(21) Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990)
(22) Department of Justice regulations on disability discrimination, 28 CFR, Part 35 and Part 39
(23) 42 U.S.C. 5154a

Attachment C

Statement of Assurances

To the extent the following provisions apply to this Agreement, the Sub-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 Sub-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 Sub-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 be performed in connection with the program assisted under this Agreement. The Sub-recipient shall incorporate, in all contracts or subcontracts a provision prohibiting any interest pursuant to the purpose stated above;

(d) All Sub-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 Sub-recipient for eligible contract work completed prior to the date the notice of suspension of funding was received by the Sub-recipient. Any cost incurred after a notice of suspension or termination is received by the Sub-recipient may not be funded with funds provided under this Agreement unless previously approved in writing by the Division. All Sub-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 work-week.

(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 Sub-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 Sub-recipient, this assurance shall obligate the Sub-recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is

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

(2) Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualifies handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973;

(3) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff/termination, rates of pay or other forms of compensation; and election for training and apprenticeship;

(g) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties pursuant to Section 112.313 and Section 112.3135, Florida Statutes;

(h) It will comply with the Anti-Kickback Act of 1986, 41 U.S.C. Section 51 which outlaws and prescribes penalties for “kickbacks” of wages in federally financed or assisted construction activities;

(i) It will comply with the provisions of 18 U.S.C. 594, 598, 600-605 (further known as the Hatch Act) which limits the political activities of employees;

(j) It will comply with the flood insurance purchase and other requirements of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4002-4107, including requirements regarding the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area having special flood hazards. The phrase “Federal financial assistance” includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance;

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

(k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Agreement to comply with the “Uniform Federal Accessibility Standards,” (AS) which is Appendix A to 41 CFR Section 101-19.6 for general type buildings and Appendix A to 24 CFR, Part 40 for residential structures. The Sub-recipient will be responsible for conducting inspections to ensure compliance with these specifications by the contractor;

(l) 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:

(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(f), and implementing regulations in 36 CFR, Part 800.

(4) When any of the Sub-recipient's projects funded under this Agreement may affect a historic property, as defined in 36 CFR, Part 800 (2)(e), the Federal Emergency Management Agency (FEMA) may require the Sub-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 Sub-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 Sub-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 Sub-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 Sub-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 Sub-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 15 calendar days of receipt of the treatment plan, FEMA may direct the Sub-recipient to implement the treatment plan. If either the Council or the SHPO object, Sub-recipient shall not proceed with the project until the objection is resolved.

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

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

(7) The Sub-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 NHPA, the Sub-recipient intentionally and significantly adversely affects a historic property, or having the legal power to prevent it, allowed such significant adverse effect to occur.

(m) It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;

(n) It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (42 U.S.C. 4521-45-94) relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(o) It will comply with 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;

(p) It will comply with Lead-Based Paint Poison Prevention Act (42 U.S.C. 4821 et seq.) which prohibits the use of lead based paint in construction of rehabilitation or residential structures;

(q) It will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the State Energy Conservation Plan adopted pursuant thereto;

(r) It will comply with the Laboratory Animal Welfare Act of 1966, (7 U.S.C. 2131-2159), pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by an award of assistance under this Agreement;

(s) It will comply with Title VIII of the Civil Rights Act of 1968, (42 U.S.C 2000c and 42 U.S.C. 3601-3619), as amended, relating to non-discrimination in the sale, rental, or financing of housing, and Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin;

(t) It will comply with the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7642;

(u) It will comply with the Clean Water Act of 1977, as amended, 42 U.S.C. 7419-7626

(v) It will comply with the endangered Species Act of 1973, 16 U.S.C. 1531-1544;

(w) It will comply with the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4728-4763;

(x) It will assist the awarding agency in assuring compliance with the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 270;

(y) It will comply with environmental standards which may be prescribed pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347;

(z) It will assist the awarding agency in assuring compliance with the Preservation of Archeological and Historical Preservation Act of 1966, 16 U.S.C. 469a, et seq.;

(aa) It will comply with the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794, regarding non-discrimination;

(bb) It will comply with the environmental standards which may be prescribed pursuant to the Safe Drinking Water Act of 1974, 42 U.S.C. 300f-300j, regarding the protection of underground water sources;

(cc) It will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Property Acquisition Policies Act of 1970, 42 U.S.C. 4621-4638, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs;

(dd) It will comply with the Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287, related to protecting components or potential components of the national wild and scenic rivers system;

(ee) It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice);

(ff) It will comply with the Coastal Barrier Resources Act of 1977, 16 U.S.C. 3510;

(gg) It will assure project consistency with the approved State program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451-1464; and

(hh) It will comply with the Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661-666.

(ii) With respect to demolition activities, it will:

(1) Create and make available documentation sufficient to demonstrate that the Sub-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 Sub-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 Sub-recipient to remove asbestos and lead from demolished or otherwise applicable structures.

(6) Leave the demolished site clean, level and free of debris.

(7) Notify the Division promptly of any unusual existing condition which hampers the contractor's work.

(8) Obtain all required permits.

(9) Provide addresses and marked maps for each site where water wells and septic tanks are to be closed along with the number of wells and septic tanks located on each site. Provide documentation of closures.

(10) Comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

(11) Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act (42 U.S.C. 1857h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR, Part 15 and 61). This clause shall be added to any subcontracts.

(12) Provide documentation of public notices for demolition activities.

Attachment D

DIVISION OF EMERGENCY MANAGEMENT

REQUEST FOR ADVANCE OR REIMBURSEMENT OF HAZARD MITIGATION ASSISTANCE PROGRAM FUNDS

SUB-RECIPIENT: FLAGLER COUNTY BOARD OF COMMISSIONERS

REMIT ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PROJECT TYPE: Generator Project PROJECT #: 4337-94-R

PROGRAM: Hazard Mitigation Grant Program CONTRACT #: H0180

APPROVED BUDGET: _____ FEDERAL SHARE: _____ MATCH: _____

ADVANCED RECEIVED: _____ N/A ____ AMOUNT: _____ SETTLED? _____

Invoice Period: _____ To _____ Payment #: _____

Eligible Amount 100% (Current Request)	Obligated Federal Amount __%	Obligated Non-Federal __%	**Division Use Only**	
			Approved	Comments

TOTAL CURRENT REQUEST: $ _____

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.

SUB-RECIPIENT SIGNATURE: _____

NAME / TITLE: _____ DATE: _____

TO BE COMPLETED BY THE DIVISION

APPROVED PROJECT TOTAL $ _____

ADMINISTRATIVE COST $ _____

APPROVED FOR PAYMENT $ _____

_____
GOVERNOR'S AUTHORIZED REPRESENTATIVE

_____
DATE

SUMMARY OF DOCUMENTATION IN SUPPORT OF AMOUNT CLAIMED FOR ELIGIBLE DISASTER WORK UNDER THE HAZARD MTIGATION ASSISTANCE PROGRAM

SUB-RECIPIENT:	FLAGLER COUNTY BOARD OF COMMISSIONERS	PAYMENT #:	
PROJECT TYPE:	Generator Project	PROJECT #:	4337-94-R
PROGRAM:	Hazard Mitigation Grant Program	CONTRACT #:	H0180

	REF NO[2]	DATE[3]	DOCUMENTATION [4]	*(Check) AMOUNT*	ELIGIBLE COSTS (100%)
1					
2					
3					
4					
5					
6					
7					
8					
9					
This payment represents			***% completion of the project.***	***TOTAL***	

[2] Recipient's internal reference number (e.g., Invoice, Receipt, Warrant, Voucher, Claim Check, or Schedule #)
[3] Date of delivery of articles, completion of work or performance services. (per document)
[4] List Documentation (Recipient's payroll, material out of recipient's stock, recipient owned equipment and name of vendor or contractor) by category (Materials, Labor, Fees) and line item in the approved project line item budget. Provide a brief description of the articles or services. List service dates per each invoice.

Attachment E
JUSTIFICATION OF ADVANCE PAYMENT

SUB-RECIPIENT: __FLAGLER COUNTY BOARD OF COMMISSIONERS_____

If you are requesting an advance, indicate same by checking the box below.

[ ] **ADVANCE REQUESTED**

Advance payment of $ _____ is requested. Balance of payments will be made on a reimbursement basis. These funds are needed to pay staff, award benefits to clients, duplicate forms and purchase start-up supplies and equipment. We would not be able to operate the program without this advance.

If you are requesting an advance, complete the following chart and line item justification below. PLEASE NOTE: Calculate your estimated expenses at 100% of your expected needs for 90 days. Submit Attachment D with the cost share breakdown along with Attachment E and all supporting documentation.

ESTIMATED EXPENSES

BUDGET CATEGORY/LINE ITEMS (list applicable line items)	**20___-20___ Anticipated Expenditures for First Three Months of Contract**
For example **ADMINISTRATIVE COSTS** **(Include Secondary Administration.)**	
For example **PROGRAM EXPENSES**	
TOTAL EXPENSES	

LINE ITEM JUSTIFICATION **(For each line item, provide a detailed justification explaining the need for the cash advance. The justification must include supporting documentation that clearly shows the advance will be expended within the first ninety (90) days of the contract term. Support documentation should include quotes for purchases, delivery timelines, salary and expense projections, etc. to provide the Division reasonable and necessary support that the advance will be expended within the first ninety (90) days of the contract term. Any advance funds not expended within the first ninety (90) days of the contract term as evidenced by copies of invoices and cancelled checks as required by the Budget and Scope of work showing 100% of expenditures for the 90 day period shall be returned to the Division Cashier, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399, within thirty (30) days of receipt, along with any interest earned on the advance.**

Attachment F

DIVISION OF EMERGENCY MANAGEMENT
HAZARD MITIGATION GRANT PROGRAM
QUARTERLY REPORT FORM

Instructions: *Complete and submit this form to the appropriate Project Manager within 15 days of each quarter's end date.*

SUB-RECIPIENT: FLAGLER COUNTY BOARD OF COMMISSIONERS **PROJECT #:** 4337-94-R
PROJECT TYPE: Generator Project **CONTRACT #:** H0180
PROGRAM: Hazard Mitigation Grant Program **QUARTER ENDING:** _____

Advance Payment Information:

Advance Received ☐ N/A ☐ Amount: $_____ Advance Settled? Yes ☐ No ☐

Provide reimbursement **Projections** for this project (*projections may change*):

Jul-Sep 20__ $_____ **Oct-Dec 20**__ $_____ **Jan-Mar 20**__ $_____ **Apr-Jun 20**__ $_____

Target Dates:

Contract Initiation Date: _____ Contract Expiration Date: _____

Estimated Project Completion Date: _____

Project Proceeding on **Schedule**? ☐ Yes ☐ No *(If No, please describe under **Issues** below)*

Percentage of Work Completed (*may be confirmed by state inspectors*): _____%

Describe **Milestones** achieved during this quarter:

Provide a **Schedule** for the remainder of work to project completion: *(Milestones from Contract with estimated dates)*

Milestone	**Date**

Describe **Issues** or circumstances affecting completion date, milestones, scope of work, and/or cost:

Cost Status: ☐ Cost Unchanged ☐ Under Budget ☐ Over Budget

Additional **Comments**/Elaboration:

NOTE: Division of Emergency Management (DEM) staff may perform interim inspections and/or audits at any time. Events may occur between quarterly reports, which have significant impact upon your project(s), such as anticipated overruns, changes in scope of work, etc. Please contact the Division as soon as these conditions become known, otherwise you may be found non-compliant with your sub grant award.

Person Completing Form: Phone:

~ To be completed by Division staff ~

Date Reviewed: _____ *Reviewer:* _____
Actions:

Attachment G

Warranties and Representations

Financial Management

The Sub-Recipient's financial management system must comply with 2 C.F.R. §200.302.

Procurements

Any procurement undertaken with funds authorized by this Agreement must comply with the requirements of 2 C.F.R. §200, Part D—Post Federal Award Requirements—Procurement Standards (2 C.F.R. §§200.317 through 200.326).

Business Hours

The Sub-Recipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site, from: **8:00 AM - 5:00 PM, Monday Thru Friday, as applicable.**

Licensing and Permitting

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

Attachment H

Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion

Subcontractor Covered Transactions

(1) The prospective subcontractor, _____, of the Sub-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 Sub-Recipient's subcontractor is unable to certify to the above statement, the prospective subcontractor shall attach an explanation to this form.

SUBCONTRACTOR

_____

By: _____
Signature

_____
Name and Title

_____
Street Address

_____
City, State, Zip

_____
Date

Flagler County Board of Commissioners
Sub-Recipient's Name

H0180
DEM Contract Number

4337-94-R
FEMA Project Number

Attachment I

Federal Funding Accountability and Transparency Act

Instructions and Worksheet

PURPOSE: The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent of this legislation is to empower every American with the ability to hold the government accountable for each spending decision. The FFATA legislation requires information on federal awards (federal assistance and expenditures) be made available to the public via a single, searchable website, which is http://www.usaspending.gov/.

The FFATA Sub-award Reporting System (FSRS) is the reporting tool the Florida Division of Emergency Management ("FDEM" or "Division") must use to capture and report sub-award and executive compensation data regarding first-tier sub-awards that obligate $25,000 or more in Federal funds (excluding Recovery funds as defined in section 1512(a) (2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5).

Note: This "Instructions and Worksheet" is meant to explain the requirements of the FFATA and give clarity to the FFATA Form distributed to sub-awardees for completion. All pertinent information below should be filled out, signed, and returned to the project manager.

ORGANIZATION AND PROJECT INFORMATION

The following information must be provided to the FDEM prior to the FDEM's issuance of a sub-award (Agreement) that obligates $25,000 or more in federal funds as described above. Please provide the following information and return the signed form to the Division as requested.

PROJECT #: 4337-94-R

FUNDING AGENCY: Federal Emergency Management Agency

AWARD AMOUNT: $83,287.50

OBLIGATION/ACTION DATE: March 15, 2019

SUBAWARD DATE (if applicable): _____

DUNS#: 808206494

DUNS# +4: _____

*If your company or organization does not have a DUNS number, you will need to obtain one from Dun & Bradstreet at 866-705-5711 or use the web form (http://fedgov.dnb.com/webform). The process to request a DUNS number takes about ten minutes and is free of charge.

BUSINESS NAME: _____

DBA NAME (IF APPLICABLE): _____

PRINCIPAL PLACE OF BUSINESS ADDRESS: _____

ADDRESS LINE 1: _____

ADDRESS LINE 2: _____

ADDRESS LINE 3: _____

CITY _____ STATE _____ ZIP CODE+4** _____

PARENT COMPANY DUNS# (if applicable): _____

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA#): 97.039

DESCRIPTION OF PROJECT (Up to 4000 Characters)

As a Hazard Mitigation Grant Program (HMGP) project, the Sub-Recipient, Flagler County Board of County Commissioners proposes to install generators at two well fields located at Eagle Lakes well field and Plantation Bay Utilities well field in Flagler County Florida.

The HMGP project shall provide protection to the facility and shall be accomplished by the installation of permanent generators within ten feet of the well field on a concrete pad. The generators shall ensure each Well field is able to provide, at minimum, uninterrupted critical functions in the event of future power outages. A transfer switch shall allow for quick and easy transition of power supply to mitigate or eliminate any potential loss service duration. The project shall help resolve any possible health concerns caused by the lack of potable water due to loss of power at the well fields.

The project shall provide protection to flood against a 500-year event and shall be protected against wind with a rated enclosure based on its location. Activities shall be completed in strict compliance with Federal, State and Local Rules and regulations.

The generator shall be protected against a 500-year flood event by implementing specific activities or by locating the generator outside the Special Flood Hazard Area (SFHA) and shall be protected against wind with a rated enclosure based on its location requirements. Activities shall be completed in strict compliance with Federal, State and Local Rules and Regulations.

Project Locations:

ID#	Station	Location	Coordinates
1)	Eagle Lakes Well Field	3410 Old Kings Road, South, Flagler Beach, FL 32110	29.437189, -81.159189
2)	Plantation Bay Utilities well field	1600 South old Dixie highway, Bunnell, FL 32110	29.396667, -81.188572

PRINCIPAL PLACE OF PROJECT PERFORMANCE (IF DIFFERENT THAN PRINCIPAL PLACE OF BUSINESS): _____

ADDRESS LINE 1: _____

ADDRESS LINE 2: _____

ADDRESS LINE 3: _____

CITY _____ STATE _____ ZIP CODE+4** _____

CONGRESSIONAL DISTRICT FOR PRINCIPAL PLACE OF PROJECT PERFORMANCE:

**Providing the Zip+4 ensures that the correct Congressional District is reported.

EXECUTIVE COMPENSATION INFORMATION:

1. In your business or organization's previous fiscal year, did your business or organization (including parent organization, all branches, and all affiliates worldwide) receive (a) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act, as defined at 2 CFR 170.320; , (b) $25,000,000 or more in annual gross revenues from U.S. Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act?

   Yes ☐ No ☒

If the answer to Question 1 is "Yes," continue to Question 2. If the answer to Question 1 is "No", move to the signature block below to complete the certification and submittal process.

2. Does the public have access to information about the compensation of the executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) Section 6104 of the Internal Revenue Code of 1986?

   Yes ☐ No ☐

If the answer to Question 2 is "Yes," move to the signature block below to complete the certification and submittal process. [Note: Securities Exchange Commission information should be accessible at http//www.sec.gov/answers/execomp.htm. Requests for Internal Revenue Service (IRS) information should be directed to the local IRS for further assistance.]

If the answer to Question 2 is "No" FFATA reporting is required. Provide the information required in the "TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR" appearing below to report the "Total Compensation" for the five (5) most highly compensated "Executives", in rank order, in your organization. For purposes of this request, the following terms apply as defined in 2 CFR Ch. 1 Part 170 Appendix A:

"Executive" is defined as "officers, managing partners, or other employees in management positions".

"Total Compensation" is defined as the cash and noncash dollar value earned by the executive during the most recently completed fiscal year and includes the following:

i. Salary and bonus.

ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

v. Above-market earnings on deferred compensation which is not tax-qualified.

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR

(Date of Fiscal Year Completion N/A)

Rank (Highest to Lowest)	**Name (Last, First, MI)**	**Title**	**Total Compensation for Most Recently Completed Fiscal Year**
1	N/A		
2			
3			
4			
5			

THE UNDERSIGNED CERTIFIES THAT ON THE DATE WRITTEN BELOW, THE INFORMATION PROVIDED HEREIN IS ACCURATE.

SIGNATURE: _____

NAME AND TITLE: Jerry Cameron, County Administrator

DATE: _____

Attachment J
Mandatory Contract Provisions

Provisions:

Any contract or subcontract funded by this Agreement must contain the applicable provisions outlined in Appendix II to 2 C.F.R. Part 200. It is the responsibility of the sub-recipient to include the required provisions. The Division provides the following list of sample provisions that may be required:

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be 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, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be 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. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity 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). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) 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 (42 U.S.C. 6201).

(I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of $100,000 or more 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.

(K) See §200.322 Procurement of recovered materials.

APPENDIX III TO PART 200—INDIRECT (F&A) COSTS IDENTIFICATION AND ASSIGNMENT, AND RATE DETERMINATION FOR INSTITUTIONS OF HIGHER EDUCATION (IHEs)

A. GENERAL

This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHEs (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1, Definition of Facilities and Administration, for a discussion of the components of indirect (F&A) costs.

1. Major Functions of an Institution

Refers to instruction, organized research, other sponsored activities and other institutional activities as defined in this section:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) *Departmental research* means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) *University research* means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, must be combined with sponsored research under the function of organized research.

c. *Other sponsored activities* means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. *Other institutional activities* means all activities of an institution except for instruction, departmental research, organized research, and other sponsored activities, as defined in this section; indirect (F&A) cost activities identified in this Appendix paragraph B, Identification and assignment of indirect (F&A) costs; and specialized services facilities described in §200.468 Specialized service facilities of this Part.

Examples of other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to Federal awards, unless otherwise indicated in an award.

2. Criteria for Distribution

a. *Base period.* A base period for distribution of indirect (F&A) costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.* The overall objective of the indirect (F&A) cost allocation process is to distribute the indirect (F&A) costs described in Section B, Identification and assignment of indirect (F&A) costs, to

RESOLUTION NO. 2020 - ____

A RESOLUTION BY THE FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS AUTHORIZING AN EXCHANGE OF LAND WITH WL RESIDENTIAL LLC, MAKIG FINDINGS, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Flagler County Board of County Commissioners ("County") owns that certain parcel of real property with Parcel ID Number 03-13-31-0000-01010-0030, consisting of approximately 40 acres (the "County Property"); and

WHEREAS, WL Residential Land, LLC ("WL Residential") owns that certain parcel of real property contiguous to the County-owned Property with Parcel ID Number 03-13-31-0650-000C0-0040, consisting of approximately 52 acres (the "WL Residential Property"); and

WHEREAS, the WL Residential Property contains 9.6 acres along Old Dixie Highway that is designated in the Plantation Bay Development of Regional Impact ("DRI") as a public safety site and may be utilized for a sheriff's sub-station or other public safety facility in the future; and

WHEREAS, the Plantation Bay Utility is located on another parcel adjacent to the WL Residential Property, with Parcel ID Number 03-13-31-0650-000C0-0050 (the "Utility Property"); and

WHEREAS, the County Property, the WL Residential Property including the portion dedicated to public safety purposes, and the Utility Property are graphically depicted on Exhibit A, attached hereto and incorporated herein; and

WHEREAS, the County is in the process of transferring the Plantation Bay Utility to the Florida Government Utility Association ("FGUA"), which transfer requires a suitable effluent disposal site; and

WHEREAS, the County and FGUA have identified the WL Residential Property, which is contiguous to the Utility Property as the most suitable effluent disposal site for the Plantation Bay Utility, provided however, that the 9.6 acre portion dedicated to public safety purposes will be retained by the County and not used for effluent disposal; and

WHEREAS, both the County Property and the WL Residential Property are largely vacant with similar amount of useable uplands; and

WHEREAS, the County Property currently has a portion of an easement for Florida

Power & Light ("FPL") along its eastern property line, but no access to a maintained public right of way, and WL Residential will retain a twenty foot access easement, coinciding with the FPL easement, in the property it is giving to the County in order to access the property it is obtaining from the County; and

WHEREAS, although the County Property is designated as a park site on the DRI, there are no plans to develop it as such, and the County's Old Dixie Park is only approximately a third of a mile away, and other action of the County Commission will remove this park designation; and

WHEREAS, the County, and FGUA as its successor, will utilize the WL Residential Property for effluent disposal, which directly benefits the Plantation Bay community and any residence or business to be served by the Planation Bay Utility; and

WHEREAS, the County Property is not needed for County purposes and should, in the best interest of the County for the reasons stated herein, be exchanged for the WL Residential Property; and

WHEREAS, notice of this Resolution has been published in the newspaper once per week for two consecutive weeks in accordance with Section 125.37, Florida Statutes, which notice is attached hereto and incorporated herein as Exhibit B; and

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Flagler County, Florida as follows:

1. The above recitals are incorporated herein as findings of fact.
2. The County Administrator, or his designee, is authorized to execute any agreement, deed, assignment, affidavit, or other document necessary to effectuate the exchange of the County Property for the WL Residential Property, as approved to legal format by the County Attorney.
3. This Resolution shall become effective upon adoption.

ADOPTED AND APPROVED this __ day of _____ 2020, by the Board of County Commissioners of Flagler County, Florida.

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS

ATTEST:

_____

_____ David C. Sullivan, Chair

Tom Bexley, Clerk of the Circuit
Court & Comptroller

APPROVED AS TO FORM:

_____

Al Hadeed, County Attorney

EXHIBIT A

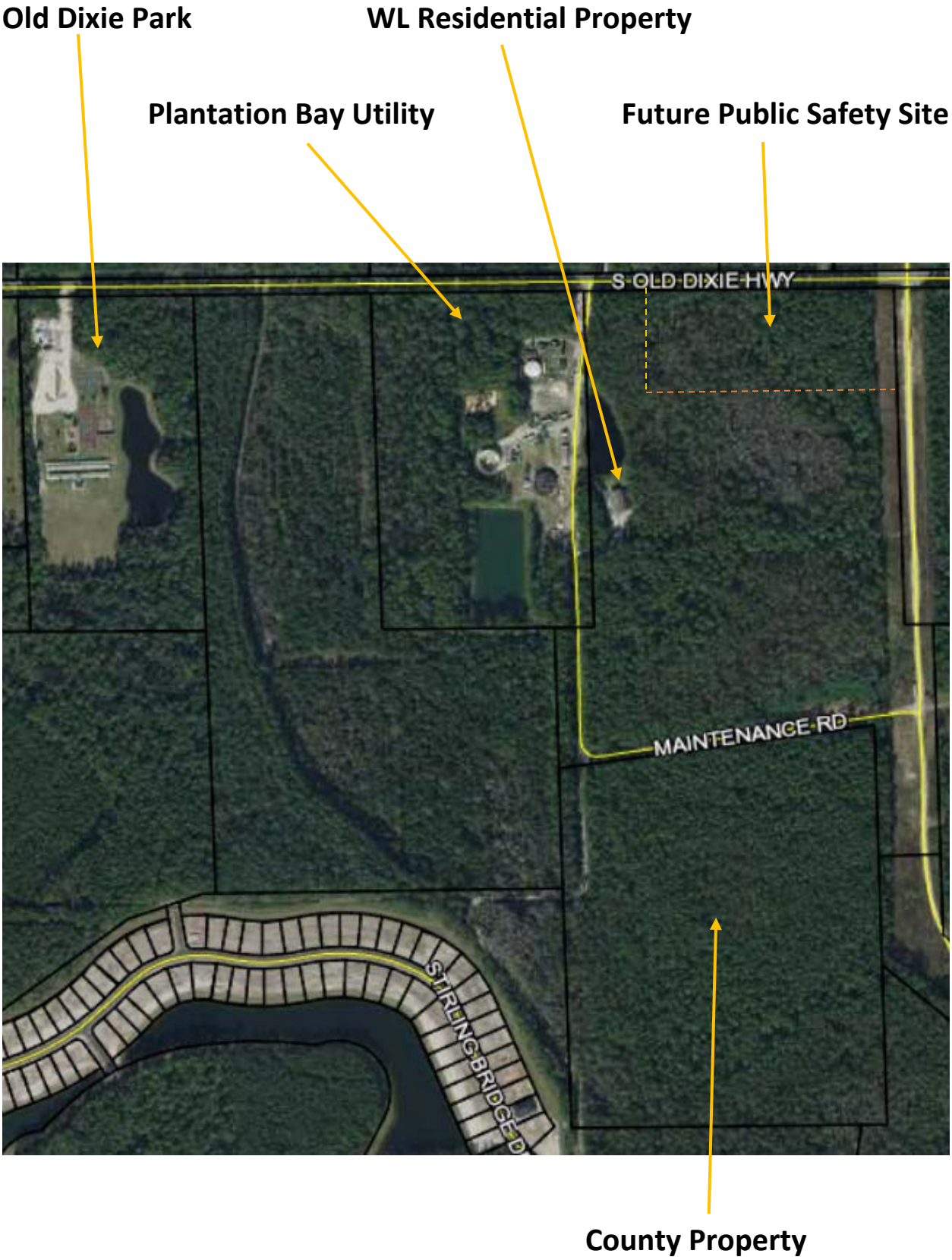
Old Dixie Park
WL Residential Property
Plantation Bay Utility
Future Public Safety Site
S OLD DIXIE HWY
MAINTENANCE RD
STRING BRIDGE D
County Property

EXHIBIT B

PUBLIC NOTICE

You are hereby notified of a Public Hearing to be held October 19, 2020 at 2:00 p.m. or as soon thereafter as possible, to consider the following:

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA, APPROVING AN EXCHANGE OF REAL PROPERTY PURSUANT TO SECTION 125.37, FLORIDA STATUTES; AND PROVIDING AN EFFECTIVE DATE.

This meeting will be held at the Flagler County Government Services Building located at 1769 E. Moody Blvd., Bunnell, Florida, Building 2, in the Board Chambers.

The Flagler County Board of County Commissioners (BOCC) will consider a property exchange with WL Residential Land, LLC, the owner of a real property consisting of 51.7 acres identified with Flagler County Property Parcel Identification Number (PIN) 03-13-31-0650-000C0-0040, for a real property consisting of 39.9 acres owned by the BOCC with the PIN 03-13-31-0000-01010-0030.

Both parties view these properties as approximately equal in value after review of the Flagler County Property Appraiser's records with consideration for size, physical characteristics, and proximity to maintained roads. The exchange is being made to create a more functional effluent spray field for the benefit of the Plantation Bay Utility System.

All interested persons are urged to attend the public hearing and be heard. Anyone wishing to express their opinion may attend, telephone 386-313-4001 or write to: Flagler County Administration, 1769 E. Moody Blvd, Building 2, Bunnell, FL 32110 or email to publiccomments@flaglercounty.org. Copies of the proposal, supporting data and analysis, staff reports and other pertinent information are available for review at Flagler County Administration, 1769 East Moody Boulevard, Building 2, Bunnell, Florida 32110.

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD OF COUNTY COMMISSIONERS WITH RESPECT TO ANY MATTER CONSIDERED AT THE MEETING, A RECORD OF THE PROCEEDINGS MAY BE NEEDED AND, FOR SUCH PURPOSES, THE PERSON WILL NEED TO ENSURE THAT A VERBATIM RECORD IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH APPEAL IS TO BE BASED. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT, PERSONS NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT COUNTY ADMINISTRATION AT LEAST 48 HOURS PRIOR TO THE MEETING.

L2368197 Oct 7, 2020 1t

PUBLIC NOTICE

You are hereby notified of a Public Hearing to be held October 19, 2020 at 2:00 p.m. or as soon thereafter as possible, to consider the following:

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA, APPROVING THE REMOVAL OF "PARK SITE" DESIGNATION WITHIN A DEVELOPMENT OF REGIONAL IMPACT IN EXCHANGE FOR OTHER PROPERTY TO THE COUNTY PURSUANT TO SECTION 380.06, FLORIDA STATUTES; AND PROVIDING AN EFFECTIVE DATE.

This meeting will be held at the Flagler County Government Services Building located at 1769 E. Moody Blvd., Bunnell, Florida, Building 2, in the Board Chambers.

The Flagler County Board of County Commissioners (BOCC) will consider the removal of a "Park Site" designation included in Map H of the Plantation Bay Development of Regional Impact. The parcel is owned by Flagler County and consists of 39.9 acres identified with Flagler County Property Parcel Identification Number (PIN) 03-13-31-0000-01010-0030.

All interested persons are urged to attend the public hearing and be heard. Anyone wishing to express their opinion may attend, telephone 386-313-4001 or write to: Flagler County Administration, 1769 E. Moody Blvd, Building 2, Bunnell, FL 32110 or email to publiccomments@flaglercounty.org. Copies of the proposal, supporting data and analysis, staff reports and other pertinent information are available for review at Flagler County Administration, 1769 East Moody Boulevard, Building 2, Bunnell, Florida 32110.

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD OF COUNTY COMMISSIONERS WITH RESPECT TO ANY MATTER CONSIDERED AT THE MEETING, A RECORD OF THE PROCEEDINGS MAY BE NEEDED AND, FOR SUCH PURPOSES, THE PERSON WILL NEED TO ENSURE THAT A VERBATIM RECORD IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH APPEAL IS TO BE BASED. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT, PERSONS NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT COUNTY ADMINISTRATION AT LEAST 48 HOURS PRIOR TO THE MEETING.

L2368195 Oct 7, 2020 1t

ORDINANCE 2020 - ___

AN ORDINANCE OF THE FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE FLAGLER COUNTY CODE OF ORDINANCES, SECTION 30-33, EXEMPTING CERTAIN SPECIAL PURPOSE GOVERNMENT PROVIDERS OF UTILITY SERVICES FROM REGULATION BY THE COUNTY ACTING AS A UTILITY AUTHORITY WITHIN THE UNINCORPORATED COUNTY; SECTION 30-35 EXEMPTING NONPROFIT CORPORATIONS, ASSOCIATIONS, AND COOPERATIVES FROM RATE AND INTERIM RATE REGULATIONS OF THE COUNTY; AMENDING SECTION 30-37 REQUIRING NONPROFIT CORPORATIONS, ASSOCIATIONS, AND COOPERATIVES SEEKING TO PROVIDE WATER AND WASTEWATER UTILITY SERVICES TO NON-MEMBERS TO OBTAIN A CERTIFICATE OF AUTHORIZATION; PROVIDING FOR CODIFICATION AND SCRIVENER'S ERRORS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 125.01(1), *Fla. Stat.*, authorizes the County to adopt ordinances and resolutions as needed to exercise its power and authority; and

WHEREAS, Section 367.171, *Fla. Stat.*, authorizes the Board of County Commissioners ("Board") to rescind the Florida Public Service Commission jurisdiction of private water, wastewater, and effluent reuse utilities within Flagler County and to assume power and jurisdiction to regulate those utilities; and

WHEREAS, in 2002, the County adopted a resolution rescinding the Florida Public Service Commission jurisdiction over private water, wastewater, and effluent reuse utilities within Flagler County; and

WHEREAS, in 2002, the County adopted Ordinance 2002-10, entitled, "Flagler County Water, Wastewater and Effluent Reuse Utilities Regulatory Ordinance," as amended by Ordinance 2003-03, (the "Utilities Ordinance"), which provides a regulatory framework and establishes the County as a regulatory authority for such utilities; and

WHEREAS, in 2019, in order to provide more efficient and higher quality utility service, the County authorized the sale and transfer of County-owned utility assets to the Florida Government Utilities Association ("FGUA"), a multi-jurisdictional utility created pursuant to Section 163.071(7)(g), Florida Statutes; and

WHEREAS, pursuant to County Resolution 2020-46, the County will be a member of FGUA and have a designated seat on its board of directors in order to be part of its governance structure; and

WHEREAS, the Utility Ordinance exempts governmental bodies from the regulatory framework in certain instances, and the County wishes to extend the exemption to include special purpose local governmental bodies such as FGUA and community development districts; and

WHEREAS, the Utility Ordinance exempts from regulation homeowners associations, non-profit corporations, associations, and cooperatives which serve its owner members; and

WHEREAS, to incentivize the expansion of centralized water and wastewater service to reduce contamination and degradation of ground or surface water and in order to protect environmentally sensitive areas, the County wishes to exempt homeowners associations, nonprofit corporations, associations, and cooperatives which seek to serve non-members under appropriate circumstances; and

WHEREAS, since the adoption of the Utilities Ordinance, the population of the County has more than doubled but without a concomitant increase in water and wastewater utility infrastructure capacity the within unincorporated areas of the County; and

WHEREAS, in the absence of centralized utility services, residents and businesses are forced to rely on ground water for water supply, which strains the surficial aquifer and potentially increases the risk of saltwater intrusion; and

WHEREAS, the widespread use of septic systems in the unincorporated county for onsite treatment of wastewater increases the daily maximum nutrient loads in the surface waters of the County; and

WHEREAS, the northeastern portion of the County includes a marine biology research institute at the University of Florida, a designated state aquatic preserve, a designated national estuarine research reserve, and an Outstanding Florida Waterbody—all within close proximity to the Matanzas Inlet; and

WHEREAS, the toxic algae bloom, commonly referred to as, "Red Tide," has increased in frequency and intensity within certain parts of the State, and the County wishes to be proactive in mitigating the outbreaks of Red Tide, such as that which occurred over hundreds of miles of Florida's coastline in 2018; and

WHEREAS, the County is seeking State appropriation to fund a sanitary sewer collection system for the unincorporated areas of the barrier island and has included this request in its 2020 Local Legislative Priorities; and

WHEREAS, to protect the coastal area water quality, the County's Comprehensive Plan 2010 – 2035 identifies septic tanks in the hurricane vulnerability zone as only an interim measure until centralized facilities are available, and requires septic tank users to hook up to centralized wastewater systems when available; and

WHEREAS, the Comprehensive Plan requires the County to coordinate with the Florida Department of Environmental Protection on the enforcement of wastewater discharge standards into Class II and III waters, and also to requires the County to encourage new developments in the coastal area to cluster through application of the County's planned unit development regulations; and

WHEREAS, the County recently approved a Planned Unit Development on the barrier island in large part because the developer agreed to install over 1,000 feet of piping to connect the development to a centralized wastewater system; and

WHEREAS, the County's Comprehensive Plan identifies septic tanks in the hurricane vulnerability zone as only an interim measure and requires septic tanks in the hurricane vulnerability zone to centralized wastewater systems when available.

NOW THEREFORE, be it ordained by the Flagler County Board of County Commissioners as follows:

SECTION 1. FINDINGS

The above recitals are incorporated herein as true and correct and establish the legislative intent of this Ordinance.

SECTION 2. FLAGLER COUNTY CODE AMENDMENT

Section 7-4 of the Flagler County Code of Ordinances is hereby amended as follows (additions are shown in <u>underline</u>, and deletions are shown in ~~strikethrough~~ format):

* * * *

Sec. 30-33(b). –Powers and duties; Flagler County Utility Regulatory Authority.

(b) The following are not subject to regulation by the board or the authority as a utility nor are they subject to the provisions of this article, except as expressly provided in this article or other valid ordinance of the board:

* * * *

<u>(12) Any special purpose local government created pursuant to Section 163.01(7)(g) , Florida Statutes, for purposes of acquiring and/or operating water</u>

and/or wastewater utilities and any community development district established pursuant to Chapter 190, Florida Statutes.

Sec. 30-35. – Rates and charges.

* * * *

(x) This section shall not apply to nonprofit corporations, associations, or cooperatives.

Sec. 30-35. – Interim rates.

* * * *

(h) This section shall not apply to nonprofit corporations, associations, or cooperatives.

Sec. 30-37. – Certificate of authorization/franchise.

* * * *

(v) Additional service area:

(1) Proposed additions of utility service into any additional service area shall not be commenced until the utility first obtains an amended franchise certificate from the authority. A nonprofit corporation, association, or cooperative shall not commence service for nonmembers until the nonprofit corporation, association, or cooperative obtains a certificate of authorization from the authority, pursuant to Sec. 30-37(a), for the service to non-members.

SECTION 3. CODIFICATION AND SCRIVENER'S ERRORS

A. The provisions of this Ordinance shall be included and incorporated into the Code of Ordinances of Flagler County, Florida, as additions and amendments thereto, and shall be appropriately renumbered or re-lettered to conform to the uniform numbering system of the Code. Scrivener's errors may be corrected as deemed necessary.

B. Only Section 2 herein shall be codified within the Flagler County Code of Ordinances. Sections not specifically amended herein shall remain unchanged by this Ordinance.

SECTION 4. SEVERABILITY

If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, then said holding shall in no way

affect the validity of the remaining portions of this Ordinance.

SECTION 5. EFFECTIVE DATE

This Ordinance shall take effect upon filing with the Secretary of State as provided in Section 125.66, Florida Statutes.

PASSED AND ADOPTED BY THE FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS, THIS _____ DAY OF OCTOBER 2020.

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS

_____

David C. Sullivan., Chair

ATTEST:

_____

Tom Bexley, Clerk of the Circuit Court and Comptroller

APPROVED AS TO FORM:

_____

Al Hadeed, County Attorney

PUBLIC NOTICE

You are hereby notified of a Public Hearing to be held October 19, 2020 at 2:00 p.m. or as soon thereafter as possible, to consider the following:

AN ORDINANCE OF THE FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE FLAGLER COUNTY CODE OF ORDINANCES, SECTION 30-33, EXEMPTING CERTAIN SPECIAL PURPOSE GOVERNMENT PROVIDERS OF UTILITY SERVICES FROM REGULATION BY THE COUNTY ACTING AS A UTILITY AUTHORITY WITHIN THE UNINCORPORATED COUNTY; AMENDING SECTION 30-35 TO EXEMPT NONPROFIT CORPORATIONS, ASSOCIATIONS, AND COOPERATIVES FROM RATE AND INTERIM RATE REGULATIONS OF THE COUNTY; AMENDING SECTION 30-37 REQUIRING NONPROFIT CORPORATIONS, ASSOCIATIONS, AND COOPERATIVES SEEKING TO PROVIDE WATER AND WASTEWATER UTILITY SERVICES TO NON-MEMBERS TO OBTAIN A CERTIFICATE OF AUTHORIZATION SUBJECT TO CONDITIONS IMPOSED BY THE COUNTY; PROVIDING FOR CODIFICATION AND SCRIVENER'S ERRORS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

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