

# City of South Daytona



Office of the City Manager / Department of Finance

Post Office Box 214960 • South Daytona, FL 32121 • 386/322-3060 • FAX 386/322-3099

## MEMORANDUM

**AGENDA ITEM**  
# E 23 DATE 9/14/20

**To:** James L. Gillis, Jr., City Manager

**From:** Jason E. Oliva, Deputy Finance Director

**Re:** Resolution No. 2020-30 - Authorizing the Mayor and the City Manager to execute a subrecipient agreement with Volusia County to participate in the Coronavirus Relief Fund Municipal Subrecipient Program

**Date:** August 19, 2020

**Problem:** The Covid-19 pandemic has presented several unique challenges as each municipality strives to reduce contact by maintaining social distancing while still providing the same level of service to residents and conducting city council meetings. The City has developed a list of supplies, equipment, and improvements that will assist the City moving forward as the COVID-19 pandemic still maintains its stranglehold on our society. These expenditures allow the City to adequately combat the spread of the virus and are eligible for reimbursement through Volusia County. The list of supplies, equipment and other improvements associated with the subrecipient agreement is presented in the project summary budget found in Attachment B of the subrecipient agreement.

The County implemented the Volusia County Coronavirus Relief Fund Municipal Subrecipient Program to reimburse Volusia County municipalities for eligible expenditures from the County's allocation of the federally provided Coronavirus Relief Fund. Volusia County has received \$15 million dollars from the Coronavirus Relief Fund to be allocated for reimbursement of eligible expenditures incurred by the county's 16 municipalities. The maximum allocation amounts for each municipality were calculated based on population, the same methodology the United States Treasury used in allocating the funds to Volusia County. South Daytona's maximum allocation is \$455,154 (Exhibit B).

**Solution:** Resolution No. 2020-30 authorizes the Mayor and the City Manager to execute a subrecipient agreement with Volusia County to participate in the Coronavirus Relief Fund Municipal Subrecipient Program. The subrecipient agreement is attached in Exhibit A for your review.

**Recommendation:** Staff is recommending council approval of Resolution No. 2020-30 to participate in the program.

**Result:** City costs will be covered on a reimbursement basis for eligible expenditures. The County must provisionally agree that expenditures are eligible under the use of the Coronavirus Relief Fund as set forth in the CARES Act and related guidance by the U.S. Department of Treasury. In the event that the Inspector General of the US Department of Treasury, or any other federal government official determines an expenditure of the City to be ineligible, the City shall reimburse the County the amount of the expenditures determined ineligible. Payment for the County's CARES Act allocation to municipalities may only cover expenses that:

1. are necessary expenditures due to the Covid-19 public health emergency;
2. were not accounted for in the City budget most recently approved as of March 27, 2020;
3. were incurred between March 1, 2020 and December 30, 2020; and
4. are submitted to the County for reimbursement by January 31, 2021.

CARES Act payments may not be used to replace revenues lost due to the Covid-19 public health emergency.

**RESOLUTION NO. 2020-30**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA, AUTHORIZING THE MAYOR AND THE CITY MANAGER TO EXECUTE A SUBRECIPIENT AGREEMENT WITH VOLUSIA COUNTY TO PARTICIPATE IN THE CORONAVIRUS RELIEF FUND MUNICIPAL SUBRECIPIENT PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the County of Volusia has been awarded funds provided by the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") Public Law Number 116-136, to be used by the subrecipient as reimbursement for subrecipient's eligible necessary expenditures incurred due to the public health emergency with respect to COVID-19 that were not accounted for in the subrecipient's budget most recently approved as of March 27, 2020 and that were incurred during the period that begins on March 1, 2020 and ends of December 30, 2020; and

**WHEREAS**, the City desires to participate in the program to recover expenses the City is going to have to endure to continue operating as this COVID-19 pandemic continues; and

**WHEREAS**, the County is requiring the City to deliver an executed subrecipient agreement to participate in the program.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA:**

**SECTION 1.** That the City Council of the City of South Daytona, hereby approves the Subrecipient Agreement to participate in the Volusia County Coronavirus Relief Fund Municipal Subrecipient Program, as attached hereto as Exhibit A and incorporated into this resolution by reference.

**SECTION 2.** That the City Council of the City of South Daytona, hereby authorizes the Mayor and the City Manager to execute the Agreement, on behalf of the City, as well as any and all additional documents necessary to carry out the terms thereof.

**SECTION 3. EFFECTIVE DATE.** This Resolution shall take effect immediately upon its adoption by the City Council.

PASSED upon first and final reading at the regular meeting of the City Council held  
in the City of South Daytona, Florida, on the 14<sup>TH</sup> day of September, 2020.

SIGNED:

\_\_\_\_\_  
William C. Hall,  
Mayor

ATTEST:

\_\_\_\_\_  
James L. Gillis, Jr.  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott E. Simpson  
City Attorney

**EXHIBIT A**  
**SUBRECIPIENT AGREEMENT**



**County of Volusia  
SUBRECIPIENT Agreement**

**Volusia County Coronavirus Relief Fund Municipal Subrecipient Program**

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This Agreement is made and entered into between the COUNTY OF VOLUSIA, a political subdivision of the STATE OF FLORIDA, hereinafter referred to as "COUNTY", and the City of South Daytona, a Florida Municipal entity, hereinafter referred to as "SUBRECIPIENT" for the purpose of subawarding to the SUBRECIPIENT a portion of the COUNTY'S Coronavirus Relief Fund allocation provided by the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Public Law Number 116-136, to be used by the SUBRECIPIENT as reimbursement for the SUBRECIPIENT's eligible necessary expenditures incurred due to the public health emergency with respect to COVID-19 that were not accounted for in the SUBRECIPIENT's budget most recently approved as of March 27, 2020 and that were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020.

NOW, THEREFORE, in consideration of the mutual understanding and Agreements set forth herein, the COUNTY and SUBRECIPIENT agree and stipulate as follows:

**1. Period of Agreement/Period of Performance**

The Period of Agreement establishes a timeframe for all SUBRECIPIENT contractual obligations to be completed. This Agreement shall be effective on March 1, 2020 and shall end on March 31, 2021, unless terminated earlier in accordance with section 14 of this Agreement, or extended by a mutually agreed-upon amendment to this Agreement. This Agreement survives and remains in effect after termination for the herein referenced State and Federal audit requirements and the referenced required records retention periods.

The Period of Performance is the timeframe during which the SUBRECIPIENT may charge allowable costs to this subaward to carry out the work authorized under this Agreement. In accordance with guidance issued by the U.S. Department of Treasury, in order for a cost to be properly incurred and allowable for funding under this Agreement, performance or delivery must occur during the Period of Performance. The Period of Performance for this Agreement commenced on March 1, 2020 and shall end on December 30, 2020, unless terminated earlier in accordance with the provisions of section 14 of this Agreement or extended by a mutually agreed-upon amendment to this Agreement. All reimbursement requests submitted in accordance with Section 4 of this Agreement must be submitted by the SUBRECIPIENT to the COUNTY by January 31, 2021. If corrective action is required on any reimbursement request pursuant to section 4(d) of this Agreement, those corrections are required to be submitted by the SUBRECIPIENT to the

COUNTY by February 28, 2020 or fifteen (15) calendar days after notice is provided by the COUNTY to the SUBRECIPIENT of the necessary corrections, whichever is earlier. In the instance that the COUNTY does not provide notice to the SUBRECIPIENT of required correction until after February 13, 2020, the required corrections are due within fifteen (15) calendar days after notice is provided by the COUNTY to the SUBRECIPIENT of the necessary corrections. Reimbursement requests submitted after the due dates above are subject to denial at the sole discretion of the COUNTY.

## **2. Scope of Work**

The SUBRECIPIENT agrees to perform the projects listed in Attachment B - Project Summary Budget ("Scope of Work"). The Scope of Work can be amended, upon mutual agreement, using Attachment C - Project Summary Budget Amendment and Restatement.

Projects included in the Scope of Work, including amendments, shall only include necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19), not accounted for in the budget most recently approved as of March 27, 2020, up to the amount set forth in the Project Summary Budget (as amended).

The SUBRECIPIENT acknowledges and agrees that guidance and frequently asked questions documents have been provided by the United States Department of Treasury are not authoritative in regard to determining whether expenditures are eligible for use of the Coronavirus Relief Fund provided by the CARES Act and all such determinations are ultimately the responsibility of the SUBRECIPIENT.

Submission, review, approval and execution of amendments to the Scope of Work are hereby delegated by mutual agreement by the governing bodies of both the SUBRECIPIENT and COUNTY as follows:

- a. The SUBRECIPIENT delegates authority to the individuals included on Attachment A - Delegation of Authority, Part A, for submission of budget amendments.
- b. The COUNTY delegates authority to any ONE of the following county employees for review, approval and execution of budget amendments:

George Reckenwald, County Manager  
Suzanne Konchan, Deputy County Manager  
Ryan Ossowski, Chief Financial Officer

## **3. Funding**

The COUNTY will subgrant Coronavirus Relief Funds, on a cost-reimbursement basis, to the SUBRECIPIENT in an amount not to exceed Four Hundred Fifty Five Thousand One Hundred Fifty Four and 00/100 Dollars (\$455,154 ), for the purpose of reimbursing SUBRECIPIENT for

expenditures incurred and paid on projects included in the Scope of Work. The amount of funding subgranted by this Agreement may be amended with a mutually agreed to Attachment C - Project Summary Budget Amendment and Restatement, as described in Section 2 of this Agreement. The SUBRECIPIENT agrees to and acknowledges that it may not pass-through funds provided under this agreement to another entity considered to be a lower-level subrecipient.

- a. This is a cost-reimbursement Agreement, subject to the availability of funds. The amount of total available funding for this subgrant is limited to the amounts set forth in the Scope of Work (as amended).
- b. The COUNTY will reimburse the SUBRECIPIENT only for allowable costs incurred by the SUBRECIPIENT. The COUNTY will provide funds on a cost reimbursement basis to the SUBRECIPIENT for eligible activities approved by the COUNTY, as specified in the approved Scope of Work. The maximum reimbursement amount for each deliverable is also outlined in the Scope of Work (as amended).
- c. Failure to complete a project is adequate cause for the termination of funding for that project.

**The SUBRECIPIENT agrees to be responsible for the repayment of funds to the COUNTY for expenditures that the COUNTY, the Inspector General of the United States Treasury, or other Federal government official determines are ineligible under the Coronavirus Relief Fund provided by the CARES Act, see section 6 regarding RECOUPMENT for further information.**

#### **4. Invoicing and Progress Reporting**

- a. The SUBRECIPIENT agrees to utilize Attachment D - Reimbursement Request Form and Attachment E - Reimbursement Request Form Summary Sheet for each reimbursement request made to the COUNTY. The SUBRECIPIENT further agrees to utilize Attachment F - Purchased Expense Reimbursement Request Form, Attachment G - Employee Regular Time Reimbursement Request Form (For All 100% Position Requests) and Attachment H - Overtime Reimbursement Request Form, as supplemental attachments, as applicable, when submitting reimbursement requests to the COUNTY.
- b. In order to obtain reimbursement for expenditures the SUBRECIPIENT must file with the COUNTY's Grant Activity Project Manager its request for reimbursement and any other information required to justify and support the Reimbursement Request.

Any Reimbursement Request under this Agreement must include a certification, signed by an official delegated by the SUBRECIPIENT (as described below), 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 subaward. I further certify that the expenditures included on this report have not been reimbursed by other local, state, federal or insurance funds. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

- c. The governing body of the SUBRECIPIENT delegates authority to the individuals included on Attachment A - Delegation of Authority, Part B, to submit and execute any Reimbursement Requests, certifications, or other necessary documentation on behalf of the SUBRECIPIENT.
- d. The COUNTY will review all Reimbursement Requests by comparing required backup documentation provided by the SUBRECIPIENT against the approved Scope of Work, as well as the requirements of the Coronavirus Relief Fund, as provided in the CARES Act, which requires that payments from the fund only be used to cover expenses that:
  - i. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
  - ii. were not accounted for in the budget most recently approved as of March 27, 2020 for the municipality; and
  - iii. were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020.

Reimbursement Requests that include only eligible expenditures shall be considered a proper invoice. Reimbursement Requests that include expenditures not approved in the Scope of Work, or expenditures determined to not meet the eligibility requirements of the CARES Act shall be considered improper invoices. Reimbursement Request that do not include required backup documentation shall be considered improper invoices. If the received request is not a proper invoice, it will be rejected and the SUBRECIPIENT will be notified that the request is improper and indicate what corrective action is needed for resubmission. If the received request is a proper invoice it will be processed and paid in accordance with the Florida Prompt Payment Act, as applicable.

- e. The COUNTY will not reimburse the SUBRECIPIENT for any payments determined to be an "improper payment". Any "improper payment" is considered to be an ineligible expenditure under this Agreement. The term "improper payment" means or includes:
  - i. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments)

- under statutory, contractual, administrative, or other legally applicable requirements; and,
- ii. Any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit or applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.
- f. **Reimbursements will only be made for expenditures that the COUNTY provisionally determines are eligible under the Coronavirus Relief Fund provided by the CARES Act. However, the COUNTY's provisional determination that an expenditure is eligible does not relieve the SUBRECIPIENT of its duty to repay the COUNTY for any expenditures that are later determined by the COUNTY, Inspector General of United States Treasury, or other Federal government official to be ineligible.**
- g. Reimbursement Requests should be mailed to:
- County of Volusia, FL  
Office of the Chief Financial Officer  
123 W. Indiana Avenue, Room 300  
DeLand, FL 32720  
Attention: Jennifer Madewell
- h. The SUBRECIPIENT shall provide additional program updates or information that may be required by the COUNTY.

**5. Duplication of Benefits**

The SUBRECIPIENT certifies that it has not received, nor will it receive other local, state, federal or insurance funds that will be used for the expenses being requested through the COUNTY'S Coronavirus Relief Fund Municipal Subrecipient Program. The SUBRECIPIENT acknowledges and understands that it may not receive duplication of benefits to reimburse any of SUBRECIPIENT's COVID-19 related expenses that are reimbursed by this Agreement.

**6. Recoupment / Subsequent Determination of Ineligibility**

- a. The SUBRECIPIENT agrees that, **NOTWITHSTANDING ANY OPINION (INCLUDING DETERMINATIONS PROVIDED IN WRITING) OF ELIGIBILITY THAT MAY BE PROVIDED TO SUBRECIPIENT BY ANY COUNTY EMPLOYEE, CONTRACTOR, OR ELECTED OFFICIAL**, if any funds provided to the SUBRECIPIENT in accordance with this Agreement are determined by the Inspector General of the United States Treasury, COUNTY, or other authorized federal official or agency, to have been used

by the SUBRECIPIENT in a manner inconsistent with this Agreement or section 601(a) of the Social Security Act as added by section 5001 of the CARES Act (Coronavirus Relief Fund), Public Law Number 116-136, and are recouped by the federal government from the COUNTY, the SUBRECIPIENT will reimburse the COUNTY for all amounts recouped by the federal government that were provided to the SUBRECIPIENT.

- b. All refunds, return of improper payments, or repayments due to the COUNTY under this Agreement are to be made payable to the order of "County of Volusia," and mailed directly to the following address:

County of Volusia, FL  
Office of the Chief Financial Officer  
123 W. Indiana Avenue, Room 300  
DeLand, FL 32720  
Attention: Coronavirus Relief Fund Refunds

- c. Any recoupment reimbursement request made in accordance with the above shall be repaid by the SUBRECIPIENT to the COUNTY within thirty (30) days of the COUNTY making such request. If the SUBRECIPIENT does not repay the COUNTY within the thirty (30) days, the SUBRECIPIENT shall be subject to withholding of other funds due the SUBRECIPIENT from the COUNTY as described below.
- d. As a condition of funding under this Agreement, the SUBRECIPIENT agrees that the COUNTY may withhold funds otherwise payable to the SUBRECIPIENT from any disbursement to the COUNTY, by the federal or state government, upon a determination by the COUNTY or authorized representative of the federal government that funds exceeding the eligible costs have been disbursed to the SUBRECIPIENT pursuant to this Agreement. The SUBRECIPIENT also agrees that the COUNTY may withhold funds otherwise payable to the SUBRECIPIENT from any other funding administered by the COUNTY.

The SUBRECIPIENT understands and agrees that the COUNTY may offset any funds due and payable to the SUBRECIPIENT until the debt to the COUNTY is satisfied. In the event funds are withheld, the COUNTY will notify the SUBRECIPIENT of the reclassification of the funds originally provided under this agreement (subsequently determined ineligible, but not repaid by the SUBRECIPIENT) that shall now be classified as funding provided under the program from which the funds were withheld, so that the proper accounting can be made by the SUBRECIPIENT.

#### **7. Compliance with Laws, Rules and Regulations**

The SUBRECIPIENT certifies compliance and agrees to comply with all applicable federal, state and local laws, rules, regulations and Executive Orders applicable to

the funds granted in accordance herewith. 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.

## **8. Contact**

- a. The COUNTY'S Grant Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the COUNTY's liaison with the SUBRECIPIENT. As part of his/her duties, the Grant Manager for the COUNTY shall:

- i. Monitor and document SUBRECIPIENT performance; and,
- ii. Review and document all deliverables for which the SUBRECIPIENT is responsible for providing to COUNTY.

- b. The COUNTY'S Grant Manager for this Agreement is:

Jennifer Madewell  
Grant Activity Project Manager  
123 W Indiana Ave, Room 300  
DeLand, FL 32720  
Telephone: (386) 736-5933 x 15574  
Email: [jmadewell@volusia.org](mailto:jmadewell@volusia.org)

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

Jason Oliva  
Deputy Finance Director  
1672 South Ridgewood Avenue  
South Daytona, Florida 32119  
Telephone: 386-322-3063  
Email: [joliva@southdaytona.org](mailto:joliva@southdaytona.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 in writing via letter or email.

## **9. Monitoring**

- a. The SUBRECIPIENT shall monitor its performance under this Agreement, to ensure that time schedules are being met, the Program Reporting 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 this Agreement, and reported in each Request for Funds.
- b. The SUBRECIPIENT shall provide the COUNTY and auditors, as well as any federal auditor or inspector general, right to access to the SUBRECIPIENT's records and financial statements as necessary for the

COUNTY to meet the requirements of 2 C.F.R. Part 200. The right of access also includes timely and reasonable access to the SUBRECIPIENT's personnel for the purpose of interview and discussion related to such documents. For the purposes of this section, the term "SUBRECIPIENT" includes employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement.

- c. The SUBRECIPIENT agrees to submit to monitoring of its activities by the COUNTY as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of this Agreement.

#### **10. Federal Award Identification pursuant to 2 C.F.R. Section 200.331(a)(1)**

The SUBRECIPIENT acknowledges that the funds provided under this Agreement are provided by the U.S. Department of Treasury, Coronavirus Relief Fund established within section 601 of the Social Security Act, as added by section 5001 of the CARES Act.

The SUBRECIPIENT acknowledges that the amount described in Section 3 of this Agreement represents the total amount of federal funds obligated and committed by the COUNTY to the SUBRECIPIENT, that this award is not R&D pursuant to 2 C.F.R. 200.331(a)(1)(xii), and that further, no indirect costs may be billed under this Agreement.

#### **11. Applicability of 2 C.F.R. Part 200 and SUBRECIPIENT Status**

The SUBRECIPIENT agrees to comply with all applicable requirements set forth in 2 C.F.R. § 200.303 regarding internal controls and 2 C.F.R. § 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F related to audit requirements.

The SUBRECIPIENT understands that while current guidance from the Department of Treasury has indicated only the above sections of 2 C.F.R. Part 200 apply to the Coronavirus Relief Fund, the United States Department of Treasury or the Inspector General of the United States Treasury may later interpret additional parts of 2 C.F.R. Part 200 to apply. In such event, it would be the responsibility of the SUBRECIPIENT to comply with these additional requirements. As such, while not required, the COUNTY recommends that SUBRECIPIENT follow all parts of 2 C.F.R. Part 200.

The SUBRECIPIENT understands the COUNTY considers the SUBRECIPIENT to be a SUBRECIPIENT in accordance the determination prescribed in §200.330, *SUBRECIPIENT and contractor determinations*, and agrees to such determination.

#### **12. Single Audit**

- a. The SUBRECIPIENT shall comply with the audit requirements contained in 2 C.F.R. Part 200, Subpart F and Federal Single Audit Act (31 U.S.C. §§ 7501-7507).

- b. In accounting for the receipt and expenditure of funds under this Agreement, the SUBRECIPIENT 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. The SUBRECIPIENT shall have all audits completed by an independent auditor, which is defined in section 215.97(2)(h), 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 COUNTY no later than nine (9) months from the end of the SUBRECIPIENT's fiscal year.
- d. The SUBRECIPIENT shall send copies of reporting packages for audits conducted in accordance with 2 C.F.R. Part 200 and related management letters issued by the auditor, by or on behalf of the SUBRECIPIENT, to the COUNTY at the following address:

Office of the Chief Financial Officer  
123 W Indiana Ave, Room 300  
DeLand, FL 32720
- e. The SUBRECIPIENT 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>
- f. Treasury has stated that CFDA # 21.019 is pending registration for funds provided under this Agreement.

### **13. Maintenance and Availability of Records**

- a. As a condition of receiving federal financial assistance, the SUBRECIPIENT agrees to maintain all accounting and client records and documents, papers, maps, photographs, other documentary materials, and any evidence pertaining to costs incurred.
- b. Copies of all Agreement-related records generated by the SUBRECIPIENT shall be available for inspection by authorized representatives of the federal government, the Inspector General of the United States Treasury, and the COUNTY. The right of access also includes timely and reasonable access to the SUBRECIPIENT's personnel for the purpose of interview and discussion related to such documents. For the purposes of this section, the term "SUBRECIPIENT" includes employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement.
- c. Such records shall be available at the SUBRECIPIENT's office at all reasonable times during the Agreement Term and kept for a period of six

(6) years after expiration of this Agreement. If a claim, investigation, or litigation is pending after what is assumed to be final payment, such pending action is deemed to have tolled the final payment date until completion of all such claims, investigations, or litigation proceedings, including all applicable appeal periods.

- d. This section 13 shall be in addition to, and not in lieu of, the Florida Public Records law requirements.

#### **14. Suspension and Termination.**

The COUNTY may terminate this Agreement and such additional supplemental agreements hereafter executed, in whole or in part, and may recover any funds provided herein, at its discretion, if the SUBRECIPIENT violates any provision of this Agreement; or

- a. Fails to complete performance in a timely manner; or
- b. Files for bankruptcy (voluntary or involuntary); becomes subject through appointment by any court to a receiver taking possession of substantially all of its assets or remaining in receivership in excess of 60 days; has substantially all of its assets attached, subject to execution or other judicial seizure; or does not perform as required under this Agreement.

#### **15. Default.**

If any of the following events occur ("Events of Default"), all obligations on the part of the COUNTY to make further payment of funds will, if the COUNTY elects, terminate and the COUNTY has the option to exercise any of its remedies set forth in section 16 of this Agreement. However, the COUNTY may make payments or partial payments after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment.

- a. If any warranty or representation made by the SUBRECIPIENT in this Agreement or any previous agreement with the COUNTY is or becomes false or misleading in any respect, or if the SUBRECIPIENT fails to keep or perform any of the obligations, terms or covenants in this Agreement or any previous agreement with the COUNTY and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;
- b. If material adverse changes occur in the financial condition of the SUBRECIPIENT at any time during the period of agreement, and the SUBRECIPIENT fails to cure this adverse change within thirty (30) days from the date written notice is sent by the COUNTY;
- c. If any reports required by this Agreement have not been submitted to the COUNTY or have been submitted with incorrect, incomplete or insufficient information;

- d. If the SUBRECIPIENT 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 COUNTY may, after thirty (30) calendar days written notice to the SUBRECIPIENT and upon the SUBRECIPIENT's failure to cure within those thirty (30) days, exercise any one or more of the following remedies, either concurrently or consecutively:

- a. Terminate this Agreement, provided that the SUBRECIPIENT is given at least thirty (30) days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in section 8 of this Agreement;
- 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 reimbursement request;
- d. Require that the SUBRECIPIENT refund to the COUNTY 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 SUBRECIPIENT 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 SUBRECIPIENT to suspend, discontinue or refrain from incurring costs for any activities in question,
  - iv. require the SUBRECIPIENT to reimburse the COUNTY for the amount of costs incurred for any items determined to be ineligible, or
  - v. withhold funds in accordance with section 6d. herein.
- f. Exercise any other rights or remedies which may be available under law. Pursuing any of the above remedies will not stop the COUNTY from pursuing any other remedies in this Agreement or provided at law or in equity. If the COUNTY waives any right or remedy in this Agreement or fails to insist on strict performance by the SUBRECIPIENT, it will not affect, extend or waive any other right or remedy of the COUNTY, or affect the later exercise of the same right or remedy by the COUNTY for any other default by the SUBRECIPIENT.



## **17. Conflict of Interest.**

- a. The SUBRECIPIENT certifies that it maintains a code or standards of conduct that govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts using Federal funds.
- b. Except for the use of funds to pay for salaries and other related administrative or personnel costs set forth herein, the SUBRECIPIENT certifies that no employee, agent, or officer of the SUBRECIPIENT who exercises decision making responsibility with respect to these funds and activities, is allowed to obtain a financial interest in or benefit from these activities, or have a financial interest in any contract, subcontract or agreement regarding these activities or in the proceeds of the activities. Specifically:
  - i. This requirement applies to any person who is an employee, agent, consultant, officer, or elected or appointed official of the SUBRECIPIENT and to their immediate family members, and business partner(s).
  - ii. This requirement applies for such persons during their tenure and for a period of one year after leaving the SUBRECIPIENT.
  - iii. It is applicable to the procurement of supplies, equipment, construction, and services; acquisition and disposition of real property; provision of assistance to individuals, businesses and other private entities for all eligible activities; and provision of loans to individuals, businesses and other private entities.

## **18. Indemnification**

The SUBRECIPIENT shall hold harmless, defend and indemnify the COUNTY, including its districts, authorities, separate units of government established by law, ordinance or resolution, elected and non-elected officials, employees, agents, volunteers, and any party with whom the COUNTY has agreed by contract to provide additional insured status, the U.S. Social Security Administration and Treasury Department, and any other governmental agencies or subdivisions, and their officers, agents and employees, from, or on any account of, any and all claims, actions, lawsuits, losses, expenses, injuries, damages, judgments or liabilities of any kind whatsoever that arise from the SUBRECIPIENT or its Agent's, employees', or officers' performance or non-performance of the terms of this Agreement, to the extent permitted by law. The parties understand that pursuant to Section 768.28(19), Florida Statutes, no party is entitled to be indemnified or held harmless by another party for its own negligent or wrongful acts or omissions. Nothing herein is intended to serve as a waiver of sovereign immunity by SUBRECIPIENT and SUBRECIPIENT claims all of the privileges and immunities and other benefits and protections afforded by Section 768.28, Florida Statutes.

## **19. Liability.**

- a. Notwithstanding anything set forth in this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the COUNTY or SUBRECIPIENT beyond any statutory limited waiver of immunity or limits of liability (Section 768.28, Florida Statutes), which may have been or may be adopted by the Florida Legislature for liability in tort, and, unless otherwise further limited by state or federal law, the cap on the amount and liability of the COUNTY or SUBRECIPIENT for damages arising from any claims related to this Agreement, regardless of the number or nature of claims or whether such claim sounds in tort, equity, or contract, shall not exceed the dollar amount set by the Florida legislature for tort damages. Further, nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the COUNTY or SUBRECIPIENT, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of state or federal law, except as may be expressly provided herein.
- b. In no event shall the COUNTY be liable to the SUBRECIPIENT for any incidental, indirect, special, punitive or consequential damages even if the COUNTY knew or should have known about the possibility of such damages for any provision of this Agreement.

## **20. Venue / Jurisdiction / Attorney's Fees.**

This Agreement shall be governed by the laws of the State of Florida and the Code of Ordinances of the County of Volusia, Florida. Venue for and jurisdiction over any civil lawsuit filed in connection with this Agreement shall, if in state court, be in the 7<sup>th</sup> Judicial Circuit in and for Volusia County, Florida, or, if in federal court, in the Middle District of Florida, Orlando Division. In any civil dispute arising from this Agreement, the parties agree to bear their own attorneys' fees and costs, unless otherwise expressly provided herein.

## **21. Public Records.**

Pursuant to section 119.0701(2)(a), Florida Statutes, the COUNTY is required to provide the SUBRECIPIENT with this statement and establish the following requirements as contractual obligations pursuant to this Agreement:

**IF THE SUBRECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUBRECIPIENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (386) 736-5933 x 15574, jmadewell@volusia.org, or by mail, Office of the Chief Financial**

**Officer, Attn: Jennifer Madewell, 123 W. Indiana Ave., DeLand, FL 32720.**

By entering into this Agreement, the SUBRECIPIENT acknowledges and agrees that any records maintained, generated, received, or kept in connection with or related to the performance of services provided under this Agreement are public records subject to the public records disclosure requirements of section 119.07(1), Florida Statutes, and Article I, section 24 of the Florida Constitution. Pursuant to section 119.0701, Florida Statutes, any entity entering into an Agreement for services with the COUNTY is required to:

- a. Keep and maintain public records required by the COUNTY to perform the services and work provided pursuant to this Agreement.
- b. Upon request from the COUNTY'S custodian of public records, provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Period of Agreement and following completion or termination of the Agreement if the SUBRECIPIENT does not transfer the records to the COUNTY.
- d. Upon completion or termination of the Agreement, transfer, at no cost, to the COUNTY all public records in the possession of the SUBRECIPIENT or keep and maintain public records required by the COUNTY to perform the service. If the SUBRECIPIENT transfers all public records to the COUNTY upon completion or termination of the Agreement, the SUBRECIPIENT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the SUBRECIPIENT keeps and maintains public records upon completion or termination of the Agreement, the SUBRECIPIENT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the COUNTY, upon request from the COUNTY'S custodian of public records, in a format that is compatible with the information technology systems of the COUNTY.

Pursuant to current state law, requests to inspect or copy public records relating to the COUNTY'S Agreement for services must be made directly to the COUNTY. If the SUBRECIPIENT receives any such request, the SUBRECIPIENT shall instruct the requestor to contact the COUNTY. If the COUNTY does not possess the records requested, the COUNTY shall immediately notify the SUBRECIPIENT of such request, and the

SUBRECIPIENT must provide the records to the COUNTY or otherwise allow the records to be inspected or copied within a reasonable time.

The SUBRECIPIENT acknowledges that failure to provide the public records to the COUNTY within a reasonable time may be subject to penalties under section 119.10, Florida Statutes. The SUBRECIPIENT further agrees not to release any records that are statutorily confidential or otherwise exempt from disclosure without first receiving prior written authorization from the COUNTY. Unless caused by the negligence of the County, as determined by a court of competent jurisdiction, the SUBRECIPIENT shall indemnify, defend, and hold the COUNTY harmless for and against any and all claims, damage awards, and causes of action arising from the SUBRECIPIENT's failure to comply with the public records disclosure requirements of section 119.07(1), Florida Statutes, or by the SUBRECIPIENT's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. The SUBRECIPIENT authorizes the COUNTY to seek declaratory, injunctive, or other appropriate relief against the SUBRECIPIENT from a court of competent jurisdiction on an expedited basis to enforce the requirements of this section. Nothing contained herein is intended to, nor shall be construed as, a waiver of any party's rights and immunities under common law or Section 768.28, Florida Statutes, as might be amended from time to time. Nothing contained herein shall be construed as consent to be sued by third parties in any matter arising out of this agreement.

The SUBRECIPIENT acknowledges the COUNTY's obligations under Article 1, Section 24, Florida Constitution and Chapter 286, Florida Statutes (commonly known as the Florida Government in the Sunshine Law (the "Sunshine Law")), the SUBRECIPIENT acknowledges that the COUNTY is required to comply with Article 1, Section 24, Florida Constitution and Chapter 286, Florida Statutes. The SUBRECIPIENT agrees to comply with these laws and any other laws related to complying with the Sunshine Law, to require any subcontractors to comply with all laws, as applicable, and to assist the COUNTY in complying with the same as it relates to all aspects of this Agreement.

The SUBRECIPIENT agrees to maintain such financial records and other records as may be prescribed by the COUNTY or by applicable federal and state laws, rules, and regulations. The COUNTY shall have the right to audit the books, records, and accounts of the SUBRECIPIENT that are directly related to this Agreement. The SUBRECIPIENT shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. The SUBRECIPIENT shall preserve and make available, at reasonable times for examination and audit by the COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention

period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of six (6) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or six (6) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by the COUNTY to be applicable to the SUBRECIPIENT's records, the SUBRECIPIENT shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by the SUBRECIPIENT. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for the COUNTY's disallowance and recovery of any payment upon such entry.

## **22. Procurement**

- a. The SUBRECIPIENT shall ensure that any procurement involving funds authorized by this Agreement complies with all applicable federal and state laws and regulations.
- b. The SUBRECIPIENT shall maintain records sufficient to detail the history of procurement. These records 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. The SUBRECIPIENT shall maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- d. The SUBRECIPIENT agrees to include in the subcontract that the subcontractor is bound by all applicable state and federal laws and regulations.
- e. The SUBRECIPIENT 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.

- f. The SUBRECIPIENT shall conduct any procurement under this Agreement in a manner providing full and open competition. Accordingly, the SUBRECIPIENT 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 actions 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.
- g. Except in those cases where applicable federal statutes expressly mandate or encourage otherwise, the SUBRECIPIENT shall not use a geographic preference when procuring commodities or services under this Agreement.
- h. 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 thirty-six (36) months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

### **23. Interest of Certain Federal Officials.**

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

### **24. Hatch Act.**

The SUBRECIPIENT agrees to comply with all provisions of the Hatch Act and that no part of the program will involve political activities, nor shall personnel employed in the administration of the program be engaged in activities in contravention of Title V, Chapter 15, of the United States Code.

## **25. Suspension and Debarment.**

The SUBRECIPIENT agrees to comply with the requirements of 24 C.F.R. parts 5 and 24, which prohibit a person who is debarred or suspended from receiving Federal financial and non-financial assistance and benefits under any Federal Programs.

SUBRECIPIENT certifies, to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;
- b. 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.
- c. 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 25 b. of this certification; and,
- d. 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.

SUBRECIPIENT acknowledges it is subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 C.F.R. part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

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

- a. 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).

- b. 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.
- c. This certification is a material representation of fact relied upon by the COUNTY. 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 COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- d. 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.

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

## **26. Equal Opportunity Employment.**

- a. In accordance with 41 C.F.R. §60-1.4(b), the SUBRECIPIENT 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 C.F.R. 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 agree as follows:

The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The SUBRECIPIENT and its contractors 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:

- i. 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 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 not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- iv. The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice 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.
- v. 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.
- vi. 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.
- vii. In the event of the contractors' noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement 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.

- viii. The contractor will include the portion of the sentence immediately preceding paragraph 26.a.i. and the provisions of paragraphs 26.a.i. through 26.a.viii. 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 provision, including sanctions for noncompliance: provided, however, that in the event the 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 SUBRECIPIENT 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 agenda, instrumentality or subdivision of such government which does not participate in work on or under the contract.
- c. The SUBRECIPIENT 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 SUBRECIPIENT 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 SUBRECIPIENT 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 SUBRECIPIENT under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such SUBRECIPIENT; and refer the case to the Department of Justice for appropriate legal proceedings.

- e. In the event a federal or state court or federal or state administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.

#### **27. Copeland Anti-Kickback Act.**

- a. The SUBRECIPIENT 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 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 SUBRECIPIENT, 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 C.F.R. 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 forty (40) hours. Work in excess of the standard work week is permissible provide 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 forty (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 SUBRECIPIENT, 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. Anti-Lobbying.**

The SUBRECIPIENT agrees, by executing this Agreement, that to the best of his or her knowledge and belief that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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;
- b. 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 the federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. If the SUBRECIPIENT, with the funds authorized by this Agreement, enters into a contract, then any such contract must including 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.

**31. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms:**

- a. If the SUBRECIPIENT, with the funds authorized by this Agreement, seeks to procure goods or services, then, the SUBRECIPIENT 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 SUBRECIPIENT must take; the requirements do not preclude the

SUBRECIPIENT from undertaking additional steps to involve small and minority businesses and women's business enterprises.

**32. Employee Protection from Reprisal.**

- a. In accordance with 41 U.S.C. Sec. 4712, an employee of SUBRECIPIENT may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph 32(b) below, information that the employee reasonably believes is evidence of:
  - i. Gross mismanagement of a Federal grant;
  - ii. Gross waste of Federal funds;
  - iii. An abuse of authority relating to implementation or use of Federal funds;
  - iv. A substantial and specific danger to public health or safety; or
  - v. A violation of law, rule, or regulation related to a Federal grant.
- b. Persons and bodies covered: The persons and bodies to which a disclosure by an employee is covered are as follows:
  - i. A member of Congress or a representative of a committee of Congress;
  - ii. An Inspector General;
  - iii. The Government Accountability Office;
  - iv. A Federal office or employee responsible for oversight of a grant program;
  - v. A court or grand jury;
  - vi. A management office of the COUNTY;
  - vii. A federal or State regulatory enforcement agency.
- c. Submission of Complaint – A person who believes that they have been subjected to a reprisal prohibited by this Section may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Treasury Department.
- d. Time Limitation for Submittal of a Complaint – A complaint may not be brought under this Section more than three years after the date on which the alleged reprisal took place.
- e. Required Actions of the Inspector General – Actions, limitations and exceptions of the Inspector General's office are established under Federal law.
- f. Assumption of Rights to Civil Remedy – Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under Federal law.

### **33. Americans with Disabilities Act**

The SUBRECIPIENT 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.

### **34. Attachments.**

- a. All attachments to this Agreement are incorporated as if set out fully.
- b. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.
- c. This Agreement has the following attachments:
  - i. Attachment A – Delegation of Authority
  - ii. Attachment B – Project Summary Budget
  - iii. Attachment C – Project Summary Budget Amendment and Restatement
  - iv. Attachment D – Reimbursement Request Form
  - v. Attachment E – Reimbursement Request Form Summary Sheet
  - vi. Attachment F – Purchased Expense Reimbursement Request Form
  - vii. Attachment G – Employee Regular Time Reimbursement Request Form (For All 100% Position Requests)
  - viii. Attachment H – Overtime Reimbursement Request Form
  - ix. Attachment I – Certification Regarding Debarment

### **35. Assurances.**

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

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

The SUBRECIPIENT assures and certifies it will:

- a. Establish safeguards to prohibit employees from using their 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.
- b. Comply with minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, and Florida Statutes.
- c. Comply with overtime provisions of the Federal Fair Labor Standards Act, requiring that covered employees be paid at least the 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.
- d. Comply with the provisions of the DRUG-FREE WORKPLACE as required by the Drug-Free Workplace Act of 1988.

**36. Good Faith.**

Each party will act in good faith in the performance of its respective responsibilities under this Agreement and will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required by the other party in order to perform its responsibilities under this Agreement.

**37. Non-assignability.**

This Agreement shall not be assigned, transferred, or encumbered by the SUBRECIPIENT unless authorized by the COUNTY in writing as a modification to this Agreement.

**38. Waiver of Jury Trial.**

By entering into this Agreement, the SUBRECIPIENT and the COUNTY hereby expressly waive any rights either may have to a trial by jury of any civil litigation related to this Agreement for any litigation limited solely to the parties of this Agreement.

**39. Conflict.**

If any provision of this Agreement shall for any reason be held to be invalid, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, such provision shall be construed so as to make it enforceable to the greatest extent permitted, such provision shall remain in effect to the greatest extent permitted and the remaining provisions of this Agreement shall remain in full force and effect unless the COUNTY and the SUBRECIPIENT mutually elect to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final. Prior to terminating this Agreement, the parties may agree to substitute an enforceable provision that, to the maximum extent possible under applicable law, preserves the original intentions and economic positions of the parties.



**40. Legal Authorization.**

The SUBRECIPIENT certifies that it has the legal authority to receive the funds under this Agreement. The SUBRECIPIENT also certifies that the undersigned person has the authority to legally execute and bind SUBRECIPIENT to the terms of this Agreement.

**41. Complete Agreement.**

This Agreement and attached exhibits and amendments thereto constitute the full and complete understanding between the parties.

**42. Amendments.**

Upon mutual consent of both parties, this Agreement may be amended in writing.

**IN WITNESS WHEREOF, the COUNTY and the SUBRECIPIENT have executed this Agreement.**

\_\_\_\_\_  
William C. Hall

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City of South Daytona

\_\_\_\_\_  
Date

Approved as to form and legality:

\_\_\_\_\_  
Scott E. Simpson, PA

\_\_\_\_\_  
City of South Daytona

\_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_

\_\_\_\_\_  
George Recktenwald

\_\_\_\_\_  
County Manager

\_\_\_\_\_  
County of Volusia, Florida

\_\_\_\_\_  
Date

Approved as to form and legality:

\_\_\_\_\_  
Michael G. Dyer,

\_\_\_\_\_  
Volusia County Attorney

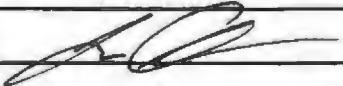
Date: \_\_\_\_\_

**Attachment A**

**Volusia County Coronavirus Relief Fund Municipal Subrecipient Program  
Delegation of Authority**


**Part A**

The following individuals are delegated authority by the elected governing body of the following municipality to submit Budget Amendment Forms to Volusia County for the Volusia County Coronavirus Relief Fund Municipal Subrecipient Program:

Authorized Individual Name	Authorized Individual Title	Signature
James L. Gillis	City Manager	
Jason Oliva	Deputy Finance Director	

**Part B**

The following individuals are delegated authority by the elected governing body of the following municipality to submit Reimbursement Request Forms to Volusia County for the Volusia County Coronavirus Relief Fund Municipal Subrecipient Program:

Authorized Individual Name	Authorized Individual Title	Signature
James L. Gillis	City Manager	
Jason Oliva	Deputy Finance Director	

City of South Daytona

Municipality Name

\_\_\_\_\_  
Signature of Municipality Mayor

William C. Hall

Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attestation of Chief Executive of Municipality

James L. Gillis

Printed Name

\_\_\_\_\_  
Date

## Attachment B

### Volusia County Coronavirus Relief Fund Municipal Subrecipient Program Project Summary Budget

Project Number	Project Name	Budget
1	PERSONAL PROTECTIVE SUPPLIES	\$ 5,445.00
2	PERSONAL PROTECTIVE EQUIPMENT	\$ 2,500.00
3	BUILDING IMPROVEMENTS: PLEXIGLASS BARRIERS	\$ 25,000.00
4	UV LIGHTS FOR AIR HANDLERS	\$ 30,000.00
5	HOT WATER HEATERS WHERE HEATERS DID NOT EXIST BEFORE	\$ 600.00
6	17 AUTOMATED DOORS TO REDUCE CONTACT	\$ 80,309.00
7	17 TOUCHLESS DOOR SENSORS TO REDUCE CONTACT	\$ 6,800.00
8	30 HAND SANITATION STATIONS	\$ 5,000.00
9	SUPERVISORY CENTRAL & DATA ACQUISITION (SCADA) FOR REMOTELY MONITORING LIFT STATIONS & PUMPS TO REDUCE POTENTIAL PUBLIC WORKS EMPLOYEES EXPOSURE TO COVID 19	\$ 90,000.00
10	REGULAR PUBLIC HEALTH: PARKS STAFF DISINFECTING PLAYGROUND EQUIPMENT 160 HOURS	\$ 5,500.00
11	FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA) SICK LEAVE	\$ 25,000.00
12	TELEWORK IMPROVEMENTS: 24 LAPTOPS (24% OF WORK FORCE)	\$ 24,000.00
13	UPGRADES TO PHONE SYSTEM TO ALLOW CALLS TO TRANSFER TO/FROM CITY HALL ACTING AS THE LOCAL EOC	\$ 10,000.00
14	LIVE BROADCAST OF CITY COUNCIL MEETINGS	\$ 20,000.00
15	3 ELECTRONIC SIGNS TO INFORM PUBLIC OF COVID UPDATES	\$ 30,000.00
16	KEY CARD ENTRY SYSTEM FOR EMPLOYEES TO REDUCE CONTACT	\$ 40,000.00
17	SCROLLING MESSAGE BOARD TO COMMUNICATE EMERGENCY INSTRUCTIONS	\$ 40,000.00
18	CONSULTING FEES TO UPDATE EMERGENCY PLAN FOR COVID 19 RESPONSE	\$ 15,000.00
<b>Total Budget</b>		<b>\$ 455,154.00</b>

City of South Daytona

Municipality Name

Signature of Municipality Mayor

William C. Hall

Printed Name

Date

## **EXHIBIT B**

### **MAXIMUM MUNICIPALITY ALLOCATIONS**

**Volusia County Coronavirus Relief Fund Municipal Subrecipient Program**

**Maximum Municipality Allocations**

<b>Name</b>	<b>2019 Census Population</b>	<b>% of Municipality Total Population</b>	<b>Maximum Municipality Allocation</b>
Daytona Beach	69,186	16.05%	\$ 2,407,514
Daytona Beach Shores	4,614	1.07%	160,557
DeBary	21,305	4.94%	741,365
DeLand	34,851	8.08%	1,212,735
Deltona	92,757	21.52%	3,227,730
Edgewater	23,918	5.55%	832,291
Holly Hill	12,357	2.87%	429,995
Lake Helen	2,801	0.65%	97,468
New Smyrna Beach	27,843	6.46%	968,872
Oak Hill	2,214	0.51%	77,042
Orange City	12,335	2.86%	429,230
Ormond Beach	43,759	10.15%	1,522,712
Pierson	1,893	0.44%	65,872
Ponce Inlet	3,308	0.77%	115,111
Port Orange	64,842	15.04%	2,256,352
South Daytona	13,080	3.03%	455,154
Unincorporated	122,221	N/A	-
<b>Total</b>	<b>553,284</b>	<b>100.00%</b>	<b>\$ 15,000,000</b>