



Bonita Springs Fire Control & Rescue District
Station Four Administrative Building
27701 Bonita Grande Drive
Bonita Springs, Florida 34135

City of Bonita Springs City Council Meeting Agenda

January 17, 2024
9:00 a.m.

If you plan to address the City Council, please complete a “Public Comment Card” located on the table outside of Chambers. Completed comment cards should be submitted to the City Clerk prior to the start of the meeting.

To submit your public comment in writing, please email your name, address, and comments to CITYMEETINGS@CITYOFBONITASPRINGS.ORG. **Any written public comment must be received by 2:00 p.m. on January 16, 2024.**

The City of Bonita Springs will not discriminate against individuals on the basis of race, color, national origin, sex, age, disability, religion, income, or marital status. To request an ADA-qualified reasonable modification at no charge to the requestor, please contact City Clerk Mike Sheffield by calling (239) 949-6262 at least 48 hours prior to the meeting.

If a person decides to appeal a decision made by the Council on any matter at this meeting, such person must have a verbatim record of the proceeding to include the testimony and evidence upon which such appeal is to be based.

1. Call to Order
2. Invocation
3. Pledge of Allegiance
4. Roll Call
5. Approval of Agenda
6. Mayor’s Welcome
7. Public Comment on Agenda Item

8. Consent Agenda:

- A. Approval of minutes from the City Council meeting held December 20, 2023.
- B. Confirm and ratify Resolutions extending the local State of Emergency due to Hurricane Ian. (Green Sheet No. 24-01-001)
- C. Confirm and ratify final Resolutions extending the local State of Emergency due to Hurricane Idalia. (Green Sheet No 24-01-002)
- D. Approve a Contract Agreement with Florida Department of Environmental Protection for the Pine Avenue Multi-Use Pathway. (Green Sheet No 24-01-003)
- E. Approve a Resolution appointing a chairperson of each of the City's advisory boards and committees. (Green Sheet No 24-01-004)
- F. Approve a Resolution establishing composition and membership requirements for the Art in Public Places Board. (Green Sheet No 24-01-008)
- G. Approve a special event application from Fair Productions LLC for a Family Fair at the Bonita Springs Poker Room from February 9 through February 18, 2024. (Green Sheet No 24-01-009)
 - Opportunity for City Council Comments on Consent Agenda

9. Public Hearing:

- A. (Second Reading) An Ordinance amending Sec. 34-94 of the City's Code of Ordinances relating to establishing composition and qualification requirements for appointment to the Art in Public Places Advisory Board. (Green Sheet No. 24-01-005)

10. City Attorney's Items:

11. City Manager's Items:

- A. Discussion regarding potential planning studies for the CDBG-DR Hurricane Ian Recovery and Resiliency Planning Program grant opportunities. (Green Sheet No. 24-01-006)
- B. Discussion regarding potential projects for FY 2025 U.S. Congressional appropriation funding requests. (Green Sheet No. 24-01-007)
- C. Update on Hurricane Ian recovery

12. Mayor and Council Member Reports

13. Public Comment

14. Adjournment



City Council Chambers
9101 Bonita Beach Road
Bonita Springs, Florida 34135

City of Bonita Springs
City Council
DRAFT Meeting Minutes

December 20, 2023

9:00 a.m.

1. Call to Order

Mayor Steinmeyer called the meeting to order at 9 a.m.

2. Invocation

The invocation was provided by Angel Ortiz of Integrity Church.

3. Pledge of Allegiance

Mayor Steinmeyer led the Pledge of Allegiance.

4. Roll Call

Mayor Steinmeyer motioned to allow Council Member Corrie to participate and vote remotely via Zoom; seconded by Council Member Carr. The motion carried 5-0.

The City Clerk called the roll:

Present: 7 Mayor Steinmeyer, Council Member Bogacz, Council Member Purdon, Council Member Carr, Council Member Fullick, Deputy Mayor Forbes, Council Member Corrie (Via Zoom)

Absent: 0

5. Approval of Agenda

No changes.

6. Mayor's Welcome

Mayor Steinmeyer welcomed all those in attendance.

7. Public Comment on Agenda Items

Alex Giovanni - Spoke on Agenda Item 8H, stating that he is the owner of the property at 27709 Old 41 Road, which is one of the three properties named in the item that has been found by the Code Enforcement Hearing Examiner to meet legal sufficiency for foreclosure proceedings. Mr. Giovanni asked for additional time to bring the property into compliance. City Attorney Rooney suggested that staff hold off on moving forward with foreclosure action for 60 days, to allow Mr. Giovanni the time that he requested. Deputy Mayor Forbes motioned to accept the City Attorney's recommendation; seconded by Council Member Fullick. The motion carried unanimously.

8. Consent Agenda:

Council Member Fullick motioned to approve the Consent Agenda; Council Member Carr seconded the motion. The motion carried unanimously.

- A. Approval of minutes from the December 6, 2023 City Council Meeting.
- B. Approval of minutes from the December 6, 2023 City Council Workshop.
- C. Confirm and ratify Resolutions extending the local State of Emergency due to Hurricane Ian. (Green Sheet No. 23-12-277)
- D. Confirm and ratify Resolutions extending the local State of Emergency due to Hurricane Idalia. (Green Sheet No 23-12-278)
- E. Approve a Resolution re-appointing members to the Art in Public Places Advisory Board, the Bicycle Pedestrian Safety Advisory Committee, the Historic Preservation Board, the Street Light Advisory Committee, and the Technology Advisory Board. (Green Sheet No. 23-12-279)
- F. Approve a Resolution for Budget Amendment to carryover prior year unspent capital budget amounts into fiscal year 2023-2024. (Green Sheet No. 23-12-280)
- G. Approve Agreement with Q. Grady Minor & Associates, PA for engineering design services for the Rosemary Dr. Stormwater and Multi-Use Pathway Project. (Green Sheet 23-12-281)
- H. Authorize staff to commence foreclosure proceedings for multiple code enforcement liens against the properties located at 26930 Old 41 Road, 27709 Old 41 Road, and 4288 Bonita Beach Road. (Green Sheet No. 23-12-285)
 - Opportunity for City Council Comments on Consent Agenda

9. Mayor & Council Member Items:

- A. Consider an appointment to the Art in Public Places Board - Council Member Fullick (Green Sheet No. 23-12-283)

Council Member Carr motioned to approve the appointment of Tom Albrecht; seconded by Council Member Fullick. The motion carried unanimously.

10. City Attorney's Items:

- A. FIRST READING of an Ordinance amending Sec. 34-94 of the City's Code of Ordinances relating to establishing composition and qualification requirements for appointment to the Art in Public Places Advisory Board. (Green Sheet No. 23-12-282)

The Clerk read the title block into the record. Mayor Steinmeyer motioned to move to second reading; Council Member Purdon seconded the motion. The motion carried unanimously.

- B. Approve Agreement for Sale and Purchase for the acquisition and condemnation of parcel 205 required for the Bonita Grande Drive extension to the City's planned park facilities adjacent to the Larry Kiker Preserve. (Green Sheet No. 23-12-284)

Council Member Carr motioned to approve; seconded by Council Member Bogacz. The motion carried unanimously.

City Attorney Update on Form 6 Financial Disclosure Requirement - City Attorney Rooney provided an update on the new State law which requires municipal elected officials to submit the Form 6 Financial Disclosure.

11. City Manager's Items:

A. Update on Hurricane Ian recovery

Assistant City Manager Feeney informed Council that Melody Lane, which was damaged during Hurricane Ian, has been repaired. He further reported that the City has received the first Notice of CDBG-DR Funding. Also, he reported that the City received notice of a grant award for Pine Avenue for a multi-use path from the baseball complex to Terry Street. The acceptance agreement will be on the next Council meeting agenda.

Assistant City Manager Feeney also advised that staff intends to recommend at the next meeting that the local State of Emergency for Hurricane Idalia be discontinued, which is consistent with neighboring communities.

Community Development Director John Dulmer provided an update on Hurricane Ian-related permitting, stating that volume is down but remains steady.

12. Mayor and Council Member Reports

Council Member Corrie informed Council that the Recovery Task Force draft report is expected to be issued in January. He also expressed concern for residents & businesses north of Shangri-La Road that are negatively impacted by blowing dirt & dust from the nearby Barron Collier project. Staff will review the issue and options.

Council Members wished residents and staff a Merry Christmas/Happy Holidays/Happy New Year.

13. Public Comment

None.

14. Adjournment

Mayor Steinmeyer announced that the next Council meeting will be held at 9 a.m., Jan. 17 at the Bonita Springs Fire Control & Rescue District, Station Four Administrative Building, 27701 Bonita Grande Drive.

There being no further business, the meeting adjourned at 9:34 a.m.

Prepared by:

Mike Sheffield, City Clerk

APPROVED BY CITY COUNCIL

Date: _____

AUTHENTICATED:

Rick Steinmeyer, Mayor

REQUESTED MOTION: Confirm and ratify Resolutions extending the Local State of Emergency due to Hurricane Ian.

REQUESTOR: Arleen M. Hunter, City Manager; Derek Rooney, City Attorney

AGENDA: Consent

STRATEGIC PRIORITY:

BACKGROUND:

Governor Ron DeSantis signed Executive Orders 2022-218 and 2022-219, in response to the anticipated landfall of Hurricane Ian and declared a state of emergency, pursuant to Chapter 252, Florida Statutes. As Hurricane Ian posed a serious threat to our area, an ultimate landfall directly affected the City of Bonita Springs. Consistent with Florida statutes, the following Resolutions were prepared and signed by the Mayor and staff to extend the Local State of Emergency in seven day increments.

At this time, it is appropriate for City Council to ratify the continued Local State of Emergency.

STAFF RECOMMENDATION: Approve

ATTACHMENTS:

1. Resolution No. 23-138 issued on December 18, 2023
2. Resolution No. 23-143 issued on December 25, 2023
3. Resolution No. 24-001 issued on January 1, 2024
4. Resolution No. 24-002 issued on January 8, 2024

REVIEWERS:

City Manager: Arleen Hunter
City Attorney: Derek Rooney
City Clerk: Mike Sheffield

CITY OF BONITA SPRINGS
RESOLUTION NO. 23-138

AN EMERGENCY RESOLUTION OF THE CITY OF BONITA SPRINGS DECLARING A STATE OF LOCAL EMERGENCY RESULTING FROM HURRICANE IAN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Governor Ron DeSantis signed Executive Orders 2022-218 and 2022-219, in response to the anticipated landfall of Hurricane Ian and has declared a state of emergency, pursuant to Chapter 252, Florida Statutes; and,

WHEREAS, on September 26, 2022 the City declared a local State of Emergency ahead of the landfall of Hurricane Ian; and

WHEREAS, Hurricane Ian had a significant impact on this area, the effects of which are still being fully ascertained and include extensive flooding, wind and water damage, not only to public infrastructure but to homes and businesses throughout the City; and

WHEREAS, the effects of Hurricane Ian continue to pose a serious threat to the lives and property of residents of the City of Bonita Springs.

NOW, THEREFORE, BE IT RESOLVED by the Mayor on behalf of the City Council of the City of Bonita Springs, Lee County, Florida;

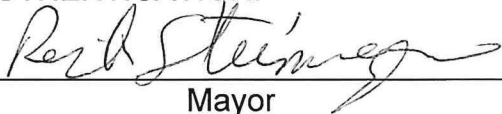
Section 1. The recitals above are hereby incorporated herein.

Section 2. The current State of Emergency is extended.

Section 3. This resolution shall take effect immediately upon adoption. Consistent with Florida Statutes §252.38(3), the duration of this state of emergency declared locally is limited to 7 days and may be extended, as necessary by resolution, in 7-day increments.

DULY PASSED AND ENACTED by the Mayor of the City of Bonita Springs, Lee County, Florida, this 18th day of December, 2023.

AUTHENTICATION:


Mayor


City Clerk

APPROVED AS TO FORM:


City Attorney Office

Date filed with City Clerk: 12/18/23

CITY OF BONITA SPRINGS
RESOLUTION NO. 23-143

AN EMERGENCY RESOLUTION OF THE CITY OF BONITA SPRINGS DECLARING A STATE OF LOCAL EMERGENCY RESULTING FROM HURRICANE IAN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Governor Ron DeSantis signed Executive Orders 2022-218 and 2022-219, in response to the anticipated landfall of Hurricane Ian and has declared a state of emergency, pursuant to Chapter 252, Florida Statutes; and,

WHEREAS, on September 26, 2022 the City declared a local State of Emergency ahead of the landfall of Hurricane Ian; and

WHEREAS, Hurricane Ian had a significant impact on this area, the effects of which are still being fully ascertained and include extensive flooding, wind and water damage, not only to public infrastructure but to homes and businesses throughout the City; and

WHEREAS, the effects of Hurricane Ian continue to pose a serious threat to the lives and property of residents of the City of Bonita Springs.

NOW, THEREFORE, BE IT RESOLVED by the Mayor on behalf of the City Council of the City of Bonita Springs, Lee County, Florida;

Section 1. The recitals above are hereby incorporated herein.

Section 2. The current State of Emergency is extended.

Section 3. This resolution shall take effect immediately upon adoption. Consistent with Florida Statutes §252.38(3), the duration of this state of emergency declared locally is limited to 7 days and may be extended, as necessary by resolution, in 7-day increments.

DULY PASSED AND ENACTED by the Mayor of the City of Bonita Springs, Lee County, Florida, this 25th day of December, 2023.

AUTHENTICATION:

 Mayor  City Clerk

APPROVED AS TO FORM:  City Attorney Office

Date filed with City Clerk: 12/27/23

CITY OF BONITA SPRINGS
RESOLUTION NO. 24-001

AN EMERGENCY RESOLUTION OF THE CITY OF BONITA SPRINGS DECLARING A STATE OF LOCAL EMERGENCY RESULTING FROM HURRICANE IAN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Governor Ron DeSantis signed Executive Orders 2022-218 and 2022-219, in response to the anticipated landfall of Hurricane Ian and has declared a state of emergency, pursuant to Chapter 252, Florida Statutes; and,

WHEREAS, on September 26, 2022 the City declared a local State of Emergency ahead of the landfall of Hurricane Ian; and

WHEREAS, Hurricane Ian had a significant impact on this area, the effects of which are still being fully ascertained and include extensive flooding, wind and water damage, not only to public infrastructure but to homes and businesses throughout the City; and

WHEREAS, the effects of Hurricane Ian continue to pose a serious threat to the lives and property of residents of the City of Bonita Springs.

NOW, THEREFORE, BE IT RESOLVED by the Mayor on behalf of the City Council of the City of Bonita Springs, Lee County, Florida;

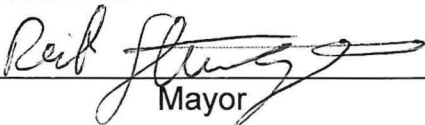
Section 1. The recitals above are hereby incorporated herein.

Section 2. The current State of Emergency is extended.

Section 3. This resolution shall take effect immediately upon adoption. Consistent with Florida Statutes §252.38(3), the duration of this state of emergency declared locally is limited to 7 days and may be extended, as necessary by resolution, in 7-day increments.

DULY PASSED AND ENACTED by the Mayor of the City of Bonita Springs, Lee County, Florida, this 1st day of January, 2024.

AUTHENTICATION:



Mayor



City Clerk

APPROVED AS TO FORM:



City Attorney Office

Date filed with City Clerk: _____


1/2/24

CITY OF BONITA SPRINGS
RESOLUTION NO. 24-002

**AN EMERGENCY RESOLUTION OF THE CITY OF BONITA
SPRINGS DECLARING A STATE OF LOCAL EMERGENCY
RESULTING FROM HURRICANE IAN; AND PROVIDING AN
EFFECTIVE DATE.**

WHEREAS, Governor Ron DeSantis signed Executive Orders 2022-218 and 2022-219, in response to the anticipated landfall of Hurricane Ian and has declared a state of emergency, pursuant to Chapter 252, Florida Statutes; and,

WHEREAS, on September 26, 2022 the City declared a local State of Emergency ahead of the landfall of Hurricane Ian; and

WHEREAS, Hurricane Ian had a significant impact on this area, the effects of which are still being fully ascertained and include extensive flooding, wind and water damage, not only to public infrastructure but to homes and businesses throughout the City; and

WHEREAS, the effects of Hurricane Ian continue to pose a serious threat to the lives and property of residents of the City of Bonita Springs.

NOW, THEREFORE, BE IT RESOLVED by the Mayor on behalf of the City Council of the City of Bonita Springs, Lee County, Florida;

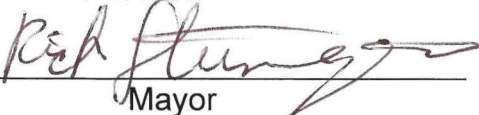
Section 1. The recitals above are hereby incorporated herein.

Section 2. The current State of Emergency is extended.

Section 3. This resolution shall take effect immediately upon adoption. Consistent with Florida Statutes §252.38(3), the duration of this state of emergency declared locally is limited to 7 days and may be extended, as necessary by resolution, in 7-day increments.

DULY PASSED AND ENACTED by the Mayor of the City of Bonita Springs, Lee County, Florida, this 8th day of January, 2024.

AUTHENTICATION:

 Mayor
 City Clerk

APPROVED AS TO FORM: 
City Attorney Office

Date filed with City Clerk: 1/8/24

REQUESTED MOTION: Confirm and ratify final Resolutions extending the Local State of Emergency due to Hurricane Idalia.

REQUESTOR: Arleen M. Hunter, City Manager; Derek Rooney, City Attorney

AGENDA: Consent

STRATEGIC PRIORITY:

BACKGROUND:

On August 26, 2023, pursuant to Chapter 252, Florida Statutes Governor Ron DeSantis signed Executive Orders 2023-171 to declare a state of emergency, including Lee County, in response to the anticipated landfall of Tropical Storm Idalia. Due to the threat of severe weather and potential impacts to the City, on August 28, 2023, the Mayor executed Resolution No. 23-70 declaring a state of emergency within the City with regard to then-Tropical Storm Idalia.

Consistent with Florida statutes, the following Resolutions were prepared and signed by the Mayor and staff to extend the Local State of Emergency in seven day increments.

Resolution 23-144, issued at the end of Calendar Year 2023, is the final anticipated extension of the local State of Emergency due to Hurricane Idalia. Staff is neither recommending nor anticipating further extensions to the local state of emergency due to Hurricane Idalia in Calendar Year 2024.

STAFF RECOMMENDATION: Confirm and ratify the Local State of Emergency.

ATTACHMENTS:

1. Resolution No. 23-139 issued on December 18, 2023
2. Resolution No. 23-144 issued on December 25, 2023

REVIEWERS:

City Manager:	Arleen Hunter
City Attorney:	Derek Rooney
City Clerk:	Mike Sheffield

CITY OF BONITA SPRINGS
RESOLUTION NO 23 - 139

**AN EMERGENCY RESOLUTION OF THE CITY OF BONITA
SPRINGS EXTENDING A STATE OF LOCAL EMERGENCY
RESULTING FROM HURRICANE IDALIA; AND PROVIDING AN
EFFECTIVE DATE.**

WHEREAS, Governor Ron DeSantis signed Executive Orders 2023-171 and 2023-172, in response to the anticipated landfall of Hurricane Idalia and has declared a state of emergency including Lee County, pursuant to Chapter 252, Florida Statutes; and,

WHEREAS, on August 28, 2023 the City declared a local State of Emergency ahead of the landfall of Hurricane Idalia; and

NOW, THEREFORE, BE IT RESOLVED by the Mayor on behalf of the City Council of the City of Bonita Springs, Lee County, Florida;

Section 1. The recitals above are hereby incorporated herein.

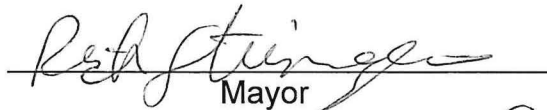
Section 2. The current State of Emergency is extended.

Section 3. Effective Date

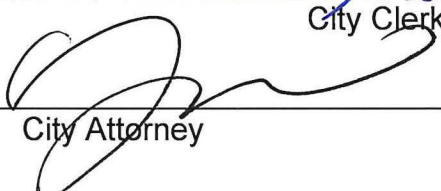
This resolution shall take effect immediately upon adoption. Consistent with Florida Statutes §252.38(3), the duration of this state of emergency declared locally is limited to 7 days and may be extended, as necessary by resolution, in 7-day increments.

DULY PASSED AND ENACTED by the Mayor of the City of Bonita Springs, Lee County, Florida, this 18th day of December, 2023.

AUTHENTICATION:

 Mayor  City Clerk

APPROVED AS TO FORM:


City Attorney

Date filed with City Clerk:

12/18/23

CITY OF BONITA SPRINGS
RESOLUTION NO 23 - 144

**AN EMERGENCY RESOLUTION OF THE CITY OF BONITA
SPRINGS EXTENDING A STATE OF LOCAL EMERGENCY
RESULTING FROM HURRICANE IDALIA; AND PROVIDING AN
EFFECTIVE DATE.**

WHEREAS, Governor Ron DeSantis signed Executive Orders 2023-171 and 2023-172, in response to the anticipated landfall of Hurricane Idalia and has declared a state of emergency including Lee County, pursuant to Chapter 252, Florida Statutes; and,

WHEREAS, on August 28, 2023 the City declared a local State of Emergency ahead of the landfall of Hurricane Idalia; and

NOW, THEREFORE, BE IT RESOLVED by the Mayor on behalf of the City Council of the City of Bonita Springs, Lee County, Florida;

Section 1. The recitals above are hereby incorporated herein.

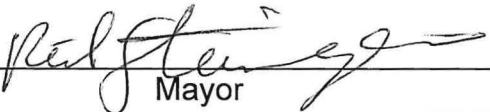
Section 2. The current State of Emergency is extended.

Section 3. Effective Date

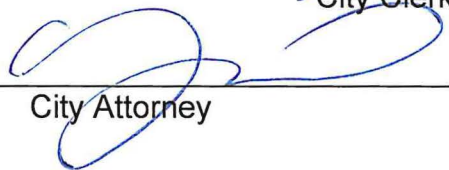
This resolution shall take effect immediately upon adoption. Consistent with Florida Statutes §252.38(3), the duration of this state of emergency declared locally is limited to 7 days and may be extended, as necessary by resolution, in 7-day increments.

DULY PASSED AND ENACTED by the Mayor of the City of Bonita Springs, Lee County, Florida, this 25th day of December, 2023.

AUTHENTICATION:

 Mayor  City Clerk

APPROVED AS TO FORM:


City Attorney

Date filed with City Clerk: 12/27/23

REQUESTED MOTION: Approve contract agreement with Florida Department of Environmental Protection for the Pine Avenue Multi-Use Pathway

REQUESTOR: Elly Soto McKuen, Senior Project Manager

AGENDA: Consent

STRATEGIC PRIORITY: 1) Stormwater Management, 2) Transportation, 3) Enhance City Finances, 4) Environmental Protection

BACKGROUND: The City submitted a grant application to Florida Department of Environmental Protection (DEP) Recreational Trail Program (RTP) on February 27, 2023 for the Pine Avenue Multi-Use Pathway (MUP) Project. The limits of the Pine Avenue MUP will begin at the intersection of West Terry Street and continue north to the City's covered basketball court parking lot at the City's Recreation Center. Staff was notified of final approval and received DEP's contract for funding on December 19, 2023.

Construction will consist of a new 12-foot wide multi-use non-motorized pathway that can accommodate bicycles, pedestrians, in-line skating and exercise. To accommodate the new pathway, the City will convert the existing open swale to a closed system on the west side of Pine Avenue to construct the pathway. The path will be constructed to ADA standards. The asphalt pathway will be constructed within the existing Pine Avenue right-of-way. Once the pathway is constructed, pathway lighting and landscape will be installed.

STAFF RECOMMENDATION: Approve contract agreement with Florida Department of Environmental Protection for the Pine Avenue Multi-Use Pathway

ATTACHMENTS:

1. FDEP Contract for Pine Avenue Multi-Use Pathway

REVIEWERS:

City Manager:	Arleen Hunter
City Attorney:	Derek Rooney
City Clerk:	Mike Sheffield
Department Director:	Matt Feeney

Council Action: Approved ___ Denied ___ Deferred ___ Other _____

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Standard Grant Agreement**

This Agreement is entered into between the Parties named below, pursuant to section 215.971, Florida Statutes:

1. Project Title (Project): **Pine Avenue Multi-Use Path** Agreement Number: **T2305**

2. Parties **State of Florida Department of Environmental Protection,
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000** (Department)

Grantee Name: **City of Bonita Springs** Entity Type: **Local Government**
Grantee Address: **9101 Bonita Beach Road, Bonita Springs, FL 34135** FEID: **59-3649914**
(Grantee)

3. Agreement Begin Date: **Upon Execution** Date of Construction Completion: **60 Days Prior to Date of Expiration** Date of Expiration: **Two Years From Date of Execution**

4. Project Number: **T23005** Project Location(s): **26890 Pine Ave, Bonita Springs, FL 34135**
(If different from Agreement Number)

Project Description: **Construction of 12' x 1,760 LF (+/- 10%) hard-surface path with the installation of pedestrian lighting fixtures, pedestrian detectors, directional signage, informational signage, benches and trash receptacles and safety lighting and landscaping.**

5. Total Amount of Funding:	Funding Source?	Award #s or Line-Item Appropriations:	Amount per Source(s):
\$ 400,000.00	☐ State ☒ Federal	RTP23	\$ 400,000.00
	☐ State ☐ Federal		\$
	☒ Grantee Match		\$ 400,000.00
Total Amount of Funding + Grantee Match, if any:			\$ 800,000.00

6. Department's Grant Manager Name: **Lauren Cruz** or successor
Address: **3900 Commonwealth Blvd
MS 585
Tallahassee, FL 32399**
Phone: **850-245-2681**
Email: **Lauren.Cruz@FloridaDEP.gov**

Grantee's Grant Manager Name: **Elly Soto McKuen** or successor
Address: **9101 Bonita Beach Road,
Bonita Springs, FL 34135**
Phone: **239-949-6262**
Email: **Elly.McKuen@cityofbonitasprings.org**

7. The Parties agree to comply with the terms and conditions of the following attachments and exhibits which are hereby incorporated by reference:

☒ Attachment 1: Standard Terms and Conditions Applicable to All Grants Agreements
☒ Attachment 2: Special Terms and Conditions
☒ Attachment 3: Grant Work Plan
☒ Attachment 4: Public Records Requirements
☒ Attachment 5: Special Audit Requirements
☒ Attachment 6: Program-Specific Requirements
☒ Attachment 7: Grant Award Terms (Federal) *Copy available at https://facts.fldfs.com , in accordance with section 215.985, F.S.
☒ Attachment 8: Federal Regulations and Terms (Federal)
☒ Additional Attachments (if necessary): Attachment 9: FHWA Form 1273
☒ Exhibit A: Progress Report Form
☐ Exhibit B: Property Reporting Form
☒ Exhibit C: Payment Request Summary Form
☐ Exhibit D: Quality Assurance Requirements
☐ Exhibit E: Advance Payment Terms and Interest Earned Memo
☐ Exhibit F: Common Carrier or Contracted Carrier Attestation Form PUR1808 (State)
☐ Exhibit H: Non-Profit Organization Compensation Form (State)

☒ Additional Exhibits (if necessary): Exhibit F: Appendices A&E; Exhibit G: 49 CFR 26.13; Exhibit H: Contractor Recipient General Terms and Conditions for Assistance Awards	
8. The following information applies to Federal Grants only and is identified in accordance with 2 CFR 200.331 (a) (1):	
Federal Award Identification Number(s) (FAIN):	12RECT023
Federal Award Date to Department:	10/01/2023
Total Federal Funds Obligated by this Agreement:	400,000
Federal Awarding Agency:	U.S. Department of Transportation - Federal Highway Administration
Award R&D?	☐ Yes ☒ N/A

IN WITNESS WHEREOF, this Agreement shall be effective on the date indicated by the Agreement Begin Date unless another date is specified in the grant documents.

City of Bonita Springs

GRANTEE

Grantee Name

By _____
(Authorized Signature) Date Signed

Print Name and Title of Person Signing

State of Florida Department of Environmental Protection

DEPARTMENT

By _____
Secretary or Designee Date Signed

Print Name and Title of Person Signing

☐ Additional signatures attached on separate page.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STANDARD TERMS AND CONDITIONS
APPLICABLE TO GRANT AGREEMENTS**

ATTACHMENT 1

1. Entire Agreement.

This Grant Agreement, including any Attachments and Exhibits referred to herein and/or attached hereto (Agreement), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any terms and conditions included on Grantee's forms or invoices shall be null and void.

2. Grant Administration.

- a. Order of Precedence. If there are conflicting provisions among the documents that make up the Agreement, the order of precedence for interpretation of the Agreement is as follows:
 - i. Standard Grant Agreement
 - ii. Attachments other than Attachment 1, in numerical order as designated in the Standard Grant Agreement
 - iii. Attachment 1, Standard Terms and Conditions
 - iv. The Exhibits in the order designated in the Standard Grant Agreement
- b. All approvals, written or verbal, and other written communication among the parties, including all notices, shall be obtained by or sent to the parties' Grant Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. If the notice is delivered in multiple ways, the notice will be considered delivered at the earliest delivery time.
- c. If a different Grant Manager is designated by either party after execution of this Agreement, notice of the name and contact information of the new Grant Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Grant Manager does not require a formal amendment or change order to the Agreement.
- d. This Agreement may be amended, through a formal amendment or a change order, only by a written agreement between both parties. A formal amendment to this Agreement is required for changes which cause any of the following:
 - (1) an increase or decrease in the Agreement funding amount;
 - (2) a change in Grantee's match requirements;
 - (3) a change in the expiration date of the Agreement; and/or
 - (4) changes to the cumulative amount of funding transfers between approved budget categories, as defined in Attachment 3, Grant Work Plan, that exceeds or is expected to exceed twenty percent (20%) of the total budget as last approved by Department.A change order to this Agreement may be used when:
 - (1) task timelines within the current authorized Agreement period change;
 - (2) the cumulative transfer of funds between approved budget categories, as defined in Attachment 3, Grant Work Plan, are less than twenty percent (20%) of the total budget as last approved by Department;
 - (3) changing the current funding source as stated in the Standard Grant Agreement; and/or
 - (4) fund transfers between budget categories for the purposes of meeting match requirements.This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.
- e. All days in this Agreement are calendar days unless otherwise specified.

3. Agreement Duration.

The term of the Agreement shall begin and end on the dates indicated in the Standard Grant Agreement, unless extended or terminated earlier in accordance with the applicable terms and conditions. The Grantee shall be eligible for reimbursement for work performed on or after the date of execution through the expiration date of this Agreement, unless otherwise specified in Attachment 2, Special Terms and Conditions. However, work performed prior to the execution of this Agreement may be reimbursable or used for match purposes if permitted by the Special Terms and Conditions.

4. Deliverables.

The Grantee agrees to render the services or other units of deliverables as set forth in Attachment 3, Grant Work Plan. The services or other units of deliverables shall be delivered in accordance with the schedule and at the pricing outlined in the Grant Work Plan. Deliverables may be comprised of activities that must be completed prior to Department making payment on that deliverable. The Grantee agrees to perform in accordance with the terms and conditions set forth in this Agreement and all attachments and exhibits incorporated by the Standard Grant Agreement.

5. Performance Measures.

The Grantee warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Grant Work Plan; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services shall not and do not knowingly infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) its employees, subcontractors, and/or subgrantees shall comply with any security and safety requirements and processes, if provided by Department, for work done at the Project Location(s). The Department reserves the right to investigate or inspect at any time to determine whether the services or qualifications offered by Grantee meet the Agreement requirements. Notwithstanding any provisions herein to the contrary, written acceptance of a particular deliverable does not foreclose Department's remedies in the event deficiencies in the deliverable cannot be readily measured at the time of delivery.

6. Acceptance of Deliverables.

- a. Acceptance Process. All deliverables must be received and accepted in writing by Department's Grant Manager before payment. The Grantee shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable time at Grantee's expense. If Department's Grant Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.
- b. Rejection of Deliverables. The Department reserves the right to reject deliverables, as outlined in the Grant Work Plan, as incomplete, inadequate, or unacceptable due, in whole or in part, to Grantee's lack of satisfactory performance under the terms of this Agreement. The Grantee's efforts to correct the rejected deliverables will be at Grantee's sole expense. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Grant Work Plan will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to Department in accordance with the Agreement requirements. The Department, at its option, may allow additional time within which Grantee may remedy the objections noted by Department. The Grantee's failure to make adequate or acceptable deliverables after a reasonable opportunity to do so shall constitute an event of default.

7. Financial Consequences for Nonperformance.

- a. Withholding Payment. In addition to the specific consequences explained in the Grant Work Plan and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Grantee has failed to perform/comply with provisions of this Agreement. None of the financial consequences for nonperformance in this Agreement as more fully described in the Grant Work Plan shall be considered penalties.
- b. Invoice reduction
If Grantee does not meet a deadline for any deliverable, the Department will reduce the invoice by 1% for each day the deadline is missed, unless an extension is approved in writing by the Department.
- c. Corrective Action Plan. If Grantee fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by Grantee to Department. The Department requests that Grantee specify the outstanding deficiencies in the CAP. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.
 - i. The Grantee shall submit a CAP within ten (10) days of the date of the written request from Department. The CAP shall be sent to the Department's Grant Manager for review and approval. Within ten (10) days of receipt of a CAP, Department shall notify Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, Grantee shall have ten (10) days from receipt of Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain Department approval of a CAP as specified above may result in Department's termination of this Agreement for cause as authorized in this Agreement.
 - ii. Upon Department's notice of acceptance of a proposed CAP, Grantee shall have ten (10) days to commence implementation of the accepted plan. Acceptance of the proposed CAP by Department does not relieve Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, Department shall retain the right to

require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by Department or steps taken by Grantee shall preclude Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to Department as requested by Department's Grant Manager.

- iii. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by Department may result in termination of the Agreement.

8. Payment.

- a. Payment Process. Subject to the terms and conditions established by the Agreement, the pricing per deliverable established by the Grant Work Plan, and the billing procedures established by Department, Department agrees to pay Grantee for services rendered in accordance with section 215.422, Florida Statutes (F.S.).
- b. Taxes. The Department is exempted from payment of State sales, use taxes and Federal excise taxes. The Grantee, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by Grantee to suppliers for taxes on materials used to fulfill its contractual obligations with Department. The Grantee shall not use Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.
- c. Maximum Amount of Agreement. The maximum amount of compensation under this Agreement, without an amendment, is described in the Standard Grant Agreement. Any additional funds necessary for the completion of this Project are the responsibility of Grantee.
- d. Reimbursement for Costs. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on Exhibit C, Payment Request Summary Form. To be eligible for reimbursement, costs must be in compliance with laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: <https://www.myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/state-agencies/reference-guide-for-state-expenditures.pdf>.
- e. Rural Communities and Rural Areas of Opportunity. If Grantee is a county or municipality that qualifies as a "rural community" or "rural area of opportunity" (RAO) as defined in subsection 288.0656(2), F.S., such Grantee may request from the Department that all invoice payments (i.e., cost reimbursement) under this Agreement be directed to the relevant county or municipality or to the RAO itself. The Department will agree to Grantee's request if:
 - i. Grantee demonstrates that it is a county or municipality that qualifies as a "rural community" or "rural area of opportunity" under subsection 288.0656(2), F.S.;
 - ii. Grantee demonstrates current financial hardship using one (1) or more of the "economic distress" factors defined in subsection 288.0656(2)(c), F.S.;
 - iii. Grantee's performance has been verified by the Department, which has determined that Grantee is eligible for cost reimbursement and that Grantee's performance has been completed in accordance with this Agreement's terms and conditions; and
 - iv. Applicable federal and state law(s), rule(s) and regulation(s) allow for such payments.This subsection may not be construed to alter or limit any other applicable provisions of federal or state law, rule, or regulation. A current list of Florida's designated RAOs can be accessed at the following web address: <https://floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity>.
- f. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by Department pursuant to the Grant Work Plan shall be submitted to Department in sufficient detail for a proper pre-audit and post-audit to be performed. The Grantee shall only invoice Department for deliverables that are completed in accordance with the Grant Work Plan.
- g. State Funds Documentation. Pursuant to section 216.1366, F.S., if Contractor meets the definition of a non-profit organization under section 215.97(2)(m), F.S., Contractor must provide the Department with documentation that indicates the amount of state funds:
 - i. Allocated to be used during the full term of the contract or agreement for remuneration to any member of the board of directors or an officer of Contractor.
 - ii. Allocated under each payment by the public agency to be used for remuneration of any member of the board of directors or an officer of the Contractor.

The documentation must indicate the amounts and recipients of the remuneration. Such information must be posted on the State's the contract tracking system and maintained pursuant to section 215.985, F.S., and must be posted on the Contractor's website, if Contractor maintains a website.

- h. Interim Payments. Interim payments may be made by Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by Department's Grant Manager.
- i. Final Payment Request. A final payment request should be submitted to Department no later than sixty (60) days following the expiration date of the Agreement to ensure the availability of funds for payment. However, all work performed pursuant to the Grant Work Plan must be performed on or before the expiration date of the Agreement.
- j. Annual Appropriation Contingency. The State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of Department if the Legislature reduces or eliminates appropriations.
- k. Interest Rates. All interest rates charged under the Agreement shall be calculated on the prevailing rate used by the State Board of Administration. To obtain the applicable interest rate, please refer to: <https://www.myfloridacfo.com/division/aa/local-governments/judgement-interest-rates>.
- l. Refund of Payments to the Department. Any balance of unobligated funds that have been advanced or paid must be refunded to Department. Any funds paid in excess of the amount to which Grantee or subgrantee is entitled under the terms of the Agreement must be refunded to Department. If this Agreement is funded with federal funds and the Department is required to refund the federal government, the Grantee shall refund the Department its share of those funds.

9. Documentation Required for Cost Reimbursement Grant Agreements and Match.

If Cost Reimbursement or Match is authorized in Attachment 2, Special Terms and Conditions, the following conditions apply. Supporting documentation must be provided to substantiate cost reimbursement or match requirements for the following budget categories:

- a. Salary/Wages. Grantee shall list personnel involved, position classification, direct salary rates, and hours spent on the Project in accordance with Attachment 3, Grant Work Plan in their documentation for reimbursement or match requirements.
- b. Overhead/Indirect/General and Administrative Costs. If Grantee is being reimbursed for or claiming match for multipliers, all multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by Grantee exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate.
- c. Contractual Costs (Subcontractors). Match or reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the Project. All eligible multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate. Nonconsumable and/or nonexpendable personal property or equipment costing \$5,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in chapters 273 and/or 274, F.S., and Chapter 69I-72, Florida Administrative Code (F.A.C.) and/or Chapter 69I-73, F.A.C., as applicable. The Grantee shall be responsible for maintaining appropriate property records for any subcontracts that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this requirement and ensure its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.
 - i. For fixed-price (vendor) subcontracts, the following provisions shall apply: The Grantee may award, on a competitive basis, fixed-price subcontracts to consultants/contractors in performing the work described in Attachment 3, Grant Work Plan. Invoices submitted to Department for fixed-price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (e.g., Invitation to Bid, Request for Proposals, or other similar competitive procurement document) resulting in the fixed-price subcontract. The Grantee may request approval from Department to award a fixed-price subcontract resulting from procurement methods other than those identified above. In this instance, Grantee shall request the advance written approval from Department's Grant Manager of the fixed price

Attachment 1

- negotiated by Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of Department Grant Manager's approval of the fixed-price amount, Grantee may proceed in finalizing the fixed-price subcontract.
- ii. If the procurement is subject to the Consultant's Competitive Negotiation Act under section 287.055, F.S. or the Brooks Act, Grantee must provide documentation clearly evidencing it has complied with the statutory or federal requirements.
 - d. Travel. All requests for match or reimbursement of travel expenses shall be in accordance with section 112.061, F.S.
 - e. Direct Purchase Equipment. For the purposes of this Agreement, Equipment is defined as capital outlay costing \$5,000 or more. Match or reimbursement for Grantee's direct purchase of equipment is subject to specific approval of Department, and does not include any equipment purchased under the delivery of services to be completed by a subcontractor. Include copies of invoices or receipts to document purchases, and a properly completed Exhibit B, Property Reporting Form.
 - f. Rental/Lease of Equipment. Match or reimbursement requests for rental/lease of equipment must include copies of invoices or receipts to document charges.
 - g. Miscellaneous/Other Expenses. If miscellaneous or other expenses, such as materials, supplies, non-excluded phone expenses, reproduction, or mailing, are reimbursable or available for match or reimbursement under the terms of this Agreement, the documentation supporting these expenses must be itemized and include copies of receipts or invoices. Additionally, independent of Grantee's contract obligations to its subcontractor, Department shall not reimburse any of the following types of charges: cell phone usage; attorney's fees or court costs; civil or administrative penalties; or handling fees, such as set percent overages associated with purchasing supplies or equipment.
 - h. Land Acquisition. Reimbursement for the costs associated with acquiring interest and/or rights to real property (including access rights through ingress/egress easements, leases, license agreements, or other site access agreements; and/or obtaining record title ownership of real property through purchase) must be supported by the following, as applicable: Copies of Property Appraisals, Environmental Site Assessments, Surveys and Legal Descriptions, Boundary Maps, Acreage Certification, Title Search Reports, Title Insurance, Closing Statements/Documents, Deeds, Leases, Easements, License Agreements, or other legal instrument documenting acquired property interest and/or rights. If land acquisition costs are used to meet match requirements, Grantee agrees that those funds shall not be used as match for any other Agreement supported by State or Federal funds.

10. Status Reports.

The Grantee shall submit status reports quarterly, unless otherwise specified in the Attachments, on Exhibit A, Progress Report Form, to Department's Grant Manager describing the work performed during the reporting period, problems encountered, problem resolutions, scheduled updates, and proposed work for the next reporting period. Quarterly status reports are due no later than twenty (20) days following the completion of the quarterly reporting period. For the purposes of this reporting requirement, the quarterly reporting periods end on March 31, June 30, September 30 and December 31. The Department will review the required reports submitted by Grantee within thirty (30) days.

11. Retainage.

The following provisions apply if Department withholds retainage under this Agreement:

- a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Agreement up to the maximum percentage described in Attachment 2, Special Terms and Conditions. Retainage may be withheld from each payment to Grantee pending satisfactory completion of work and approval of all deliverables.
- b. If Grantee fails to perform the requested work or fails to perform the work in a satisfactory manner, Grantee shall forfeit its right to payment of the retainage associated with the work. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed. The Department shall provide written notification to Grantee of the failure to perform that shall result in retainage forfeiture. If the Grantee does not correct the failure to perform within the timeframe stated in Department's notice, the retainage will be forfeited to Department.
- c. No retainage shall be released or paid for incomplete work while this Agreement is suspended.
- d. Except as otherwise provided above, Grantee shall be paid the retainage associated with the work, provided Grantee has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Agreement.

12. Insurance.

- a. Insurance Requirements for Sub-Grantees and/or Subcontractors. The Grantee shall require its sub-grantees and/or subcontractors, if any, to maintain insurance coverage of such types and with such terms and limits as described in this Agreement. The Grantee shall require all its sub-grantees and/or subcontractors, if any, to make compliance with the insurance requirements of this Agreement a condition of all contracts that are related to this Agreement. Sub-grantees and/or subcontractors must provide proof of insurance upon request.
- b. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Grantee providing such insurance.
- c. Proof of Insurance. Upon execution of this Agreement, Grantee shall provide Department documentation demonstrating the existence and amount for each type of applicable insurance coverage *prior to* performance of any work under this Agreement. Upon receipt of written request from Department, Grantee shall furnish Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.
- d. Duty to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, or if Grantee cannot get adequate coverage, Grantee shall immediately notify Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) days after the cancellation of coverage.
- e. Insurance Trust. If the Grantee's insurance is provided through an insurance trust, the Grantee shall instead add the Department of Environmental Protection, its employees, and officers as an additional covered party everywhere the Agreement requires them to be added as an additional insured.

13. Termination.

- a. Termination for Convenience. When it is in the State's best interest, Department may, at its sole discretion, terminate the Agreement in whole or in part by giving 30 days' written notice to Grantee. The Department shall notify Grantee of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Agreement is to be terminated. The Grantee must submit all invoices for work to be paid under this Agreement within thirty (30) days of the effective date of termination. The Department shall not pay any invoices received after thirty (30) days of the effective date of termination.
- b. Termination for Cause. The Department may terminate this Agreement if any of the events of default described in the Events of Default provisions below occur or in the event that Grantee fails to fulfill any of its other obligations under this Agreement. If, after termination, it is determined that Grantee was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Department. The rights and remedies of Department in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- c. Grantee Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination unless as otherwise directed by Department, Grantee shall not furnish any service or deliverable on the date, and to the extent specified, in the notice. However, Grantee shall continue work on any portion of the Agreement not terminated. If the Agreement is terminated before performance is completed, Grantee shall be paid only for that work satisfactorily performed for which costs can be substantiated. The Grantee shall not be entitled to recover any cancellation charges or lost profits.
- d. Continuation of Prepaid Services. If Department has paid for any services prior to the expiration, cancellation, or termination of the Agreement, Grantee shall continue to provide Department with those services for which it has already been paid or, at Department's discretion, Grantee shall provide a refund for services that have been paid for but not rendered.
- e. Transition of Services Upon Termination, Expiration, or Cancellation of the Agreement. If services provided under the Agreement are being transitioned to another provider(s), Grantee shall assist in the smooth transition of Agreement services to the subsequent provider(s). This requirement is at a minimum an affirmative obligation to cooperate with the new provider(s), however additional requirements may be outlined in the Grant Work Plan. The Grantee shall not perform any services after Agreement expiration or termination, except as necessary to complete the transition or continued portion of the Agreement, if any.

14. Notice of Default.

If Grantee defaults in the performance of any covenant or obligation contained in the Agreement, including, any of the events of default, Department shall provide notice to Grantee and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Grantee fail to perform within the time provided, Grantee will be found in default, and Department may terminate the Agreement effective as of the date of receipt of the default notice.

15. Events of Default.

Provided such failure is not the fault of Department or outside the reasonable control of Grantee, the following non-exclusive list of events, acts, or omissions, shall constitute events of default:

- a. The commitment of any material breach of this Agreement by Grantee, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Agreement;
- b. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Grantee in this Agreement or in its application for funding;
- c. Failure to submit any of the reports required by this Agreement or having submitted any report with incorrect, incomplete, or insufficient information;
- d. Failure to honor any term of the Agreement;
- e. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Grantee by a state or other licensing authority;
- f. Failure to pay any and all entities, individuals, and furnishing labor or materials, or failure to make payment to any other entities as required by this Agreement;
- g. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act;
- h. Failure to maintain the insurance required by this Agreement;
- i. One or more of the following circumstances, uncorrected for more than thirty (30) days unless, within the specified 30-day period, Grantee (including its receiver or trustee in bankruptcy) provides to Department adequate assurances, reasonably acceptable to Department, of its continuing ability and willingness to fulfill its obligations under the Agreement:
 - i. Entry of an order for relief under Title 11 of the United States Code;
 - ii. The making by Grantee of a general assignment for the benefit of creditors;
 - iii. The appointment of a general receiver or trustee in bankruptcy of Grantee's business or property; and/or
 - iv. An action by Grantee under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

16. Suspension of Work.

The Department may, in its sole discretion, suspend any or all activities under the Agreement, at any time, when it is in the best interest of the State to do so. The Department shall provide Grantee written notice outlining the particulars of suspension. Examples of reasons for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, Grantee shall comply with the notice. Within 90 days, or any longer period agreed to by the parties, Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Agreement. If the Agreement is terminated after 30 days of suspension, the notice of suspension shall be deemed to satisfy the thirty (30) days' notice required for a notice of termination for convenience. Suspension of work shall not entitle Grantee to any additional compensation.

17. Force Majeure.

The Grantee shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Grantee or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond Grantee's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to Grantee. In case of any delay Grantee believes is excusable, Grantee shall notify Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first arose, if Grantee could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five days after the date Grantee first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against Department. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist Grantee shall perform at no increased cost, unless Department determines, in its sole

discretion, that the delay will significantly impair the value of the Agreement to Department, in which case Department may: (1) accept allocated performance or deliveries from Grantee, provided that Grantee grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity; or (3) terminate Agreement in whole or in part.

18. Indemnification.

- a. The Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
 - i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors; provided, however, that Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of Department;
 - ii. the Grantee's breach of this Agreement or the negligent acts or omissions of Grantee.
- b. The Grantee's obligations under the preceding paragraph with respect to any legal action are contingent upon Department giving Grantee: (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense; and (3) assistance in defending the action at Grantee's sole expense. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by Department in any legal action without Grantee's prior written consent, which shall not be unreasonably withheld.
- c. Notwithstanding sections a. and b. above, the following is the sole indemnification provision that applies to Grantees that are governmental entities: Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of section 768.28, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State to be sued by third parties in any matter arising out of any contract or this Agreement.
- d. No provision in this Agreement shall require Department to hold harmless or indemnify Grantee, insure or assume liability for Grantee's negligence, waive Department's sovereign immunity under the laws of Florida, or otherwise impose liability on Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

19. Limitation of Liability.

The Department's liability for any claim arising from this Agreement is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Agreement. Such liability is further limited to a cap of \$100,000.

20. Remedies.

Nothing in this Agreement shall be construed to make Grantee liable for force majeure events. Nothing in this Agreement, including financial consequences for nonperformance, shall limit Department's right to pursue its remedies for other types of damages under the Agreement, at law or in equity. The Department may, in addition to other remedies available to it, at law or in equity and upon notice to Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it.

21. Waiver.

The delay or failure by Department to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

22. Statutory Notices Relating to Unauthorized Employment and Subcontracts.

- a. The Department shall consider the employment by any Grantee of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Grantee/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.
- b. Pursuant to sections 287.133, 287.134, and 287.137 F.S., the following restrictions apply to persons placed on the convicted vendor list, discriminatory vendor list, or the antitrust violator vendor list:
 - i. Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may

not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

- ii. **Discriminatory Vendors.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- iii. **Antitrust Violator Vendors.** A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity; may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity.
- iv. **Notification.** The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list, the discriminatory vendor list, or antitrust violator vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and the antitrust violator vendor list and posts the list on its website. Questions regarding the discriminatory vendor list or antitrust violator vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

23. Compliance with Federal, State and Local Laws.

- a. The Grantee and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Grantee shall include this provision in all subcontracts issued as a result of this Agreement.
- b. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- d. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

24. Build America, Buy America Act (BABA) - Infrastructure Projects with Federal Funding.

This provision does not apply to Agreements that are wholly funded by Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act. Also, this provision does not apply where there is a valid waiver in place. However, the provision may apply to funds expended before the waiver or after expiration of the waiver.

If applicable, Recipients or Subrecipients of an award of Federal financial assistance from a program for infrastructure are required to comply with the Build America, Buy America Act (BABA), including the following provisions:

- a. All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. All manufactured products used in the project are produced in the United States--this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

- c. All construction materials are manufactured in the United States-this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

25. Investing in America

Grantees of an award for construction projects in whole or in part by the Bipartisan Infrastructure Law or the Inflation Reduction Act, including the following provision:

a. **Signage Requirements**

a. Investing in America Emblem: The recipient will ensure that a sign is placed at construction sites supported in whole or in part by this award displaying the official Investing in America emblem and must identify the project as a “project funded by President Biden’s Bipartisan Infrastructure Law” or “project funded by President Biden’s Inflation Reduction Act” as applicable. The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

The recipient will ensure compliance with the guidelines and design specifications provided by EPA for using the official Investing in America emblem available at:

<https://www.epa.gov/invest/investing-america-signage>.

b. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Investing in America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

26. Scrutinized Companies.

- a. Grantee certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
- b. If this Agreement is for more than one million dollars, the Grantee certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in section 287.135, F.S. Pursuant to section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
- c. As provided in subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions, then they shall become inoperative.

27. Lobbying and Integrity.

The Grantee agrees that no funds received by it under this Agreement will be expended for the purpose of lobbying the Legislature or a State agency pursuant to section 216.347, F.S., except that pursuant to the requirements of section 287.058(6), F.S., during the term of any executed agreement between Grantee and the State, Grantee may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Grantee shall comply with sections 11.062 and 216.347, F.S.

28. Record Keeping.

The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during

the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. In the event that any work is subcontracted, Grantee shall similarly require each subcontractor to maintain and allow access to such records for audit purposes. Upon request of Department's Inspector General, or other authorized State official, Grantee shall provide any type of information the Inspector General deems relevant to Grantee's integrity or responsibility. Such information may include, but shall not be limited to, Grantee's business or financial records, documents, or files of any type or form that refer to or relate to Agreement. The Grantee shall retain such records for the longer of: (1) three years after the expiration of the Agreement; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

29. Audits.

- a. Inspector General. The Grantee understands its duty, pursuant to section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Grantee will comply with this duty and ensure that its sub-grantees and/or subcontractors issued under this Agreement, if any, impose this requirement, in writing, on its sub-grantees and/or subcontractors, respectively.
- b. Physical Access and Inspection. Department personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:
 - i. Grantee shall provide access to any location or facility on which Grantee is performing work, or storing or staging equipment, materials or documents;
 - ii. Grantee shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
 - iii. Grantee shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.
- c. Special Audit Requirements. The Grantee shall comply with the applicable provisions contained in Attachment 5, Special Audit Requirements. Each amendment that authorizes a funding increase or decrease shall include an updated copy of Exhibit 1, to Attachment 5. If Department fails to provide an updated copy of Exhibit 1 to include in each amendment that authorizes a funding increase or decrease, Grantee shall request one from the Department's Grants Manager. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment 5, Exhibit 1 and determine whether the terms of Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, Grantee shall utilize the guidance provided under 2 CFR §200.331 for determining whether the relationship represents that of a subrecipient or vendor. For State financial assistance, Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website: <https://apps.fldfs.com/fsaa>.
- d. Proof of Transactions. In addition to documentation provided to support cost reimbursement as described herein, Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State guidelines (including cost allocation guidelines) and federal, if applicable. Allowable costs and uniform administrative requirements for federal programs can be found under 2 CFR 200. The Department may also request a cost allocation plan in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Grantee must provide the additional proof within thirty (30) days of such request.
- e. No Commingling of Funds. The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
 - i. If Department finds that these funds have been commingled, Department shall have the right to demand a refund, either in whole or in part, of the funds provided to Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from Department shall refund, and shall forthwith pay to Department, the amount of money demanded by Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the

original payment(s) are received from Department by Grantee to the date repayment is made by Grantee to Department.

- ii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by Department, from another source(s), Grantee shall reimburse Department for all recovered funds originally provided under this Agreement and interest shall be charged for those recovered costs as calculated on from the date(s) the payment(s) are recovered by Grantee to the date repayment is made to Department.
- iii. Notwithstanding the requirements of this section, the above restrictions on commingling funds do not apply to agreements where payments are made purely on a cost reimbursement basis.

30. Conflict of Interest.

The Grantee covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.

31. Independent Contractor.

The Grantee is an independent contractor and is not an employee or agent of Department.

32. Subcontracting.

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by Grantee.
- b. The Department may, for cause, require the replacement of any Grantee employee, subcontractor, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.
- c. The Department may, for cause, deny access to Department's secure information or any facility by any Grantee employee, subcontractor, or agent.
- d. The Department's actions under paragraphs b. or c. shall not relieve Grantee of its obligation to perform all work in compliance with the Agreement. The Grantee shall be responsible for the payment of all monies due under any subcontract. The Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract and Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract.
- e. The Department will not deny Grantee's employees, subcontractors, or agents access to meetings within the Department's facilities, unless the basis of Department's denial is safety or security considerations.
- f. The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.
- g. The Grantee shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both Grantee and the subcontractor(s), and without the fault or negligence of either, unless the subcontracted products or services were obtainable from other sources in sufficient time for Grantee to meet the required delivery schedule.

33. Guarantee of Parent Company.

If Grantee is a subsidiary of another corporation or other business entity, Grantee asserts that its parent company will guarantee all of the obligations of Grantee for purposes of fulfilling the obligations of Agreement. In the event Grantee is sold during the period the Agreement is in effect, Grantee agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of Grantee.

34. Survival.

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

35. Third Parties.

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of Grantee, its agents, servants, and employees, nor shall Grantee disclaim its own negligence to Department or any third party. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. If Department consents to a subcontract, Grantee will specifically disclose that this Agreement does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Agreement.

36. Severability.

If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

37. Grantee's Employees, Subcontractors and Agents.

All Grantee employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under Agreement must comply with all security and administrative requirements of Department and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement.

38. Assignment.

The Grantee shall not sell, assign, or transfer any of its rights, duties, or obligations under the Agreement, or under any purchase order issued pursuant to the Agreement, without the prior written consent of Department. In the event of any assignment, Grantee remains secondarily liable for performance of the Agreement, unless Department expressly waives such secondary liability. The Department may assign the Agreement with prior written notice to Grantee of its intent to do so.

39. Compensation Report.

If this Agreement is a sole-source, public-private agreement or if the Grantee, through this agreement with the State, annually receive 50% or more of their budget from the State or from a combination of State and Federal funds, the Grantee shall provide an annual report, including the most recent IRS Form 990, detailing the total compensation for the entities' executive leadership teams. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. The Grantee must also inform the Department of any changes in total executive compensation between the annual reports. All compensation reports must indicate what percent of compensation comes directly from the State or Federal allocations to the Grantee.

40. Execution in Counterparts and Authority to Sign.

This Agreement, any amendments, and/or change orders related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Terms and Conditions
AGREEMENT NO. T2305**

ATTACHMENT 2

These Special Terms and Conditions shall be read together with general terms outlined in the Standard Terms and Conditions, Attachment 1. Where in conflict, these more specific terms shall apply.

1. Scope of Work.

The Project funded under this Agreement is Pine Avenue Multi-Use Path. The Project is defined in more detail in Attachment 3, Grant Work Plan.

2. Duration.

- a. Reimbursement Period. The reimbursement period for this Agreement begins on the Agreement Begin Date and ends on the Project Completion Date, as defined in Attachment 3.
- b. Extensions. There are two one-year extensions available to the Grantee, if requested in writing, for good cause, subject to the conditions in Rule 62S-2.075(7)(a), F.A.C. There are no other extensions available for this Project.
- c. Service Periods. Additional service periods are not authorized under this Agreement.

3. Payment Provisions.

- a. Compensation. This is a cost reimbursement Agreement. The Grantee shall be compensated under this Agreement as described in Attachment 3.
- b. Invoicing. Invoicing will occur after approval of the final deliverable(s).
- c. Advance Pay. Advance Pay is not authorized under this Agreement.

4. Cost Eligible for Reimbursement or Matching Requirements.

Reimbursement for costs or availability for costs to meet matching requirements shall be limited to the following budget categories, as defined in the Reference Guide for State Expenditures, as indicated:

<u>Reimbursement</u>	<u>Match</u>	<u>Category</u>
☒	☒	Salaries/Wages
		Overhead/Indirect/General and Administrative Costs:
☒	☒	a. Fringe Benefits, N/A.
☒	☒	b. Indirect Costs, N/A.
☒	☒	Contractual (Subcontractors)
☐	☐	Travel, in accordance with Section 112, F.S.
☐	☐	Equipment
☒	☒	Rental/Lease of Equipment
☒	☒	Miscellaneous/Other Expenses
☐	☐	Land Acquisition

5. Equipment Purchase.

No Equipment purchases shall be funded under this Agreement.

6. Land Acquisition.

There will be no Land Acquisitions funded under this Agreement.

7. Match Requirements

The Agreement requires at least a 50% match on the part of the Grantee. Therefore, the Grantee is responsible for providing \$400,000.00 through cash or third party in-kind towards the project funded under this Agreement.

The Grantee may claim allowable project expenditures made on 12/19/2023 or after for purposes of meeting its match requirement as identified above.

Each payment request submitted shall document all matching funds and/or match efforts (i.e., in-kind services) provided during the period covered by each request. The final payment will not be processed until the match requirement has been met.

All required matching funds shall meet the federal requirements established in 2 CFR § 200.306 and other federal statutory requirements, as applicable. Grantee acknowledges and agrees to provide eligible match types as set forth in subsection 62S-2.071(4)(b), F.A.C. Grantee acknowledges and agrees not to provide ineligible match sources which includes value of real property or inmate labor.

8. Insurance Requirements

Required Coverage. At all times during the Agreement the Grantee, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy maintained by the Grantee shall not be interpreted as limiting the Grantee's liability and obligations under the Agreement. All insurance policies shall be through insurers licensed and authorized to issue policies in Florida, or alternatively, Grantee may provide coverage through a self-insurance program established and operating under the laws of Florida. Additional insurance requirements for this Agreement may be required elsewhere in this Agreement, however the minimum insurance requirements applicable to this Agreement are:

a. Commercial General Liability Insurance.

The Grantee shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Agreement. The Department, its employees, and officers shall be named as an additional insured on any general liability policies. The minimum limits shall be \$250,000 for each occurrence and \$500,000 policy aggregate.

b. Commercial Automobile Insurance.

If the Grantee's duties include the use of a commercial vehicle, the Grantee shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The Department, its employees, and officers shall be named as an additional insured on any automobile insurance policy. The minimum limits shall be as follows:

\$200,000/300,000	Automobile Liability for Company-Owned Vehicles, if applicable
\$200,000/300,000	Hired and Non-owned Automobile Liability Coverage

c. Workers' Compensation and Employer's Liability Coverage.

The Grantee shall provide workers' compensation, in accordance with Chapter 440, F.S. and employer liability coverage with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Grant.

d. Other Insurance. None.

9. Quality Assurance Requirements.

The Grantee shall develop and implement quality assurance practices consisting of policies, procedures, specifications, standards, and documentation sufficient to produce data of quality adequate to meet Project objectives and to minimize loss of data due to out-of-control conditions or malfunctions. All sampling and analyses performed under this Agreement must conform with the requirements set forth in Chapter 62-160, Florida Administrative Code, and the Quality Assurance Requirements for Department Agreements, attached hereto and made part hereof as Exhibit D, Quality Assurance Requirements for Grants.

10. Retainage.

Retainage is permitted under this Agreement. Retainage may be up to a maximum of 10% of the total amount of the Agreement.

11. Subcontracting.

- a. The Grantee may subcontract work under this Agreement without the prior written consent of the Department's Grant Manager except for certain fixed-price subcontracts pursuant to this Agreement, which require prior approval. Regardless of any subcontract, the Grantee is ultimately responsible for all work to be performed under this Agreement.
- b. The Grantee shall physically attach: (1) Attachment 8, Contract Provisions for Department of Transportation (DOT) Funded Agreements; (2) Attachment 9, Form FHWA-1273, Required Contract Provisions Federal-Aid

Construction Contracts; (3) Exhibit F, Appendices A and E; (4) Exhibit G, 49 CFR §26.13; and (5) Exhibit H, FHWA Contractors & Recipients General Terms and Conditions for Assistance Awards to all subcontracts executed under this Agreement.

12. State-owned Land.

The work will not be performed on State-owned land.

13. Office of Policy and Budget Reporting.

There are no special Office of Policy and Budget reporting requirements for this Agreement.

14. Common Carrier.

- a. Applicable to contracts with a common carrier – firm/person/corporation that as a regular business transports people or commodities from place to place. If applicable, Contractor must also fill out and return PUR 1808 before contract execution. If Contractor is a common carrier pursuant to section 908.111(1)(a), Florida Statutes, the Department will terminate this contract immediately if Contractor is found to be in violation of the law or the attestation in PUR 1808.
- b. Applicable to solicitations for a common carrier – Before contract execution, the winning Contractor(s) must fill out and return PUR 1808, and attest that it is not willfully providing any service in furtherance of transporting a person into this state knowing that the person unlawfully present in the United States according to the terms of the federal Immigration and Nationality Act, 8 U.S.C. ss. 1101 et seq. The Department will terminate a contract immediately if Contractor is found to be in violation of the law or the attestation in PUR 1808.

15. Additional Terms.

None.

ATTACHMENT 3
GRANT WORK PLAN
RECREATIONAL TRAILS PROGRAM (RTP)
Project Name: Pine Avenue Multi-Use Path
Grantee Name: City of Bonita Springs
RTP Project #T23005

SUMMARY: The Grantee will complete the Project Element(s), which were approved by the Department through the RTP Application Evaluation Criteria, pursuant to Chapter 62S-2, Florida Administrative Code (F.A.C.) and the FHWA Recreational Trails Program Interim Guidance Manual. Any alteration(s) to the Project Element(s) defined in the Grant Work Plan resulting in a change in the total point score of Grantee's Application as it appears on the Recommended RTP Priority List for FY2023-2024 is considered a significant change, must be pre-approved by the Department, and requires a formal Amendment to this Agreement.

All work must be completed in accordance with laws, rules, and guidance including, but not limited to: local, state and federal laws, the approved Project plans, all required permits, the Florida Building Code and, as applicable, the FDOT Project Development and Environmental Manual (PD&E Manual), the Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways ("Florida Greenbook"). Prior to the Department issuing a Notice to Proceed to the Grantee, as specified in Attachment 6, Program Specific Requirements, the Department must receive evidence of and have approved all Deliverables in Task 1.

COMPLETION: The Department will designate the Project complete upon receipt and approval of all Deliverables and when Project site is open and available for use by the public for outdoor recreation purposes. The Department may retain ten percent (10%) of the Grant Award until the Grantee completes the Project and the Department approves the Completion Documentation set forth in paragraph 62S-2.075(7)(e), F.A.C. The final payment of the retained ten percent (10%) will be processed within thirty (30) days of the Project being designated complete by the Department.

For the purpose of this Agreement, the terms "Project Element" and "Project Task" are used interchangeably to mean an identified facility within the Project.

PROJECT LOCATION: The project is located at 26890 Pine Ave, Bonita Springs, FL 34135.

PROJECT CATEGORY AND USE: This is a nonmotorized, diverse-use trail.

BUDGET: Reimbursement for allowable costs for the Project may not exceed the maximum grant award amount outlined below. Required match will be provided by cash or in-kind services as set forth in subsection 62S-2.071(4), F.A.C. Grantee shall maintain an accounting system that meets generally accepted accounting principles and will maintain financial records to properly account for all Program and matching funds. The total estimated Project cost provided below is based on the approved RTP Application. A detailed Project cost analysis will be provided in the Deliverables for Task 1, prior to the Department issuing the Notice to Proceed. All final Project costs shall be submitted to the Department with the payment request.

Maximum Grant Award Amount:	\$ 400,000.00
Required Grantee Match Amount:	\$ 400,000.00
Total Estimated Project Cost:	\$ 800,000.00
Match Ratio:	50:50

Scope of Work/Tasks within Deliverable	Deliverables	Due Date	Financial Consequences
TASK 1 1.A. Approval of required NEPA documentation by FHWA. 1.B. Development of Commencement Documentation Checklist (OGT-11) ¹ . 1.C. A Cost Analysis Form, with detailed budget (and In-House Cost Schedule(s), if applicable).	DELIVERABLE 1 1.A. Submission through SWEPT and approval of required NEPA documentation by FHWA. 1.B. All applicable Project specific Commencement documentation, including, but not limited to those listed on Commencement Documentation Checklist (OGT-11). 1.C. Cost Analysis Form with detailed budget (and/or In-House Cost Schedule(s), if applicable). The Department will issue Notice to Proceed upon receipt and approval of deliverables 1.A., 1.B. and 1.C. Project planning expenses, such as application preparation, architectural and engineering fees, permitting fees, project inspection fees, and other similar fees are eligible for reimbursement. However, reimbursement, if requested, shall not to exceed fifteen percent (15%) of total project cost, and shall be invoiced upon project completion, in accordance with the Payment Request Schedule below. The Grantee may not proceed with construction of the Project until Notice to Proceed has been issued.	Deliverable 1.A. 180 days after Execution of Grant Agreement ² Deliverables 1.B. and 1.C. 12 months after Execution of Grant Agreement ²	The Department will terminate the Project Agreement if the required Deliverables are not submitted and approved by the FHWA and the Department.
TASK 2 2.A. Development of Project Elements, including: SCOPE OF WORK: Construction of 12' x 1,760 LF (+/- 10%) hard-surface path with the installation of pedestrian lighting fixtures, pedestrian detectors, directional signage, informational signage, benches and trash receptacles and safety lighting and landscaping. 2.B. Development of Completion of Documentation Checklist (OGT-13).	DELIVERABLE 2 The Grantee may request reimbursement upon Department receipt and approval of: 2.A. Development of required Project Elements. 2.B. All applicable Project specific Completion documentation, including, but not limited to those listed on Project Completion Documentation Checklist (OGT-13). 2.C. Final Status Report (DRP-109).	Due 60 calendar days prior to the expiration of this Agreement which shall also be the Project Completion Date ³	No reimbursement will be made for Deliverable(s) deemed unsatisfactory by the Department. Payment(s) will not be made for unsatisfactory or incomplete work. In addition, a Task may be terminated for Grantee's failure to perform.

2.C. Completion of Final Status Report (DRP-109).			
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Project Task Performance Standard: The Department’s Grant Manager will review the Project Completion Certificate and the Deliverables to verify compliance with the requirements for funding under the Recreation Trails Program (RTP); approved plans and application approved for funding. Upon review and written acceptance by the Department’s Grant Manager of the Project Completion Certification and the Deliverables, the Grantee may proceed with the payment request submittal.

Payment Request Schedule: Following Department approval of all Project Deliverables, the Grantee may submit a **single payment request** on Payment Request Summary Form (DEP55-223) along with all required documentation as outlined in the Financial Reporting Procedures (DRP-110), as applicable, to support payment. A payment request submitted as part of the reimbursement process must correspond with the Cost Analysis and supporting documents provided under Project Tasks. The payment request must include documentation regarding the match source, as required.

Endnotes:

1. RTP documentation is available at <https://floridadep.gov/lands/land-and-recreation-grants/content/recreational-trails-program> and/or, Land and Recreational Grants Section, State of Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, M.S. 585, Tallahassee, Florida 32399-3000.
2. Project Agreement is subject to termination if NEPA documents under Task 1 are not received and approved by FHWA within 180 days of the Project Agreement execution.
3. Project Agreement is subject to termination if Commencement documents under Task 1 are not received and approved by the Department within 12 months of the Project Agreement execution.
4. This time period may be extended within the parameters of the RTP and/or FHWA federal guidelines, upon written request of the Grantee and approval by the Department through the execution of an amendment.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Public Records Requirements**

Attachment 4

1. Public Records.

- a. If the Agreement exceeds \$35,000.00, and if Grantee is acting on behalf of Department in its performance of services under the Agreement, Grantee must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by Grantee in conjunction with the Agreement (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Agreement if Grantee refuses to allow public access to Public Records as required by law.

2. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

For the purposes of this paragraph, the term “contract” means the “Agreement.” If Grantee is a “contractor” as defined in section 119.0701(1)(a), F.S., the following provisions apply and the contractor shall:

- a. Keep and maintain Public Records required by Department to perform the service.
- b. Upon request, provide Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- c. A contractor who fails to provide the Public Records to Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- d. 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 contract term and following completion of the contract if the contractor does not transfer the Public Records to Department.
- e. Upon completion of the contract, transfer, at no cost, to Department all Public Records in possession of the contractor or keep and maintain Public Records required by Department to perform the service. If the contractor transfers all Public Records to Department upon completion of the contract, the contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the contractor keeps and maintains Public Records upon completion of the contract, the contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to Department, upon request from Department’s custodian of Public Records, in a format specified by Department as compatible with the information technology systems of Department. These formatting requirements are satisfied by using the data formats as authorized in the contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the contractor is authorized to access.

f. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT’S CUSTODIAN OF PUBLIC RECORDS AT:

Telephone: (850) 245-2118
Email: public.services@floridadep.gov
Mailing Address: Department of Environmental Protection
ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Boulevard, MS 49
Tallahassee, Florida 32399

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Audit Requirements
(State and Federal Financial Assistance)**

Attachment 5

The administration of resources awarded by the Department of Environmental Protection (*which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the agreement*) to the recipient (*which may be referred to as the "Recipient", "Grantee" or other name in the agreement*) may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEP Department staff, limited scope audits as defined by 2 CFR 200.425, or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in 2 CFR §200.330

1. A recipient that expends \$750,000 or more in Federal awards in its fiscal year, must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F. EXHIBIT 1 to this Attachment indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department of Environmental Protection. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR 200.502-503. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200.514 will meet the requirements of this part.
2. For the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR 200.508-512.
3. A recipient that expends less than \$750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F-Audit Requirements. If the recipient expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F-Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other federal entities).
4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at <https://sam.gov/content/assistance-listings>.

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient (for fiscal years ending June 30, 2017, and thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this form lists the state financial assistance awarded through the Department of Environmental Protection by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1; the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal year ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$750,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa> for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at <http://www.leg.state.fl.us/Welcome/index.cfm>, State of Florida's website at <http://www.myflorida.com/>, Department of Financial Services' Website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and required by PART I of this form shall be submitted, when required by 2 CFR 200.512, by or on behalf of the recipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR 200.36 and 200.512
 - A. The Federal Audit Clearinghouse designated in 2 CFR §200.501(a) (the number of copies required by 2 CFR §200.501(a) should be submitted to the Federal Audit Clearinghouse), at the following address:

By Mail:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/facweb/>

2. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

- B. The Auditor General's Office at the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room 401
111 West Madison Street
Tallahassee, Florida 32399-1450

The Auditor General's website (<http://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

4. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with 2 CFR 200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

Attachment 5

3 of 7

5. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with 2 CFR 200, Subpart F-Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (non and for-profit organizations), Rules of the Auditor General, should indicate the date and the reporting package was delivered to the recipient correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of the award and this Agreement for a period of **five (5)** years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **three (3)** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

EXHIBIT – 1

FUNDS AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Note: If the resources awarded to the recipient represent more than one federal program, provide the same information shown below for each federal program and show total federal resources awarded

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program A	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
	U.S. Department of Transportation – Federal Highway Administration	20.219	Recreational Trails Program	\$ 400,000.00	140185
Federal Program B	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				\$	

Note: Of the resources awarded to the recipient represent more than one federal program, list applicable compliance requirements for each federal program in the same manner as shown below:

Federal Program A	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	
Federal Program B	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	

Note: If the resources awarded to the recipient for matching represent more than one federal program, provide the same information shown below for each federal program and show total state resources awarded for matching.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following <u>Matching</u> Resources for Federal Programs:					
Federal Program A	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category
Federal Program B	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category

Note: If the resources awarded to the recipient represent more than one state project, provide the same information shown below for each state project and show total state financial assistance awarded that is subject to section 215.97, F.S.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:						
State Program A	State Awarding Agency	State Fiscal Year ¹	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
State Program B	State Awarding Agency	State Fiscal Year ²	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category

Total Award					\$400,000.00	
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Note: List applicable compliance requirement in the same manner as illustrated above for federal resources. For matching resources provided by the Department for DEP for federal programs, the requirements might be similar to the requirements for the applicable federal programs. Also, to the extent that different requirements pertain to different amount for the non-federal resources, there may be more than one grouping (i.e. 1, 2, 3, etc.) listed under this category.

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [<https://sam.gov/content/assistance-listings>] and/or the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/searchCatalog.aspx>], and State Projects Compliance Supplement (Part Four: State Projects Compliance Supplement [https://apps.fldfs.com/fsaa/state_project_compliance.aspx]). The

¹ Subject to change by Change Order.

² Subject to change by Change Order.

services/purposes for which the funds are to be used are included in the Agreement's Grant Work Plan. Any match required by the Recipient is clearly indicated in the Agreement.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
PROGRAM SPECIFIC REQUIREMENTS
FOR THE RECREATIONAL TRAILS GRANT PROGRAM**

ATTACHMENT 6

1. Project Submittal Forms.

Administrative Forms, Reimbursement Forms and guidelines referenced in this Agreement may be found at <https://floridadep.gov/lands/land-and-recreation-grants/content/recreational-trails-program>, or by contacting the Department's Grant Manager.

2. Notice to Proceed.

Prior to commencement of Project, the Grantee shall submit to the Department for approval all documentation and completion of responsibilities listed on the Commencement Documentation Checklist, OGT-11. In addition to the Checklist items, the Grantee shall submit a copy of the executed subcontract to the Department. Upon satisfactory approval by the Department, the Department will issue written "Notice to Proceed" to the Grantee to commence the Project. **The Grantee SHALL NOT proceed until the Department issues the "Notice to Proceed".** The Grantee shall commence Task 2 Performance **within ninety (90) days** after the "Notice to Proceed" is issued by the Department, unless the Grantee requests an extension in writing for good cause, in accordance with the requirements of Rule 62S-2.075(7)(a), F.A.C. Until the Department issues the "Notice to Proceed," the Department is not obligated to reimburse Grantee for fees, costs or general expenses of any kind.

3. RTP Guidelines.

- i. This Agreement must be performed according to all applicable state and federal guidelines, including but not limited to, 23 U.S.C. § 206, Chapter 260, F.S., Chapter 62S-2, F.A.C., and the FHWA Recreational Trails Program Interim Guidance Manual (Manual). The Grantee acknowledges that receiving this grant does not guarantee that a federal, state, or local permit will be issued for a particular activity to complete the Project. Further, the Grantee agrees to ensure that Grantee has obtained all necessary permits prior to implementing any Grant Work Plan activity that may fall under applicable federal, state, or local laws.
- ii. The Department will terminate this Project Agreement if the Commencement Documentation is not received and approved by the Department within twelve (12) months of this Project Agreement's execution. The Department may extend this time period for good cause, such as a natural disaster, pursuant to subparagraph 62S-2.075(7)(d)3, F.A.C.

All awards will be administered pursuant to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards found in 2 CFR part 200, as adopted by USDOT at 2 CFR part 1201

4. The Grantee's compliance with the applicable provisions of Florida Department of Transportation's (FDOT) Project Development and Environmental Manual (PD&E Manual), hereby incorporated by reference constitutes compliance with National Environmental Policy Act (NEPA) standards as more fully implemented pursuant to subsection 62S-2.074(1), F.A.C. The Department will terminate the Project Agreement if FHWA does not approve the required NEPA documentation.
5. The following hereby replaces paragraph 8.d, Attachment 1, Standard Terms and Conditions:
 - d. **Reimbursement for Costs.** Project costs will be reimbursed as provided in paragraph 62S-2.075(3)(a), F.A.C. and in the Project Agreement. The Grantee must incur costs between the effective date of, and the Project Completion Date identified in, the Project Agreement, except for Pre-agreement expenses. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on Exhibit C, Payment Request Summary Form. To be eligible for reimbursement, costs must be in compliance with laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: <https://www.myfloridacfo.com/Division/AA/Manuals/default.htm>. However, unless the Department issues the "Notice to Proceed," the Department is not obligated to reimburse Grantee for fees, costs or general expenses of any kind.

- i. **Pre-agreement Expenses** means expenses incurred by a Grantee for an eligible RTP project after authorization by Federal Highway Administration (FHWA) but before full execution of the Agreement. RTP funds remaining after termination of a grant award or completion of Project will revert to the State's program funds under the provisions of the federal Infrastructure Investment and Jobs Act (Bipartisan Infrastructure Law) and subsection 62S-2.075(6), F.A.C. All funds not paid out after four (4) years will revert to FHWA pursuant to paragraph 62S-2.075(7)(a), F.A.C. The Grantee will be entitled to reimbursement of eligible Pre-agreement Expenses for expenses incurred after the Department provides notice of Project approval and before the effective date of this Agreement.
6. The following hereby replaces paragraph 8.h, Attachment 1, Standard Terms and Conditions:
 - h. **Annual Appropriation Contingency.** The State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature & the FHWA. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of Department if the Legislature & the FHWA reduces or eliminates appropriations. It is further understood that Grant Awards may be revised by the Department due to the availability of RTP Program Funds.
7. The following hereby adds to paragraph 8, Attachment 1, Standard Terms and Conditions:
 - k. **Project Costs.** The Department will reimburse Project costs pursuant to paragraph 62S-3.075(3)(a), F.A.C., and as provided herein. The Grantee must incur all reimbursable Project costs between the Agreement Effective Date and the Project Completion Date. If the total cost of the Project exceeds the grant amount and the required match, the Grantee must pay the excess cost.
 - l. **Cost Limits.** Pursuant to paragraph 62S-2.075(3)(b), F.A.C., project planning expenses, such as application preparation, , architectural and engineering fees, permitting fees, project inspection fees, and other similar fees are eligible Project costs provided that such costs do not exceed fifteen percent (15%) of the total Project cost. These costs must be incurred between the Agreement Begin Date and the Project Completion Date.
 - i. Applicants may seek reimbursement for costs related to the required approval under the National Environmental Policy Act ("NEPA"). These expenses are considered planning expenses, and are included in the 15% of total Project cost limit set forth in Rule 62S-2.075(3)(b), F.A.C. All eligible planning expenses related to NEPA approval must be incurred within 180 days of the Effective Date of the Agreement.
8. The following replaces paragraph 10, Attachment 1, Standard Terms and Conditions:

Status Reports.

 - i. The Grantee must utilize Exhibit A, Project Status Report, DRP-109, available online and incorporated herein by reference, to describe the work performed during the reporting period, problems encountered, problem resolutions, schedule updates, and proposed work for the next reporting period. The Project Status Reports must be submitted to the Department's Grant Manager no later than January 5, May 5, and September 5. The Department's Grant Manager will have thirty (30) calendar days to review the required reports and deliverables submitted by the Grantee.
 - ii. Additionally, the Grantee must comply with the reporting and inventory requirements set forth in the Statewide Comprehensive Outdoor Recreation Plan (SCORP), available online: <https://floridadep.gov/parks/florida-scorp-outdoor-recreation-florida> and hereby incorporated by reference, by updating the Florida Outdoor Recreation Inventory (FORI) system (<https://floridadep.gov/parks/florida-outdoor-recreation-inventory>).
9. **Site Dedication.**
 - i. The Grantee agrees to dedicate for ninety-nine (99) years the Project Site and all land within the Project boundaries, which is developed or acquired with RTP Program Funds, as an outdoor recreational area for the use and benefit of the general public in accordance with Rule 62S-2.076, F.A.C. Land under control other than by ownership of the Grantee (e.g., by lease) must be dedicated as an outdoor recreation area for the use and benefit of the general public for a minimum of twenty-five (25) years from the Project Completion Date as set forth in the Project Completion Certificate. The lease must not be revocable at will; must extend for twenty-five (25) years after Project Completion Date; and must include safeguards to ensure the use requirement enabling the Grantee to dedicate the land for the twenty-five (25) year period. Safeguards include such things as joint sponsorship of the Project or an agreement between the Parties that the lessor will assume compliance responsibility for the Project Site in the event of default by the lessee (Grantee) or termination or expiration of

the lease. The dedication must be recorded in the county's public property records by the Grantee, or in the case of a nonprofit Grantee, by the land owner. Execution of this Agreement by the Department constitutes an acceptance of a Project Site dedication on behalf of the general public of the State of Florida. The Project Site(s) must be open at reasonable times and must be managed in a safe and attractive manner. The Grantee must obtain Department approval prior to any development of facilities on the Project Site. This Agreement is not transferable.

- ii. Should the Grantee's interest in the land change, either by sale, lease, or other written legal instrument, the Grantee is required to notify the Department in writing of the change no later than ten (10) days after the change occurs, and the Grantee is required to notify all subsequent parties with interest to the land of the terms and conditions as set forth in this Agreement.

10. Management of Project Site.

- i. Site Inspections. Grantees must ensure by site inspections that facilities on the Project Site are being operated and maintained for public outdoor recreational purposes for a period of twenty-five (25) years from the Project Completion Date set forth in the Project Completion Certificate. The Project Site must be open at reasonable times and managed in a safe and attractive manner.
- ii. Non-Compliance. The Department will terminate an Agreement and demand return of the program funds (including interest) if a Grantee fails to comply with the terms stated in the Agreement. If the Grantee fails to comply with the Agreement, the Department will declare the Grantee ineligible for further participation in RTP until such time as the Grantee comes into compliance.
- iii. Public Accessibility. All facilities must be accessible to the public on a non-exclusive basis without regard to age, gender, race, religion, residence, or ability level.
- iv. Entrance Fees. Grantees may charge user fees for the Project Site, as described in the Manual. Reasonable differences in entrance fees for RTP projects may be allowed on the basis of residence, but only if the Grantee can clearly show that the difference in entrance fees reflects, and is substantially related to, all economic factors related to park management, and is not simply related to the amount of tax dollars spent by the residents for the park; and that a definite burden on the Grantee in park maintenance costs clearly justifies a higher fee for nonresidents.

11. Procurement Requirements for Grantee.

The Grantee must secure all goods and services for accomplishment of this Project according to its adopted procurement procedures and applicable federal requirements identified in the FHWA Recreational Trails Guidance Manual.

12. Project Completion Certification.

Project completion means the Project is open and available for use by the public. To certify completion, the Grantee will submit to the Department the Project Completion Certification, OGT-14, available online and incorporated herein by reference. The Project must be designated complete prior to release of final reimbursement.

13. Good Cause Extensions.

The Department staff will only extend this Agreement for good cause such as financial hardship, public controversy, material shortage, unexpected weather conditions, or other major factors beyond Grantee's control.

14. Signage.

The Grantee must erect a permanent information sign on the Project site which credits funding or a portion thereof, to the Florida Department of Environmental Protection and the Recreational Trails Program. The sign must be made of appropriate materials, which will be durable for a minimum of twenty-five (25) years after the Project is complete. The sign must be installed on the Project site and approved by the Department before the final Project reimbursement request is processed.

15. Termination and Ineligibility.

In addition to the remedies provided elsewhere in this Agreement, if the Grantee materially fails to comply with the terms stated in this Agreement or with any provisions of Chapter 62S-2, F.A.C., the Department shall terminate this Agreement and demand return of the program funds (including interest) and any equipment purchased with grant funds that has not been properly disposed of in accordance with the federal property management requirements set forth in 2 CFR Part 200, Subpart D (§§ 200.310 through 200.316). Furthermore, the Department shall declare the

Grantee ineligible for further participation in RTP until such time as compliance has been obtained pursuant to subsection 62S-2.076(4).

16. Conversion.

This Project Site acquired and/or developed with RTP assistance must be retained and used for public outdoor recreation. Should the Grantee, within the periods set forth in subsections 62S-2.076(1) and (2), F.A.C., convert all or part of the Project Site to other than public outdoor recreational uses, the Grantee must replace the area, facilities, resource, or Project Site at its own expense with an acceptable project of comparable, scope, and quality.

17. Monitoring.

The Grantee further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Florida Department of Transportation (FDOT) and FHWA. The Grantee also grants the FDOT and FHWA the same monitoring rights it has agreed to provide the Department.

18. Compliance with FDOT Disadvantaged Business Enterprise (DBE) Program.

The Department and the Grantee adhere to FDOT's DBE program on all FHWA-assisted contracts in accordance with 49 CFR Part 26.21 and the FDOT DBE Program Plan. DBE participation on FHWA-assisted contracts in Florida must be achieved through race-neutral methods. 'Race neutral' means that the DEP can likely achieve the overall state DBE goal of 10.65% through ordinary procurement methods. Therefore, no specific DBE contract goal may be applied to this project. Nevertheless, the Department is committed to supporting the identification and use of DBEs and other small businesses and encourages all reasonable efforts to do so. Furthermore, the Transportation Planning Organization recommends the use of certified DBE's listed in the Florida Unified Certification Program (UCP) DBE Directory, who by reason of their certification are ready, willing, and able to provide and assist with the services identified in the scope of work. Assistance with locating DBEs and other special services are available at no cost through FDOT's Equal Opportunity Office DBE Supportive Services suppliers. More information is available by visiting <http://www.fdot.gov/equalopportunity/serviceproviders.shtm> or by calling 850-414-4750.

ATTACHMENT 8

Contract Provisions for Department of Transportation (DOT) Funded Agreements

The Department, as a Non-Federal Entity as defined by 2 CFR §200.69, shall comply with the following provisions, where applicable. For purposes of this Grant Agreement between the Department and the Grantee, the term “Recipient” shall mean “Grantee.”

Further, the Department, as a pass-through entity, also requires the Grantee to pass on these requirements to all lower tier subrecipients, and to comply with the provisions of the award, including applicable provisions of the OMB Uniform Guidance (2 CFR Part 200), and all associated terms and conditions. Therefore, Grantees must include these requirements in all related subcontracts and/or sub-awards. Grantees can include these requirements by incorporating this Attachment in the related subcontract and/or sub-awards, however for all such subcontracts and sub-awards, the Grantee shall assume the role of the Non-Federal Entity and the subrecipients shall assume the role of the Recipient.

2 CFR PART 200 APPENDIX 2 REQUIREMENTS

1. Administrative, Contractual, and Legal Remedies

The following provision is required if the Agreement is for more than \$150,000. In addition to any of the remedies described elsewhere in the Agreement, if the Recipient materially fails to comply with the terms and conditions of this Contract, including any Federal or State statutes, rules or regulations, applicable to this Contract, the Non-Federal Entity may take one or more of the following actions.

- A. Temporarily withhold payments pending correction of the deficiency by the Recipient.
- B. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- C. Wholly or partly suspend or terminate this Contract.
- D. Take other remedies that may be legally available.

The remedies identified above, do not preclude the Recipient from being subject to debarment and suspension under Presidential Executive Orders 12549 and 12689. The Non-Federal entity shall have the right to demand a refund, either in whole or part, of the funds provided to the Recipient for noncompliance with the terms of this Agreement.

2. Termination for Cause and Convenience

Termination for Cause and Convenience are addressed elsewhere in the Agreement.

3. Equal Opportunity Clause

The following provision applies if the agreement meets the definition of “federally assisted construction contract” as defined by 41 CFR Part 60-1.3:

During the performance of this Agreement, the Recipient agrees as follows:

- i. The Recipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Recipient will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
 - a. 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 Recipient 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 Recipient will, in all solicitations or advertisements for employees placed by or on behalf of the Recipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- iii. The Recipient 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 Recipient's legal duty to furnish information.

- iv. The Recipient will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Agreement or understanding, a notice to be provided advising the said labor union or workers' representatives of the Recipient's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- v. The Recipient 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 Recipient 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 Recipient's 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 Recipient 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 Recipient will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Recipient will take such action with respect to any subcontractor purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

4. Davis Bacon Act

If the Agreement is a prime construction contract in excess of \$2,000 awarded by the Recipient, and if required by the Federal Legislation, the Recipient must comply 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 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 pay wages not less than once a week. The Recipient must comply 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 Recipient 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.

5. Contract Work Hours and Safety Standards Act

Where applicable, if the Agreement is in excess of \$100,000 and involves the employment of mechanics or laborers, the Recipient must comply 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 Recipient 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.

6. Rights to Inventions Made Under Agreement

If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the Non-Federal Entity 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 Non-Federal Entity 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.

7. Clean Air Act (42 U.S.C. 7401-7671q.), the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), and EPA Regulations

If the Agreement is in excess of \$100,000, the Recipient shall 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 by the EPA (40 CFR Part 15). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).

8. Debarment and Suspension (Executive Orders 12549 and 12689)

The Recipient certifies that it is not listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 and 2 CF 1200 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.”

9. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

The Recipient certifies 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. If applicable, the Recipient shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award, using form SF-LLL, available at: https://apply07.grants.gov/apply/forms/sample/SFLLL_1_2_P-V1.2.pdf.

10. Procurement of Recovered Materials

The Recipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act as described in 2 CFR part 200.322.

11. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

The Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. See Section 889 of Public Law 115-232 (National Defense Authorization Act 2019). Also, see 2 CFR 200.216 and 200.471.

12. Domestic Preferences for Procurement

The Recipients and subrecipients must to the greatest extent practical give preference to the purchase, acquisition, or use of goods, products, or materials produced in the United States in accordance with 2 CFR 200.322.

ADMINISTRATIVE

1. General Federal Regulations

Recipients shall comply with the regulations listed in 2 CFR 200, 48 CFR 31, and 40 U.S.C. 1101 *et sequence*.

2. Rights to Patents and Inventions Made Under a Contract or Agreement

Rights to inventions made under this assistance agreement are subject to federal patent and licensing regulations, which are codified at Title 37 CFR Part 401 and Title 35 U.S.C. 200 through 212.

3. Compliance with the Trafficking Victims Protection Act of 2000 (2 CFR Part 175)

Recipients, their employees, subrecipients under this award, and subrecipients' employees may not:

- A. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

- B. Procure a commercial sex act during the period of time that the award is in effect; or
- C. Use forced labor in the performance of the award or subawards under the award.

4. Whistleblower Protection

Recipients shall comply with U.S.C. §4712, Enhancement of Recipient and Subrecipient Employee Whistleblower Protection. This requirement applies to all awards issued after July 1, 2013 and effective December 14, 2016 has been permanently extended (Public Law (P.L.) 114-261).

- A. This award, related subawards, and related contracts over the simplified acquisition threshold and all employees working on this award, related subawards, and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies in the pilot program on award recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239).
- B. Recipients, their subrecipients, and their contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.
- C. The Recipient shall insert this clause, including this paragraph C, in all subawards and in contracts over the simplified acquisition threshold related to this award; best efforts should be made to include this clause, including this paragraph C in any subawards and contracts awarded prior to the effective date of this provision.

5. Notification of Termination (2 CFR § 200.340)

In accordance with 2 CFR § 200.340, in the event that the Agreement is terminated prior to the end of the period of performance due to the Recipient's or subcontractor's material failure to comply with Federal statutes, regulations or the terms and conditions of this Agreement or the Federal award, the termination shall be reported to the Office of Management and Budget (OMB)-designated integrity and performance system, accessible through System for Award Management (SAM) currently the Federal Awardee Performance and Integrity Information System (FAPIIS). The Non-Federal Entity will notify the Recipient of the termination and the Federal requirement to report the termination in FAPIIS. See 2 CFR § 200.340 for the requirements of the notice and the Recipient's rights upon termination and following termination.

6. Additional Lobbying Requirements

- A. The Recipient certifies that no funds provided under this Agreement have been used or will be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.
- B. The Lobbying Disclosure Act of 1995, as amended (2 U.S.C. §1601 *et seq.*), prohibits any organization described in Section 501(c)(4) of the Internal Revenue Code, from receiving federal funds through an award, grant (and/or subgrant) or loan unless such organization warrants that it does not, and will not engage in lobbying activities prohibited by the Act as a special condition of such an award, grant (and/or subgrant), or loan. This restriction does not apply to loans made pursuant to approved revolving loan programs or to contracts awarded using proper procurement procedures.
- C. Pursuant to 2 CFR §200.450 and 2 CFR §200.454(e), the Recipient is hereby prohibited from using funds provided by this Agreement for membership dues to any entity or organization engaged in lobbying activities.

COMPLIANCE WITH ASSURANCES

1. Assurances

Recipients shall comply with any and all applicable assurances made by the Department or the Recipient to the Federal Government during the Grant application process.

FEDERAL REPORTING REQUIREMENTS

1. FFATA

Grant Recipients awarded a new Federal grant greater than or equal to \$30,000 awarded on or after October 1, 2015, are subject to the FFATA the Federal Funding Accountability and Transparency Act ("FFATA") of 2006. The FFATA legislation requires that information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is www.USASpending.gov. The Grantee agrees to provide the information necessary, within one (1) month of execution, for the Department to comply with this requirement.

DEPARTMENT OF TRANSPORTATION-SPECIFIC

2. DOT Regulations

Recipients shall comply with the following regulations: 2 CFR 1200-1201, 23 CFR 200, 49 CFR 17, 49 CFR 20-21, 49 CFR 25-28.

3. Retention and Access Requirements for Records

Pursuant to 49 CFR §18.37(a)(3), for cost reimbursement subgrants of any tier, Recipients and subrecipients shall comply with the record retention and access requirements of 49 CFR §18.42.

4. Energy Efficiency Policies

Recipients must 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 (Pub. L. 94-163, 89 Stat. 871).

5. Drug-Free Workplace

The Department must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in 49 CFR 32. Additionally, in accordance with these regulations, the recipients must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

6. Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act

As applicable, Recipient shall comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) to provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

7. Payments to Subcontractors

The Recipient must pay all subcontractors within 30 days of receipt of payment in accordance with 49 CFR 26.29. If retainage is withheld, the Department may make prompt and regular incremental acceptances of portions of the Agreement and pay retainage to Recipients based on these acceptances. Further, the Recipient must pay all retainage owed to the subcontractors for satisfactory completion of the accepted work within 30 days after your payment to the Recipient.

8. Additional Assurances

Consistent with 49 CFR 26.13(a) and (b), neither the Department nor the Recipient or any sub-recipient or subcontractor shall discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Recipient shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Recipient to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- A. Withholding monthly progress payments;
- B. Assessing sanctions;
- C. Liquidated damages; and/or
- D. Disqualifying the contractor from future bidding as non-responsible.

FEDERAL HIGHWAY ADMINISTRATION-SPECIFIC

1. Federal Highway Administration (FHWA) Contractors & Recipients General Terms and Conditions for Assistance Awards

Recipients shall comply with FHWA Contractors & Recipients General Terms and Conditions for Assistance Awards available at https://www.fhwa.dot.gov/cfo/contractor_recip/gtandc_generaltermsconditions.cfm, and incorporated by reference.

2. Contract Provisions

If the Project meets the definition of a “Federal Aid Construction Project,” Form FHWA-1273 Required Contract Provisions, available at <https://www.fhwa.dot.gov/construction/cqit/form1273.cfm> and incorporated by reference, must be physically incorporated into each contract and subcontract.

RECREATIONAL TRAILS PROGRAM-SPECIFIC

1. Recreational Trails Program Guidance

Recipients shall comply with the applicable requirements of Recreational Trails Program Guidance available at https://www.fhwa.dot.gov/environment/recreational_trails/guidance/index.cfm, and incorporated by reference.

ATTACHMENT 9

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants /

Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:

The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its procurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

3. Records and certified payrolls (29 CFR 5.5)

a. Basic record requirements (1) Length of record retention. All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) Information required. Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) Additional records relating to fringe benefits. Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) Additional records relating to apprenticeship. Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. Certified payroll requirements (1) Frequency and method of submission. The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) Information required. The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHDL/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) Statement of Compliance. Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) Use of Optional Form WH-347. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor 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). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a 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, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

* * * * *

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

* * * * *

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, 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 the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal 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 Federal 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. 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 31 U.S.C. 1352. 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.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.



Florida Department of Environmental Protection

Exhibit A Recreational Trails Program Project Status Report

Required Signatures: **Adobe Signature**

Project Name: Pine Avenue Multi-Use Path

Project Number: T23005

Project Sponsor: City of Bonita Springs

Identify primary and support recreation areas and facilities to be constructed.

PROVIDE PHOTOS OF WORK IN PROGRESS

PRIMARY FACILITIES/ELEMENTS:

Project Elements	Work Accomplished	% Completed

SUPPORT FACILITIES/ELEMENTS:

Project Elements	Work Accomplished	% Completed

PROBLEMS ENCOUNTERED:

Period Covered (Check Appropriate Period):

January through April:
May through August:
September through December:

Due May 5th
Due September 5th
Due January 5th

LIAISON: _____
Signature

Date



EXHIBIT C
Florida Department of Environmental Protection
DEP 55-223 PAYMENT REQUEST SUMMARY FORM

Required Signatures: **Original Ink**

Grantee: _____

Grantee's Grant Manager: _____

Mailing Address: _____

Payment Request No.: _____

DEP Agreement No.: _____

Date Of Request: _____

Performance Period: _____

Task/Deliverable Amount Requested: \$ _____

Task/Deliverable No.: _____

GRANT EXPENDITURES SUMMARY SECTION
 [Effective Date of Grant through End-of-Grant Period]

CATEGORY OF EXPENDITURE	AMOUNT OF THIS REQUEST	TOTAL CUMULATIVE PAYMENTS	MATCHING FUNDS	TOTAL CUMULATIVE MATCHING FUNDS
Salaries	\$	\$	\$	\$
Fringe Benefits	\$	\$	\$	\$
Travel (if authorized)	\$	\$	\$	\$
Subcontracting:				
Planning	\$	\$	\$	\$
Design	\$	\$	\$	\$
Construction	\$	\$	\$	\$
Equipment Purchases	\$	\$	\$	\$
Supplies/Other Expenses	\$	\$	\$	\$
Land	\$	\$	\$	\$
Indirect	\$	\$	\$	\$
TOTAL AMOUNT	\$	\$	\$	\$
TOTAL TASK BUDGET AMOUNT	\$		\$	
Less Total Cumulative Payments of:	\$		\$	
TOTAL REMAINING IN TASK	\$		\$	

GRANTEE CERTIFICATION

The undersigned certifies that the amount being requested for reimbursement above was for items that were charged to and utilized only for the above cited grant activities.

_____	_____
Grantee's Grant Manager's Signature	Grantee's Fiscal Agent
_____	_____
Print Name	Print Name
_____	_____
Telephone Number	Telephone Number

EXHIBIT F

APPENDICES A and E

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- (1.) **Compliance with Regulations:** The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- (2.) **Nondiscrimination:** The Contractor, with regard to the work performed during the contract, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3.) **Solicitations for Subcontractors, including Procurements of Materials and Equipment:** In all solicitations made by the Contractor, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials or leases of equipment; each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.
- (4.) **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration* to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the *Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration* as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5.) **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the *Florida Department of Transportation* shall impose such contract sanctions as it or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration* may determine to be appropriate, including, but not limited to:
 - a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 - b. cancellation, termination or suspension of the contract, in whole or in part.
- (6.) **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (1) through (7) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the

Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event a Contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the Contractor may request the *Florida Department of Transportation* to enter into such litigation to protect the interests of the *Florida Department of Transportation*, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

- (7.) **Compliance with Nondiscrimination Statutes and Authorities:** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

49 CFR 26.13 - What assurances must recipients and contractors make?

- [eCFR](#)
- [Authorities \(U.S. Code\)](#)
- [What Cites Me](#)

[prev](#) | [next](#)

§ 26.13 What assurances must [recipients](#) and [contractors](#) make?

(a) Each financial assistance agreement you sign with a DOT [operating administration](#) (or a primary recipient) must include the following assurance: The [recipient](#) shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any [DOT-assisted contract](#) or in the administration of its DBE [program](#) or the requirements [49 CFR part 26](#). The [recipient](#) shall take all necessary and reasonable steps under [49 CFR part 26](#) to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The [recipient's](#) DBE [program](#), as required by [49 CFR part 26](#) and as approved by DOT, is incorporated by reference in this agreement. Implementation of this [program](#) is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the [recipient](#) of its failure to carry out its approved [program](#), the Department may impose sanctions as provided for under [49 CFR part 26](#) and may, in appropriate cases, refer the matter for enforcement under [18 U.S.C. 1001](#) and/or the [Program](#) Fraud Civil Remedies Act of 1986 ([31 U.S.C. 3801](#) et seq.).

(b) Each [contract](#) you sign with a [contractor](#) (and each subcontract the prime [contractor](#) signs with a subcontractor) must include the following assurance: The [contractor](#), sub [recipient](#) or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this [contract](#). The [contractor](#) shall carry out applicable requirements of [49 CFR part 26](#) in the award and administration of DOT-assisted [contracts](#). Failure by the [contractor](#) to carry out these requirements is a material breach of this [contract](#), which may result in the termination of this [contract](#) or such other remedy as the [recipient](#) deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the [contractor](#) from future bidding as non-responsible.

[[79 FR 59593](#), Oct. 2, 2014]

Exhibit H

U.S. Department of Transportation

Federal Highway Administration

1200 New Jersey Avenue, SE

Washington, DC 20590

202-366-4000

DOING BUSINESS WITH FHWA



Contractors & Recipients General Terms and Conditions for Assistance Awards

Effective Date: March 6, 2015

(for awards effective after June 22, 2015)

DEFINITIONS

AO	Agreement Officer
AS	Agreement Specialist
AOR	Agreement Officer's Representative
Agreement	Grant Agreement or Cooperative Agreement
CFR	Code of Federal Regulation
FAR	Federal Acquisition Regulation
FHWA	The Federal Highway Administration
OMB	Office of Management and Budget

1. GOVERNING REGULATIONS

Performance under this Agreement will be governed by and in compliance with the following regulations:

2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

2 CFR Part 200 will be applicable to all non-federal entities as a default position, and that any determination not to apply 2 CFR Part 200 subparts A through E to for-profit entities, foreign public entities, or foreign organizations will be made in writing and identify the basis for that determination.

Cost Principles For-profit Organizations: 48 CFR 31 (Federal Acquisition Regulations) Subpart 31.2

2. SECTION 508 OF THE REHABILITATION ACT OF 1973

While the requirements of Section 508 of the Rehabilitation Act of 1973, as amended, do not apply to assistance agreements, the FHWA is subject to the Act's requirements that all documents posted on an FHWA or FHWA-hosted website comply with the accessibility standards of the Act. Accordingly, final deliverable reports prepared under this Agreement and submitted in electronic format must be submitted in a format whereby FHWA can easily meet the requirements of Section 508 of the Rehabilitation Act of 1973, as amended.

NOTE: Quarterly Progress Reports and financial reports are not considered final deliverables and therefore the following requirements do not apply.

Accessibility Requirements: Section 508 of the Rehabilitation Act of 1973

All electronic documents prepared under this Agreement must meet the requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The act requires that all electronic products prepared for the Federal Government be accessible to persons with disabilities, including those with vision, hearing, cognitive, and mobility impairments. View Section 508 of the Rehabilitation Act (<http://www.access-board.gov/508/508standards.htm>) - PART 1194 and the Federal IT Accessibility Initiative Home Page (<http://section508.gov>) for detailed information.

The following paragraphs summarize the requirements for preparing FHWA reports in conformance with Section 508 for eventual posting by FHWA to an FHWA-sponsored website.

a. *Electronic documents with images*

Provide a text equivalent for every non-text element (including photographs, charts and equations) in all publications prepared in electronic format. Use descriptions such as "alt" and "longdesc" for all non-text images or place them in element content. For all documents prepared, vendors must prepare one standard HTML format as described in this statement of work AND one text format that includes descriptions for all non-text images. "Text equivalent" means text sufficient to reasonably describe the image. Images that are merely decorative require only a very brief "text equivalent" description. However, images that

convey information that is important to the content of the report require text sufficient to reasonably describe that image and its purpose within the context of the report.

b. *Electronic documents with complex charts or data tables*

When preparing tables that are heavily designed, prepare adequate alternate information so that assistive technologies can read them out. Identify row and column headers for data tables. Provide the information in a non-linear form. Markups will be used to associate data cells and header cells for data tables that have two or more logical levels of row and column headers.

c. *Electronic documents with forms*

When electronic forms are designed to be completed on-line, the form will allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

Draft documents developed under this Agreement will be delivered as electronic files compatible with Microsoft Word 2000, or verified to be error free when read using Microsoft Word 2000 and Adobe PDF formats. Any other electronic format will receive prior approval from the AOR. With prior approval of the AOR, artwork or graphics not embedded in the electronic (MS Word) document may be submitted in camera ready format. Deliverables must follow the Turner Fairbanks Highway Research Center (TFHRC) **Communications Reference Guide** (<https://www.fhwa.dot.gov/publications/research/general/03074/index.cfm>) unless otherwise indicate in this scope of work.

The final deliverables under this Agreement must comply with Section 508 of the Rehabilitation Act and the Access Board Standards available online at: <http://www.section508.gov/>. Unless otherwise indicated, the Recipient represents by signature on this Agreement that all deliverables will comply with the Access Board Standards. Final documents will be delivered in Microsoft Word 2000, PDF, and HTML formats. These documents will be prepared in electronic GPO-required format and will meet the Section 508 requirements to allow them to be posted and viewed on the Internet. Files should be organized so that they are readable without requiring an associated style sheet. The html versions will include a text equivalent description (e.g., via "alt", "longdesc", or in element content) for every non-text (e.g., graph, table, photo, diagram, etc.) element in the document. The best location for information on regulations for 36 CFR 1194, which implements Section 508 of the Rehabilitation Act of 1973, as amended, is at <http://www.access-board.gov/sec508/guide/index.htm>.

If the information center website existed before the effective date of this Agreement, information presented prior to the date of execution of this Agreement does not need to be modified to comply with Federal accessibility requirements. However, if a web page is modified or updated during this Agreement's period of performance, the modified or updated page must be presented in accessible format.

3. RESPONSIBILITIES OF THE RECIPIENT

The Recipient will provide overall program management. Specifically, the Recipient will be responsible for the following, as a minimum:

- Meeting with the AOR as necessary.
- Participating in a kick-off meeting with the AO and/or the AOR to discuss agreement expectations and procedures.
- Participating in meetings via teleconference or web conference with the AOR.
- Performing the Statement of Work as described in Section I, Funding Opportunity Description.
- Coordinating and managing work, including issuing and managing subcontracts/sub awards and consulting arrangements, as necessary.
- Submitting all required reports including Quarterly Progress Reports. (See Part B of this Section, entitled Reporting.)
- During the period of performance, the FHWA and the Recipient will meet periodically, at a minimum annually, to discuss project activities. The location of the meeting will be established by the AOR. Note: for application process, assume the meeting will be in Washington, DC and will last 1 full day.

4. NON-DOMESTIC TRAVEL

All non-domestic travel must be approved in writing by the AO prior to incurring costs. Travel requirements under this Agreement will be met using the most economical form of transportation available. If economy class transportation is not available, the request for payment vouchers must be submitted with justification for use of higher class travel indicating dates, times, and flight numbers.

5. AMENDMENTS

This Agreement and any amendments executed by the AO constitute the entire agreement between the parties. Discussions and understandings concerning such scope and subject matter are superseded by this Agreement and any executed amendments. All changes to the terms and conditions of this Agreement will be in writing, issued as an Amendment and signed by the AO pursuant to 2 CRF 200.308.

- a. *Unilateral.* A unilateral amendment is signed only by the AO. Unilateral amendments are used, for example, to make administrative changes; i.e. funding, accounting data changes, change in Government personnel.
- b. *Bilateral.* A bilateral amendment is a change that is signed by the Recipient and the AO. Bilateral amendments are used to reflect other agreements of the parties amending the terms of the Agreement.

6. AGREEMENT OFFICER'S REPRESENTATIVE (AOR)

The AO may designate an AOR to assist in monitoring the work under this Agreement. The AOR will oversee the technical administration of this Agreement and act as technical liaison with the performing organization. The AOR is not authorized to change the scope of work or specifications as stated in the Agreement, to make any commitments or otherwise obligate the FHWA or authorize any changes which affect the Agreement funding, delivery schedule, period of performance or other terms or conditions.

The AO is the only individual who can legally commit or obligate the FHWA for the expenditure of public funds. The technical administration of this Agreement will not be construed to authorize the revision of the terms and conditions of performance. The AO will authorize any such revision in writing.

7. PAYMENT

The Recipient may request advances or reimbursement of costs incurred in the performance hereof as are allowable under the applicable cost provisions not-to exceed the funds currently available as stated herein. Requests should be made no more frequently than monthly and must include the certification as required by 2 CFR 200.415.

Payments by Reimbursement

Requests for payments by reimbursement will be submitted to the payment office via DELPHI eInvoicing System. When requesting reimbursement of costs incurred and credit for cost share incurred, the Recipient will submit supporting cost detail electronically with the SF 270, Request for Advance or Reimbursement or, if construction, the SF 271, Outlay Report and Request for Reimbursement for Construction to clearly document all costs incurred. Cost detail includes a detailed breakout of all costs incurred including direct labor, indirect costs, other direct costs, travel, etc. Identify the Federal share and the Recipient's cost share portions as applicable. The cost detail should show all the project costs for the period covered by the reimbursement request, and also show all the cumulative-to-date costs.

The AO or Agreement Specialist reserve the right to withhold processing requests for reimbursement until sufficient detail is received. In addition, reimbursement will not be made without AOR review and approval to ensure that progress on the Agreement is sufficient to substantiate payment. After AOR approval, the AO will certify and forward the request for reimbursement to the payment office via DELPHI eInvoicing System.

Advance Payments

Recipients may be paid in advance, provided they maintain or demonstrate the willingness to maintain the following in accordance with 2 CFR 200.305 as applicable: (1) written procedures that minimize the time elapsing between the transfer of funds and disbursement by the Recipient, and (2) financial management systems that meet the standards for fund control and accountability. When these items are not met, reimbursement will be the method for payment.

DELPHI eInvoicing System Registration and Information

The Recipient must have Internet access to register and use the DELPHI eInvoicing System. Prompt registration for DELPHI eInvoicing System is important in order to reduce the possibility of delayed payments.

All persons accessing the DELPHI eInvoicing System will be required to have their own unique user ID and password. It is not possible to have a generic ID and password for a Recipient.

To register for DELPHI eInvoicing System, Recipients must eAuthenticate and activate an account by contacting their AO and providing the full name, title, phone number and e-mail address for the appropriate point(s) of contact (POC) who will submit payment requests. Within two weeks the POC should receive an invite to sign up for the system. The POC will also receive a form to verify their identity. The POC must complete the form, and present it to a Notary Public for verification. The POC will return the notarized form to:

DOT Enterprise Service Center
 FAA Accounts Payable, AMZ-100
 PO Box 25710
 Oklahoma City, OK 73125

When the form is received and validated, the Recipient POC will receive a unique user ID and password via e-mail. POCs should contact their AO with any changes to their system information.

Applicants registered with other DOT Agencies, such as Federal Aviation Administration or Federal Railroad Administration, must also apply for access with FHWA in order to request payment from FHWA.

To facilitate your use of the DELPHI eInvoicing system, comprehensive user's information is available at <http://www.dot.gov/policy-initiatives/delphi-einvoicing-system-training-materials>.

Account Management

The Applicant should contact their AO when POCs have left their organization or are no longer will be submitting invoices, with the full name, title, phone number, e-mail address, and user ID of the POC. The user ID will then be removed. If a user ID becomes inactive/times out due no activity, the Recipient should contact their AO with the full name, title, phone number, e-mail address, and user ID of the POC to be reactivated. To prevent being timed out due to no-activity, users should login once within 45 days of their last login.

Waivers

The Department of Transportation Financial Management officials may, on a case by case basis, waive the requirement to register and use the DELPHI eInvoicing System. Waiver request forms can be obtained on the DELPHI eInvoicing website (<http://www.dot.gov/cfo/delphi-einvoicing-system.html>) or by contacting the AO. Applicants must explain why they are unable to use or access the Internet to register and enter payment requests.

All waiver requests should be sent to via mail to:

Director of the Office of Financial Management
 US Department of Transportation, B-30
 Office of Financial Management, Room W93-431
 1200 New Jersey Avenue SE
 Washington DC 20590-0001

or electronically to: DOTElectronicInvoicing@dot.gov

The Director of the DOT Office of Financial Management will confirm or deny the request within approximately 30 days.

If a Recipient is granted a Waiver, Requests for advance or reimbursement and required supporting documents, should be sent via regular U.S. Postal Service to the following address:

Federal Highway Administration
Markview Processing
P.O. Box 268865
Oklahoma City, OK 73126-8865
Attention: Ryan Wisniewski

Requests for advance or reimbursement submitted via an overnight service must use the following physical address:

MMAC
FHWA/AMZ-150
6500 MacArthur Blvd.
Oklahoma City, OK 73169
Attention: Ryan Wisniewski

Express Delivery Point of Contact: Ryan Wisniewski, 405-954-8252

8. FUNDS NOTIFICATION

The Recipient shall notify the AO in writing whenever it has reason to believe that the costs it expects to incur under this Agreement in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the total amount so far allotted to the Agreement by the Government. The notice shall state the estimated amount of additional funds required to complete the work under the Agreement.

9. ACKNOWLEDGEMENT OF SUPPORT AND DISCLAIMER

An acknowledgment of FHWA support and a disclaimer must appear in any publication of any material, whether copyrighted or not, based on or developed under the Agreement, in the following terms:

"This material is based upon work supported by the Federal Highway Administration under Agreement No. - **(fill in award number)**."

All materials must also contain the following:

"Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the Author(s) and do not necessarily reflect the view of the Federal Highway Administration."

10. SITE VISITS

The FHWA, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. During a site visit, the Recipient and/or sub-recipient/subcontractor will provide all reasonable facilities and assistance for the safety and convenience of the FHWA representative. All site visits and evaluations will be performed in such a manner as to not unduly delay work.

11. BUDGET REVISION/REALLOCATION OF AMOUNTS (FOR AWARDS OVER THE SIMPLIFIED ACQUISITION THRESHOLD)

The Recipient is required to report deviations from budget and program plans, and request prior approval for budget and program plan revisions in accordance with 2 CFR 200.308 The Recipient must obtain prior written approval from the AO to transfer amounts budgeted for direct cost categories when the cumulative value of such transfers will exceed 10% of the value of Federal share of this Agreement.

12. SYSTEM FOR AWARD MANAGEMENT (SAM)

The Recipient must be registered in the SAM in order to receive payments under this Agreement. Use of the SAM is to provide one location for Applicants and Recipients to change information about their organization and enter information on where government payments should be made. Information for registering in the SAM and online documents can be found at www.sam.gov.

13. PRINTING

The Joint Committee on Printing Regulations Number 26, Section 36 states that Recipients shall not become prime or substantial sources of printing for the use of departments and agencies.

In the performance of this agreement, the Recipient may duplicate less than 5,000 units of only one page or less than 25,000 units in the aggregate of multiple pages. Duplication of quantities in excess of the amounts stated requires prior written approval of the AO. The Recipient must submit such requests in writing or by email to the AO, to include specifics on the deliverable, requested printing quantity, and estimated costs for printing.

14. DRUG FREE WORKPLACE

The Recipient will comply with Subpart B of 49 CFR Part 32, Government wide Requirements for a Drug-Free Workplace (Financial Assistance). See 49 CFR Part 32 for details of the requirement.

15. DEBARMENT AND SUSPENSION REQUIREMENTS

The non-Federal entity must comply with the provisions in 2 CFR Part 180 OMB Guidelines to Agencies on Government Debarment and Suspension (Non-procurement) and 2 CFR Part 1200 DOT Non-procurement Suspension and Debarment. These provisions restrict Federal awards, subaward and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal programs or activities.

16. TERMINATION AND SUSPENSION

This Agreement may be terminated or suspended in whole or in part, at any time prior to its expiration date in accordance with 2 CFR 200.339.

The Recipient may appeal or object to a termination or suspension for non-compliance by submitting an appeal in writing to the next level above the AO within 30 days after receipt of the written notification of termination or suspension of this agreement. The Recipient will document the dispute by notifying the Agency in writing of the relevant facts, identify the grounds for objecting or appealing the termination or suspension and specify the remedy sought. The Agency will follow the procedures in the Disputes section when responding to this appeal.

17. FINANCIAL ASSISTANCE POLICY TO BAN TEXT MESSAGING WHILE DRIVING

a. Definitions. As used in this clause-

"Driving" - Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

"Text messaging" - means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

b. This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, dated October 1, 2009.

c. The Applicant should-

- i. Adopt and enforce policies that ban text messaging while driving- (i) Company-owned or -rented vehicles or Government-owned vehicles; or (ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.
- ii. Conduct initiatives in a manner commensurate with the size of the business, such as- (i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and (ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

- d. Sub-agreements/sub-contracts. The Applicant shall insert the substance of this clause, including this paragraph (d), in all sub-agreement/subcontracts that exceed the micro-purchase threshold.

18. REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUB-AWARDS (2 CFR Part 170, Appendix A)

I. Reporting Sub-awards and Executive Compensation.

a. *Reporting of first-tier sub-awards.*

1. *Applicability.* Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal fund that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a sub-award to an entity (see definitions in paragraph e. of this award term).
2. *Where and when to report.*
 - i. i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.
 - ii. ii. For sub-award information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. *Reporting Total Compensation of Applicant Executives.*

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if-
 - i. the total Federal funding authorized to date under this award is \$25,000 or more;
 - ii. in the preceding fiscal year, you received-
 - A. 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and sub-awards); and
 - B. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and sub-awards); and
 - iii. The public does not have access to information about the compensation of the executives 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)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has

access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>)

2. *Where and when to report.* You must report executive total compensation described in paragraph b.1. of this award term:
 - i. As part of your registration profile at <http://www.sam.gov>.
 - ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. *Reporting of Total Compensation of Sub-applicant Executives.*

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier sub-applicant under this award, you will report the names and total compensation of each of the sub-applicant's five most highly compensated executives for the sub-applicant's preceding completed fiscal year, if-
 - i. in the sub-applicant's preceding fiscal year, the sub-applicant received-
 - A. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and sub-awards); and
 - B. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and sub-awards); and
 - ii. The public does not have access to information about the compensation of the executives 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)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>)

2. *Where and when to report.* You must report sub-applicant executive total compensation described in paragraph c.1. of this award term:
 - i. To the Applicant.
 - ii. By the end of the month following the month during which you make the sub-award. For example, if a sub-award is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the sub-applicant by November 30 of that year.

- d. *Exemptions* If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:
 - i. Sub-awards, and
 - ii. The total compensation of the five most highly compensated executives of any sub-applicant.

e. *Definitions.* For purposes of this award term:

1. *Entity* means all of the following, as defined in 2 CFR Part 25:
 - i. A Governmental organization, which is a State, local Government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization;
 - iv. A domestic or foreign for-profit organization;
 - v. A Federal agency, but only as a sub-applicant under an award or sub-award to a non-Federal entity.
2. *Executive* means officers, managing partners, or any other employees in management positions.
3. *Sub-award*:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you receive this award and that you as the Applicant award to an eligible sub-applicant
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec ____ .210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - iii. A sub-award may be provided through any legal agreement, including an agreement that you or a sub-applicant considers a contract.
4. *Sub-applicant* means an entity that:
 - i. Receives a sub-award from you (the Applicant) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the sub-award.
5. *Total compensation* means the cash and noncash dollar value earned by the executive during the Applicant's or sub-applicant's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
 - 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.

19. OMB PAPERWORK REDUCTION ACT

The Paperwork Reduction Act of 1995 (PRA): Any activities involving information collection (i.e. paper or web-based surveys, questionnaires, etc.) from 10 or more non-Federal entities, OMB Information Collection Clearance, a process that generally takes eight months. The Recipient will coordinate with the AOR on this process.

20. CONFLICT OF INTEREST

If at any time during performance, the Recipient identifies an actual or potential personal or organizational conflict of interest relating to performance of this Agreement, the Recipient must immediately notify the AO in writing. Actual or potential conflicts of interest may include but are not limited to any past, present or planned contractual, financial, or other relationships, obligations commitments or responsibilities, which may bias the Recipient or affect the Recipient's ability to perform the agreement in an impartial and objective manner.

The AO will review the statement and may require additional relevant information from the Recipient. All such information, and any other relevant information known to DOT, will be used to determine whether agreement performance by the Recipient creates an actual or potential conflict of interest. If any such conflict of interest is found to exist, the AO may (a) terminate the Agreement pursuant to the termination term of the Agreement, or (b) determine that it is otherwise in the best interest of the United States to continue the agreement and include appropriate provisions to mitigate or avoid such conflict in the Agreement pursuant to 2 CFR 200.112.

21. ANNUAL PROPERTY REPORT

The Recipient must submit an electronic copy and one hard copy of the SF-428 Tangible Personal Property Report to the AOR and one electronic copy and one hard copy to the Agreement Specialist 60 days prior to the anniversary date of this Agreement.

If no property was furnished or acquired during the Agreement up to the end date of the reporting period, indicate that information in block 8 of the SF-428. If property was furnished or acquired during the Agreement up to the end date of the reporting period, list the property on the SF-428-A and SF-428S forms. Use additional sheets as necessary. Use separate sets of sheets to show Federally-owned property and Recipient-owned property.

22. RESTRICTIONS ON INTERNAL CONFIDENTIALITY AGREEMENTS

The Recipient shall not require employees or subrecipients to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subrecipients from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

Page last modified on January 12, 2016

REQUESTED MOTION: Approve a Resolution appointing a chairperson to each of the City's advisory boards and committees.

REQUESTOR: Mayor Rick Steinmeyer

AGENDA: Consent

STRATEGIC PRIORITY: N/A

BACKGROUND:

Rule 4.01(C) of the Administrative Code for Advisory Boards (attached), states that in January of each year, the Mayor shall appoint a chairperson of each Board and Committee from among the membership. The below listed individuals have served as chairpersons in 2023 and each has expressed an interest in continuing to serve in that capacity. Appointments shall commence upon approval of the Resolution and expire December 31, 2024.

Melissa Layner:	Art in Public Places Board
Lindsey Robin:	Bicycle Pedestrian Safety Advisory Committee
Alan Glazier:	Historic Preservation Board
Jeff Maturo:	Local Planning Agency
Michael Robinson:	Outreach Advisory Committee
Bobbi Bird:	Special Events Committee
David Schmitt:	Street Light Advisory Committee
Jim Kauffman:	Technology Advisory Board
Jack Brown	Tree Advisory Board
Bobby Hunter:	Veterans Advisory Board
Anthony Rascio:	Zoning Board/Board for Land Use Hearings & Adjustments

STAFF RECOMMENDATION: Approve Resolution

ATTACHMENTS:

1. Resolution - Administrative Code for Advisory Boards
-

REVIEWERS:

City Manager:	Arleen Hunter
City Attorney:	Derek Rooney
City Clerk:	Mike Sheffield

CITY OF BONITA SPRINGS, FLORIDA

RESOLUTION NO. 24-

A RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; APPOINTING A CHAIR TO THE FOLLOWING BOARDS AND COMMITTEES: ART IN PUBLIC PLACES BOARD; BICYCLE PEDESTRIAN SAFETY ADVISORY COMMITTEE; HISTORIC PRESERVATION BOARD; LOCAL PLANNING AGENCY, OUTREACH ADVISORY COMMITTEE; SPECIAL EVENTS COMMITTEE; STREET LIGHT ADVISORY COMMITTEE; TECHNOLOGY ADVISORY BOARD; TREE ADVISORY BOARD; VETERANS ADVISORY COMMITTEE, AND THE BOARD FOR LAND USE HEARINGS & ADJUSTMENTS AND ZONING BOARD OF APPEALS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Rule 4.01(C) of Administrative Code AC-1-6, states that the Mayor shall appoint the Chair annually from the members of the Board in January of each year; and

WHEREAS, Rule 4.01(D) states that a Vice Chair shall be elected by the other members of the Advisory Committee, Board or Commission.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bonita Springs, Florida:

Section 1. The following persons are hereby appointed as Chairs to the following Committees/Boards:

Melissa Layner:	Art in Public Places Advisory Board
Lindsey Robin:	Bicycle Pedestrian Safety Advisory Committee
Alan Glazier:	Historic Preservation Board
Jeff Maturo:	Local Planning Agency
Michael Robinson:	Outreach Advisory Committee
Bobbi Bird:	Special Events Committee
David Schmitt:	Street Light Advisory Committee
Jim Kauffman:	Technology Advisory Board
Jack Brown	Tree Advisory Board
Bobby Hunter:	Veterans Advisory Board
Anthony Rascio:	Zoning Board/Board for Land Use Hearings & Adjustments

Section 2. Said appointments shall commence upon adoption of this Resolution and expire December 31, 2024.

Section 3. Effective date. This Resolution shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 17th day of January 2024.

AUTHENTICATION:

_____ Mayor	_____ City Clerk
----------------	---------------------

APPROVED AS TO FORM: _____
City Attorney's Office

Vote:

Bogacz
Purdon
Carr
Corrie

Fullick
Steinmeyer
Forbes

Date filed with City Clerk: _____

**CITY OF BONITA SPRINGS, FLORIDA
RESOLUTION NO. 22-67**

**A RESOLUTION OF THE CITY OF BONITA SPRINGS,
FLORIDA; AMENDING AND RESTATING RESOLUTION 06-
76, AS AMENDED BY RESOLUTIONS 13-012, 13-052 and
14-049, THE ADMINISTRATIVE CODE FOR ADVISORY
BOARDS; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Bonita Springs City Council, as the duly elected governing body for the City of Bonita Springs, has the authority to adopt administrative codes for the operation of City business; and

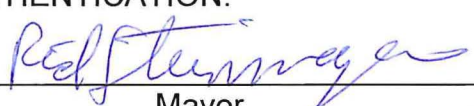
WHEREAS, advisory board members benefit from rules and procedures to effectively and efficiently serve the Bonita Springs City Council, hence a review of all the rules was undertaken to provide uniformity in how advisory boards operate.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bonita Springs, Lee County, Florida, that:

1. City Council declares that the procedures set forth, attached hereto, and incorporated by reference herein by Exhibit "A", is applicable for all members to the City's various boards, committees, and agencies.
2. The Resolution shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 2nd day of November, 2022

AUTHENTICATION:



Mayor



City Clerk

APPROVED AS TO FORM:



City Attorney

Vote:

Carr	Aye	Purdon	Aye
Corrie	Aye	Quaremba	Aye
Forbes	Aye	Steinmeyer	Aye
Gibson	Aye		

Date filed with City Clerk: 11/2/2022

ADVISORY BOARD
ADMINISTRATIVE CODE

CODE NUMBER: AC-1-6

TITLE: ADVISORY BOARD ADMINISTRATIVE
CODE

ADOPTED: May 17, 2006 (Res. 06-076), amended February 20,
2013 (Res. 13-012), September 18, 2013 (Res. 13-
052), and November 5, 2014 (Res. 14-049)

ORIGINATING DEPARTMENT: City Manager's Office

PURPOSE/SCOPE: Provide the supplementary procedures for the City's
various boards, committees, and agencies.

Rule 1.01: Purpose

To establish procedures for creation and function of Advisory Committees, Boards, Councils, or Commissions. Unless specified otherwise, any amendments to this Administrative Code should be considered remedial in nature, with the City retroactively applying the amendments to this Code.

Rule 2.01 Policy/Procedure:

- (a) The Mayor and the City of Bonita Springs shall have the power to designate and create Advisory Committees, Boards, Task Forces, Councils, or Commissions (collectively referred to as "Advisory Boards") by Ordinance, Resolution, Interlocal Agreement, or Florida Statute, as may be necessary for the administration of the affairs of the City and shall provide for their duties and powers in said Ordinance, Resolution, Interlocal Agreement, or Florida Statute.
- (b) The City Council is authorized to dissolve Standing Advisory Boards or rescind an appointment to an Advisory Boards by a vote of the majority of the City Council. In the event a member to any advisory boards is accused of misusing the advisory position, the Mayor may temporarily suspend that member pending a decision by City Council on whether to remove that member from their appointed position.
- (c) Each Advisory Board shall have an anniversary month that shall be the month in which the City Council created the Advisory Board and appointed its members unless specified otherwise. ~~Effective November 1, 2014, the advisory board terms will run from January 1st to December 31st of each year. Advisory board members will continue service for the months from this anniversary date to December 31st so as to have all advisory board members on an appointment schedule consistent with rule 5.04. For example, if an advisory board member's term is set to expire in September 2015, that member will continue to serve until December 31st, 2015, unless they are reappointed or the Mayor has not named a successor to the position (or the City Council has yet to confirm the Mayor's appointment).~~

- (d) Except for standing committees or where the establishing document calls for a different term, the term for each member of an Advisory Board is for three years.
- (e) Members of the Advisory Boards shall serve without compensation unless otherwise specified. A city staff member, designated by the City Manager, will be appointed as City Liaison to the Advisory Boards and will assist as appropriate. Applications to serve on a City Advisory Board can be obtained from:

Office of the City Clerk
9101 Bonita Beach Road
Bonita Springs, FL 34135
Phone (239) 949-6262
Or website www.cityofbonitasprings.org.

- (f) The City Clerk shall be responsible for maintaining an accurate and up-to-date roster of all Advisory Boards, their respective members, and shall advise the City Council prior to the expiration of any term of appointment, establishing an agenda item for appointment/reappointment.
- (g) Advisory Board members are subject to reference checks to determine fitness and character. Consistent with Florida Statutes §112.3143(6), City Council will consider the number and nature of memoranda of conflicts [**COE Form 8B**] previously filed an appointee or reappointee in consideration of the appointment. No member of any Advisory Board shall have any financial or personal interest in the outcome of any matter coming before such member in their official capacity, unless that interest is waived by City Council in accordance with Florida Statutes §112.313 (12) [**COE Form 4A**]. Such member shall disclose in the records of the Advisory Board, the existence of an interest therein and shall disqualify themselves from voting or action on such matters.
- (h) No advisory boards or sub-committees may be created by staff, citizens or advisory boards.

Rule 3.01 Establishing an Advisory Board:

- (A) When establishing a new Advisory Board, the originating resolution (or ordinance, when applicable) shall specify the following:

Category
Advisory Board Name
Number of Members
How Appointed
Length of Term
Any limitation in how many terms an individual may serve
If Form 1 Financial Disclosure required (if applicable)
Anniversary Month of December 31st (if different than the month appointed)
City Liaison Name or position

Sunset Date (if applicable)

Purpose

- (B) The City Council will periodically review the purpose, function, membership and continued need for the Advisory Board at regular intervals. The date for this "sunset" review will be established by the City Council.

Rule 4.01 Organization of Advisory Committees, Boards, or Commissions

All Advisory Boards shall be organized as follows:

- (A) ~~Meetings should be conducted informally unless the meeting is a quasi-judicial hearing.~~ Roberts Rules of Order shall govern the proceedings of all meetings.
- (B) The Mayor will appoint any vacancies upon advice and consent of the City Council to confirm the appointment.
- (C) The Mayor shall appoint the chair annually from the members of the Board in January of each year.
- (D) A Vice Chair shall be elected by the other members of the Advisory Committee, Board, or Commission.
- (E) Advisory Boards shall meet quarterly, with additional meetings being called only when necessary to facilitate City business or to allow the Advisory Board to consider a time-sensitive matter. Meetings shall be called by the Chair, by the City Council, and/or the City Staff Liaison.
- (F) The Secretary (member or staff, whichever is applicable) shall take minutes of the proceedings each meeting. Draft Minutes should be forwarded to the City Staff Liaison and City Clerk two (2) weeks prior to the next meeting, unless the advisory board meets more frequently than monthly, in which case, draft minutes will be added to the agenda when there is sufficient time to prepare and review, but no greater than thirty (30) days from the meeting for the subject minutes. Approved minutes should be signed by the Secretary and Chairperson and forwarded to the liaison and the City Clerk ten (10) days following approval. These records shall become official records of the Advisory Board and a copy shall be distributed to the following:

Committee Chairperson
Staff Liaison
City Clerk

- (G) All meetings of the Advisory Board are open to the public and subject to the Florida Sunshine Law as set forth in Florida Statutes §286.011. All public meetings must be held where there is reasonable public access and sufficient notice of each meeting must be provided by:
 - 1) Advertisement in a paper of general circulation, if required by the enabling ordinance or resolution creating the advisory board, or

- 2) Posting notice in City Hall, 9101 Bonita Beach Road, Bonita Springs, FL 34135, or
- 3) Posting on Bonita T.V. Channel 98 and the City's website.

(H) Public Comment:

- 1) Except when limited pursuant to Florida Statutes §286.0114(3), members of the public have the reasonable opportunity to be heard. For advisory boards, public comment shall occur at the beginning of a meeting prior to any vote being taken unless the written agenda specifies public comment being taken during discussion of the item.
- 2) The public is limited to four (4) minutes or less.
- 3) ~~With exception during a quasi-judicial hearing (LPA, Zoning Board, Historic Preservation, etc.) no form is prescribed. Speakers wishing to address a board during a quasi-judicial hearing will fill out a speaker form for the Recording Secretary to have the information for taking minutes of the meeting. The form may be used to indicate in the record an individual's support, opposition, or neutrality on a proposition, at the speaker's option.~~

Rule 5.01 — Existing Appointees:

~~Effective November 1, 2014, re-appointment of existing appointees for all advisory board members will be as follows:~~

- A. ~~All terms will run from January 1st to December 31st beginning January 2015. For advisory boards where the terms originally ran differently that commencing January 1st, the advisory board members will stay in office until January 1st or upon appointment of a new advisory board member assuming the seat, whichever occurs later, to maintain a quorum. For example, if an advisory board member's term is set to expire in September 2015, that member will continue to serve until December 31, 2015, unless they are reappointed or the Mayor has not named a successor to the position.~~
- B. ~~In November, the City Clerk will inquire whether or not the existing appointee wishes to be reappointed, and notice of availability addressed, per Rule 4.01(G).~~
- C. ~~Staff liaisons each November will inquire to the respective advisory board members whose terms are set to expire on December 31st for that year whether they desire to continue service on that advisory board. Staff liaisons will inform the City Clerk no later than November 15th of each year as to the desires of the advisory board members, and then the City Clerk will contact the applicable Council member as to re-appointment. The City Clerk will then schedule the re-appointments for a meeting in December, with any new members to be considered for appointment in January by City Council.~~

- ~~D. For LPA and Zoning Board only, the Council member (or if no longer in office, the Council member holding the seat) who appointed the member will be asked if the existing appointee should be reappointed. City Council will then consider whether to make the re-appointment or if a new appointee should be selected from the applicable applications.~~
- ~~E. If a Council member or City Council decides not to re-appoint an existing appointee, they will advise the staff liaison who will notify the existing appointee that their term will end on December 31st or upon appointment of a new advisory board member assuming the seat, whichever occurs later.~~

~~Rule 6.01 — Vacant Positions or New Positions:~~

~~—— Forty five (45) days prior to the expiration of the Advisory Board member terms, the City Clerk shall utilize the available means: newspapers, newsletters, and public television, to obtain volunteers for any open positions.~~

REQUESTED MOTION: Approve resolution establishing composition and membership requirements for the Art in Public Places Board.

REQUESTOR: Nicole Perino, Parks & Recreation Director

AGENDA: Consent

STRATEGIC PRIORITY:

BACKGROUND:

On October 5, 2005, City Council adopted Ordinance No. 05-18 creating the Art in Public Places Program, providing for an Art in Public Places Advisory Board, establishing the Art in Public Places account, and providing for appropriations for the funding. The Council now wishes to re-establish membership requirements for the Board by resolution and amend the composition. This is to streamline the administration of the board in consistency with other City advisory boards.

This is a companion item to Green Sheet No. 24-01-005, which is a draft ordinance allowing the membership to be amended by resolution. The Art in Public Places Program will remain codified by ordinance.

STAFF RECOMMENDATION: Adopt the resolution.

ATTACHMENTS:

1. Resolution

REVIEWERS:

City Manager:	Arleen Hunter
City Attorney:	Derek Rooney
City Clerk:	Mike Sheffield
Department Director:	Nicole Perino

CITY OF BONITA SPRINGS, FLORIDA

RESOLUTION NO. 24 –

**A RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA;
ESTABLISHING THE COMPOSITION AND MEMBERSHIP
REQUIREMENTS FOR THE CITY OF BONITA SPRINGS ART IN PUBLIC
PLACES BOARD; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the City Council for the City of Bonita Springs is the governing body for the City of Bonita Springs, Florida; and

WHEREAS, Bonita Springs City Council desires to provide vast cultural resources to beautify the community and for the enjoyment by the citizens of Bonita Springs; and

WHEREAS, the Bonita Springs City Council desires to continue the Art in Public Places Board ("APPB"), to foster through the Art in Public Places Program the development for a receptive climate for the fine arts, to enrich culturally and benefit the citizens of the City of Bonita Springs in their daily lives and to serve a public purpose.

NOW, THEREFORE, BE IT RESOLVED by the City of Bonita Springs City Council that:

1. It is hereby established that the Art in Public Places Board shall consist of nine (9) members appointed by the Mayor with the advice and consent of City Council, all of whom shall serve without compensation. The quorum shall remain at four members.
2. The City Council shall strive to appoint one voting member who represents Arts Bonita, one voting member who has a bachelor's degree or higher in the area of fine arts, and seven (7) general voting members.
3. This resolution shall take effect upon its adoption.

AUTHENTICATION:

Mayor City Clerk

APPROVED AS TO FORM: _____
City Attorney's Office

Vote:

Steinmeyer	Corrie
Bogacz	Fullick
Purdon	Forbes
Carr	

REQUESTED MOTION: Approve a special event application from Fair Productions LLC for a Family Fair at the Bonita Springs Poker Room from February 9 through February 18, 2024.

REQUESTOR: Lora Taylor, Communications Director

AGENDA: Consent

STRATEGIC PRIORITY: N/A

BACKGROUND: Fair Productions LLC would like to host a Family Fair at the Bonita Springs Poker Room site. The festival is proposed to run from February 9 through February 18, 2024, with closing time being 10 pm on weekdays and 11 pm on Fridays and Saturdays.

As the proposed hours of operation are later than what is typically approved, the applicant is requesting Council's approval to extend the weekday hours to 10 pm and the weekend hours to 11 pm. All music emanating from the amusement rides and entertainment would shut off at 9 pm.

The event will include amusement rides, entertainment, an outdoor circus, pony rides, a petting zoo, and food. The organizer has permission to use the Bonita Springs Poker Room property and has met with LCSO to coordinate traffic flow.

This is the third year that Fair Productions LLC has offered a Fair at this location. The event operated in December of 2022 with extended hours.

Staff recommends not permitting the amplified sound to exceed 65 dB from the point of the closest residence during the duration of the event.

STAFF RECOMMENDATION: Approve a special event application for the Bonita Springs Family Fair from February 9 through February 18, 2024, with the understanding that all amplified music will end at 9 pm.

ATTACHMENTS:

1. Special Event Application

REVIEWERS:

City Manager:	Arleen Hunter
City Attorney:	Derek Rooney
City Clerk:	Mike Sheffield
Department Director:	Lora Taylor

Council Action: Approved ___ Denied ___ Deferred ___ Other _____

You do not have to partner with the charities on this list. You may choose any charity. This list is intended as informational only.

**SPECIAL EVENT
PERMIT APPLICATION**

PERMIT. SEP- _____



City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

Date Received: _____

Effective Date/Time: _____

Application Fee: ☒ \$50.00 Phone: 239/949-6262
☐ \$25.00 (501C3 organizations)
Fee is non-refundable

Fax: 949-6239

Use this form for: Parades, Festival/Carnival, Any Activity Requiring Off-Site Parking, Street Closure, Sound Amplification or City Personnel, Run/Race/Walk, Art Shows, Concerts, Special Musical Presentation, Street Dances, Photography Shoots, and Fireworks. For information call 949-6262.

Completed Special Event Permits take 45 days to process with all necessary attachments and without errors. Your permit will go to the next City Council Meeting after the 45 days. Please take this into consideration when planning your event.

Organization: Fair Productions LLC.

Nature of Event: Family Fair with amusement rides, entertainment, attractions, food and games.

Location (Attach Site Plan): Bonita Springs Poker Room parking lots.

Date	Set-Up Time	Actual Event Times	Take Down Time
<u>February 5 - 8, 2024</u>	to <u>(LETTER ATTACHED)</u>	to _____	<u>February 19 - 21, 2024</u>

For multiple dates, please attach letter.

Has this event been held in the past? Yes If so, when was the last event? December 2021
Individual Contact for Activity/Event: Brian Schuman Phone: (516) 369-2195
Address: P.O. Box 70 Old Bethpage, N.Y. 11804 Website: BonitaSpringsFair.com
E-Mail Address: brianschuman@gmail.com
Major Sponsor(s): _____
Promoter(s): Fair Productions LLC. / Brian Schuman Phone or Contact #: (516) 369-2195

	Yes	No
1. Crowd: Is anticipated crowd size 1,000 or more?	☐	☒

Actual Anticipated number: 500-1,000

2. Parking: Will off-site parking be provided? <u>Parking in Dog Track lots</u>	☐	☒
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Will "shuttle" service to parking be provided? By whom? _____ ☐ ☒

4. Noise: Will there be amplified music or entertainment? If yes, please attach type(s) of Entertainment and time(s) of performances(s). <u>Indicated stage location(s) on siteplan.</u>	☒	☐
--	-------------------------------------	--------------------------

Magic Show, Petting Coral, Circus

- | | Yes | No |
|---|-------------------------------------|-------------------------------------|
| 5. City Co-Sponsorship:
Is City co-sponsorship being requested? If yes, please explain with letter of attachment, listing benefitting organizations. | ☐ | ☒ |
| 6. Fireworks: Is this a public _____ or private _____ display? Applicant must comply with State Law F.S. 791; and NFPA 1123 and obtain any applicable Lee County permit. | ☐ | ☒ |
| 7. Banners, Signs, Etc.: Will exterior banners, balloons, signs or other types of advertising techniques be used? Temporary signs may only be placed in accordance with the Sign Ordinance. | ☒ | ☐ |
| 8. Alcohol Beverages: Will alcoholic beverages be sold <u>No</u> or consumed <u>No</u> on the premises? Please check one or both. A copy of the Florida Beverages Commission permit is required to finalize before event. Permit Holder: _____
Division of Alcoholic Beverages and Tobacco: (239) 278-7195. | ☐ | ☒ |
| 9. Security: Will private security be provided to protect exhibits, equipment or facilities brought on-site for the event? Name of Company: <u>Suncoast Security</u>
Contact Number: <u>239-822-0728</u> | ☒ | ☐ |
| 10. Private Property: Does the applicant own the property where the event is to be held? If not, please attach a letter of permission from the property owner. | ☐ | ☒ |
| 11. Public Safety: Will Police and Fire District Personnel be requested? (Based on responses to questions 1-6 certain Public Safety personnel may be required, i.e., Lee County Sheriff's Office, emergency services, fire, etc. Once staffing needs are determined, applicant will be required to provide copies of its contracts detailing obligated public safety staff necessary for event. | ☒ | ☐ |
| 12. Tents/Canopies: Will tents or canopies be used? <u>If yes, indicate on site plan the tent size, location, and type of surface on which the tent(s) will be installed and intended use of each tent.</u> Canopy for pony rides | ☒ | ☐ |
| 13. Air Conditioning Units/Power Generators: Will exterior air conditioning units or power generating equipment be operated from vehicles or trailers? <u>If yes, indicate location of equipment on-site plan.</u> | ☒ | ☐ |
| 14. Food/Cooking: Will food be cooked <u>Yes</u> catered _____ on-site during this event? <u>Indicate on site plan the location of vendors and cooking equipment to be used.</u>
(Appropriately rated fire extinguishers required.) Lee County Health Department approval is required to finalize permit before event. Environmental Health Section: (239) 332-9559. | ☒ | ☐ |

Food prepared and served from State Fair type Food Concession trailers.

Yes No

15. Sanitary Facilities:

Will temporary sanitary facilities be provided? If yes, indicate location on site plan. ☒ ☐

Will disposable cardboard trash receptacles be provided? If yes, indicate on site plan. ☒ ☐

Will additional refuse containers/dumpsters be provided? ☒ ☐

If yes, by whom: 3 - 30 yard dumpsters provided by Bin There Dump That

16. Insurance Requirement: Permittee is required to obtain and present evidence of surety indemnity bond or comprehensive liability insurance naming the city as an additional insured. The insurance requirement is a minimum of \$1,000,000.00 general liability (personal injury) and \$100,000.00 property damage against all claims arising from permits issued pursuant to this ordinance, naming the city of Bonita Springs **as additional insured**. If the event poses higher risks than covered by such insurance, permittee shall be responsible for assessing the risks of the event and obtaining additional insurance coverage.
17. Non-Profits are required to provide either a form 990 or a financial report to the city showing revenue from the event where at least 10% of the proceeds will remain within the Bonita Springs area, supporting the community or charities, within 60 days after the event. If the event is of a non-monetary nature, the non-profit must show they provide an impact to 5% of the area.

DURING REVIEW BY VARIOUS CITY DEPARTMENTS, ADDITIONAL CONDITIONS MAY BE IMPOSED. THIS PERMIT IS VALID ONLY FOR THE TIME INDICATED ON THIS PERMIT. IN THE EVENT THAT THE APPLICANT FAILS TO FULFILL THE REQUIREMENT(S) AS SET FORTH IN THIS PERMIT, OR FAILS TO OBTAIN PROPER AUTHORIZATION TO PROCEED IF CONDITIONS HAVE CHANGED ON THE EXPECTED OUTCOMES, IMPACTS, OR SPECIFICATIONS, INCLUDING BUT NOT LIMITED TO TIME AND ACTIVITIES, THE PERMIT MAY BE CANCELLED BY THE CITY MANAGER AND THE ACTIVITY SHALL CEASE IMMEDIATELY.

I, the undersigned, will indemnify, defend, and hold harmless, the City of Bonita Springs, its agents, employees, officers and any and all other associates, from and against any and all actions, in law or in equity, from liability or claims for damages, demands or judgments to any person or property which may result now or in the future from the conduct of this event.

The undersigned has read and voluntarily signed the release and waiver of liability and Indemnity Agreement, and further agrees that no oral representations, statements, or inducements apart from the foregoing written agreement have been made.



12/05/2023

Signature of Applicant

Date

Comments: _____

City Manager

Date

Comments: _____

Application Fee is non-refundable.



January 4, 2024

RE: Permit Application for proposed 'Bonita Springs Fair'

Location: Bonita Springs Poker Room property -
28010 Race Track Road, Bonita Springs, FL 34135
When: February 9 - 18, 2024

Fair Productions proposes to produce the Bonita Springs Fair
www.BonitaFair.com.

The *Bonita Springs Fair* would incorporate all of the fun family activities and attractions we promoted and produced over the past two years at the Bonita Holiday Fair at the same location. We have been producing a similar family event called the 'FAIR AT FENWAY' at Jetblue Park since 2013.

There would be amusement rides, both kiddie rides and thrill rides, entertainment including Magic Shows, an outdoor circus, pony rides, and a petting zoo.

As with our Fair at Fenway, we are completely self-contained including all generator power. We contract with United Site Services for portable restrooms and perimeter fencing. Bin There Done That company provides 20 yard dumpsters for the refuse disposal and Global Security Company/ Suncoast Security provides a full security detail.

Likewise, at the Fair at JetBlue Park, we would abide by and take recommendations from the Lee County Sheriff Department and have Deputies onsite.

The Bonita Springs Fair would run from February 9 - 18, 2024. Weeknights would open at 5 pm and Saturday's and Sunday's at 3pm. Understanding that the City of Bonita Springs noise ordinance requires a 9 pm shut off, we propose the following: As we have been approved for the past two years of the Fair:

All music emanating from the amusement rides and entertainment would shut off at 9pm, with the park closing time being 10 pm weekdays and at 11pm on Friday's and Saturday's.

If the City of Bonita Springs approves our Permit Application, we would continue to workout the final details and logistics with the management at the Bonita Springs Poker Room.

We look forward to continuing this new Bonita Springs Fair with hopes that it becomes a local annual tradition. We are open to any suggestions and comments the governing authorities have to offer.

Thank you for your consideration,



Brian Schuman
Managing Member

Fair Productions LLC.
516-369-2195

BONITA SPRINGS POKER ROOM
28010 Race Track Road
Bonita Springs, FL 34165

RE: LETTER OF PERMISSION

January 4, 2024

To whom it may concern,

This letter serves as acknowledgement that the Bonita Springs Poker grants permission to Fair Productions LLC, to hold an event known as the 'Bonita Springs Fair' on our property on the paved area along Race Track Road from February 9th through February 18th, 2024.

Juan Fra

A handwritten signature in blue ink, appearing to read 'Juan Fra', with a stylized, cursive script.

General Manager

PLEASE NOTE: Lee County Sheriff's Department will not sign-off on your event unless they see a completed Special Event Packet. This sign-off sheet must be completed by the Lee County Sheriff's Office with your Special Event Packet when you return it to Bonita Springs City Hall.



CITY OF BONITA SPRINGS SPECIAL EVENT DEPARTMENT
9101 BONITA BEACH ROAD | BONITA SPRINGS, FL 34135 | (239) 949-6262

LEE COUNTY SHERIFF'S DEPARTMENT SIGN-OFF

Details Unit - (239) 477-1199 or jhillery@sheriffleefl.org or asellers@sheriffleefl.org

Event Name Bonita Springs Fair 2024

Parking:

All parking must be in authorized areas on site and must not impede the normal flow of traffic.

Road Closures (Please Explain):

None required for this event.

Alcoholic Beverages:

It is understood through this event permit packet that alcohol will not be served at this event.

Special Arrangements:

Two (2) extra duty detail deputies will be required for security & presence throughout the event area prior to opening & will remain on site as long as the event is open to the public.

SHERIFF'S PERSONNEL USE ONLY

LCSO DETAIL COMMANDER: _____

SIGNATURE

DATE: 12.13.23

DEPUTIES BOOKED FOR EVENT (How Many?): 2 each day DATE BOOKED: _____

Please Note: "Deputies Booked for Event" is an estimate. Amount of Deputies may change at any time before or during your event.

BONITA SPRINGS FAIR FEBRUARY 9 – 18, 2024

MODERN MIDWAYS

RIDE LIST

MUSIK EXPRESS
EXPO WHEEL
HYPERLOOP 360
FLYING JUMBOS
DARK RIDE
S.A. MERRY GO-ROUND
BULL
VERTIGO
SCRAMBLER
WIND GLIDER
TEA CUPS
SUPER SLIDE
SCOOTER
PHARAOH'S FURY
HANG OVER
ZERO GRAVITY
DRAGON FLYER ROLLER COASTER
BEACH PARTY
SINGLE BIKES
PUPPIES
GROOVY BUS
TRACTORS
LADY BUGS
QUADRUNNERS
ALLIGATOR RIDE
SURF SHACK
NEMOS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/29/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER McGowan Allied Specialty Insurance 20595 Lorain Rd Fairview Park OH 44126 License#: 973 FAIRPRO-03	CONTACT NAME: Lisa Cummings	
	PHONE (A/C, No, Ext): E-MAIL: lcummings@mcgowanallied.com ADDRESS:	
INSURED Fair Production II, Inc./ Fair Productions LLC PO Box 70 Old Bethpage NY 11747	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : T.H.E. Insurance Company	12866
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	

COVERAGES

CERTIFICATE NUMBER: 654564818

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:			CPP010331710	4/14/2023	4/14/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 0 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000 \$
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS			CPP010331710	4/14/2023	4/14/2024	COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ 1,000,000 PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB EXCESS LIAB ☐ DED ☐ RETENTION S						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	☐ Y ☒ N	N/A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate holder - City of Bonita Springs is included as an additional insured as required by written contract with respects to the General Liability.

BONITA SPRINGS FAIR
Set-up February 5 - 8, 2024
Fair Dates: February 9 - 18, 2024
Tear-Down: February 19 - 22, 2024

CERTIFICATE HOLDER**CANCELLATION**

City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs FL 34135

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/28/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Arthur J. Gallagher Risk Management Services, LLC 777 108th Ave NE #200 Bellevue WA 98004	CONTACT NAME: Charles Underhill	
	PHONE (A/C, No, Ext): 425-454-3386	FAX (A/C, No): 425-451-3716
E-MAIL ADDRESS: charles_underhill@ajg.com		
INSURER(S) AFFORDING COVERAGE		
INSURER A : Everest National Insurance Company		
INSURER B :		
INSURER C :		
INSURER D :		
INSURER E :		
INSURER F :		

COVERAGES CERTIFICATE NUMBER: 1583762032 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☒ LOC ☐ OTHER:	Y		SI8ML01459231	4/3/2023	4/3/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO ☒ OWNED AUTOS ONLY ☒ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			SI8ML01459231	4/3/2023	4/3/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	☐ UMBRELLA LIAB ☐ EXCESS LIAB ☐ DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y	N/A	SI8WC00580231	10/29/2023	10/29/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Event: Bonita Springs Fair
Set-Up Dates: February 5 - 8, 2024
Fair Dates: February 9 - 18, 2024
Tear Down Dates: February 19 - 21, 2024

The City of Bonita Springs is named as Additional Insured with respect to the operations of the Named Insured where required by written contract for General Liability.

CERTIFICATE HOLDER	CANCELLATION
City of Bonita Springs 9101 Bonita Beach Road Bonita Springs FL 34135	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE

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2241

FAIR PRODUCTIONS, LLC
8642 MARLAMOOD LN
WEST PALM BEACH, FL 33412-1603

Bank of America

ACH R/T 063100277

63-4-630

12/20/2023

PAY TO THE ORDER OF City of Bonita Springs

\$ **50.00

Fifty and 00/100*****

DOLLARS

City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135
ATT Logan DeShong




AUTHORIZED SIGNATURE

MEMO

Permit Application for Fair Productions LLC for Bonit

⑈002241⑈ ⑆063000047⑆ 898048149290⑈

REQUESTED MOTION: Second reading of an ordinance amending Sec. 34-94 of the City's Code of Ordinances relating to establishing composition and qualification requirements for appointment to the Art in Public Places Advisory Board.

REQUESTOR: Derek Rooney, City Attorney

AGENDA: Public Hearing

STRATEGIC PRIORITY:

BACKGROUND:

At a previous Council meeting, Council Member Fullick advised that he would like the Art in Public Places ordinance to allow Council to revise the Board's composition and qualification requirements by resolution, rather than by ordinance. This fosters a streamlined process for future adjustments and is consistent with other City advisory boards. The first reading of this ordinance was held on December 20, 2023.

Additionally, he would like to proceed with amending the Board's membership composition from eleven members to nine members. The accompanying resolution to revise the composition is included in Green Sheet No. 24-01-008.

STAFF RECOMMENDATION: Adopt the ordinance.

ATTACHMENTS:

1. Draft Ordinance
-

REVIEWERS:

City Manager:	Arleen Hunter
City Attorney:	Derek Rooney
City Clerk:	Mike Sheffield
Department Director:	Nicole Perino

CITY OF BONITA SPRINGS

ORDINANCE NO. 23-

AN ORDINANCE OF THE CITY OF BONITA SPRINGS, AMENDING BONITA SPRINGS CODE §34-94 RELATING TO ESTABLISHMENT OF REQUIREMENTS FOR APPOINTMENT TO THE ART IN PUBLIC PLACES ADVISORY BOARD; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

WHEREAS, the City Council for the City of Bonita Springs is the governing body for the City of Bonita Springs, Florida; and

WHEREAS, the Bonita Springs City Council desires to amend the APPB Board, to foster through the Art in Public Places Program the development for a receptive climate for the fine arts, to enrich culturally and benefit the citizens of the City of Bonita Springs in their daily lives and to serve a public purpose.

THE CITY OF BONITA HEREBY ORDAINS:

SECTION ONE: BONITA SPRINGS CODE §34-94

Section 34-94 of the Bonita Springs Code is amended to read as follows, with strike-through identifying deleted language and underline identifying additional language:

Sec. 34-94. - Art in Public Places Board (APPB).

- (a) It is hereby established and created an art in public places board (APPB), ~~consisting of eleven members~~ whose membership shall be appointed by the mayor with the advice and consent of city council, and all of whom shall serve without compensation. City Council may establish by resolution the applicable membership qualification criteria, terms, or other requirements as the Council determines to be in the best interest of the City. ~~The quorum will remain at four members. The composition of the APPB will include one voting member who represents the city art league, at least one voting member who has a bachelor's degree or higher in the area of fine arts, and nine five general voting members. City Council may adopt a resolution setting forth the terms and appointments of the art in public places board.~~ The mayor shall annually select one of the APPB members as chairperson for the APPB, with the APPB selecting its vice-chairperson.
- (b) The APPB shall advise city council on acquiring, commissioning, and maintaining works of art for public places.

SECTION TWO: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted Ordinance or Statute, the most restrictive requirements shall apply.

SECTION THREE: SEVERABILITY

The provisions of this Ordinance are severable and it is the legislative intention to confer upon the whole or any part of the Ordinance the powers herein provided for. If any provision of this Ordinance shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of the Ordinance. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such unconstitutional provision not been included herein.

SECTION FOUR: CODIFICATION AND SCRIVENER'S ERRORS

The Bonita Springs City Council intends that this Ordinance will be made part of the Bonita Springs Code; and that sections of this Ordinance can be renumbered or relettered and the word "Ordinance" can be changed to "Section", "Article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this Ordinance is ever codified. The Ordinance can be renumbered or relettered and typographical errors and clarification of ambiguous wording that do not affect the intent can be corrected with the authorization of the City Manager or his designee, without the need for public hearing.

SECTION FIVE: EFFECTIVE DATE

This ordinance shall take effect immediately upon its adoption.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this ____ day of _____, 2024.

AUTHENTICATION:

Mayor City Clerk

APPROVED AS TO FORM: _____
City Attorney

Vote: Bogacz	Carr	Corrie
Forbes	Fullick	Purdon
Steinmeyer		

REQUESTED MOTION: Discussion regarding potential planning studies for the CDBG-DR Hurricane Ian Recovery and Resiliency Planning Program grant opportunities.

REQUESTOR: Elly Soto McKuen, Senior Project Manager

AGENDA: City Manager's Items

STRATEGIC PRIORITY: 3) Strengthen City Finances, 5) Community Aesthetics

BACKGROUND: Lee County announced a Notice of Funding Availability (NOFA) on December 5, 2023 for Recovery and Resiliency Planning Program. Congress appropriated supplemental funding for 2022 disasters of which U.S. Housing and Urban Development (HUD) allocated Lee County \$1,107,881,000 in Community Development Block Grant-Disaster Recovery (CDBG-DR) funding to support long-term recovery efforts following Hurricane Ian.

The funds are for planning activities which consist of all costs of data collection, studies, analyses, and preparation of plans that are consistent with 24 CFR (code of federal regulations) 570.205 (see attachment 1). Planning activities must be broad in nature and/or area-based. An engineering or similar study related to a specific project with a specific address is not considered a planning activity for program funding. The minimum funding request is \$100,000 and a maximum request is \$3,000,000 per plan.

Staff has identified two (2) potential planning studies. They are an updated mobility study (non-motorized pathways) and a park master plan. Both plans will be citywide but particular attention will be paid to the Low-Moderate Income Areas (see attachment 2 for LMA).

Staff is seeking additional planning studies that would meet the criteria for use of the CDBG-DR funding allocation.

STAFF RECOMMENDATION: Discuss potential planning studies for the CDBG-DR Hurricane Ian Recovery and Resiliency Planning Program grant opportunities.

ATTACHMENTS:

1. 24 CFR 570.205 Legislation
2. Low Moderate Income Map

REVIEWERS:

City Manager:	Arleen Hunter
City Attorney:	Derek Rooney
City Clerk:	Mike Sheffield
Department Director:	Matt Feeney

Council Action: Approved ___ Denied ___ Deferred ___ Other _____

This content is from the eCFR and is authoritative but unofficial.

Title 24 —Housing and Urban Development

Subtitle B —Regulations Relating to Housing and Urban Development

Chapter V —Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development

Subchapter C —Community Facilities

Part 570 —Community Development Block Grants

Subpart C —Eligible Activities

Source: 53 FR 34439, Sept. 6, 1988, unless otherwise noted.

Authority: 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 3535(d) and 5301-5320.

Source: 40 FR 24693, June 9, 1975, unless otherwise noted.

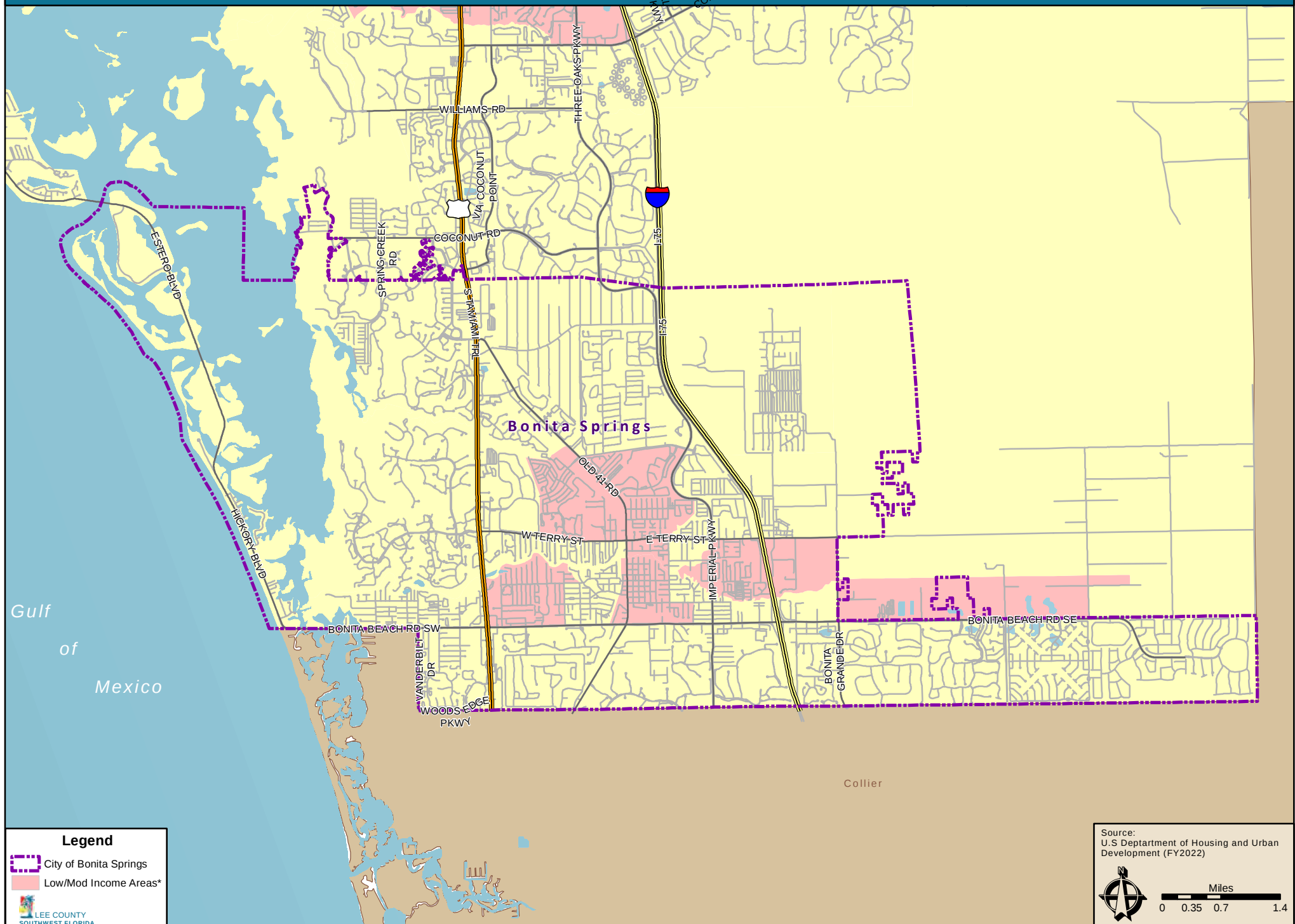
§ 570.205 Eligible planning, urban environmental design and policy-planning-management-capacity building activities.

- (a) Planning activities which consist of all costs of data gathering, studies, analysis, and preparation of plans and the identification of actions that will implement such plans, including, but not limited to:
 - (1) Comprehensive plans;
 - (2) Community development plans;
 - (3) Functional plans, in areas such as:
 - (i) Housing, including the development of a consolidated plan;
 - (ii) Land use and urban environmental design;
 - (iii) Economic development;
 - (iv) Open space and recreation;
 - (v) Energy use and conservation;
 - (vi) Floodplain and wetlands management in accordance with the requirements of Executive Orders 11988 and 11990;
 - (vii) Transportation;
 - (viii) Utilities; and
 - (ix) Historic preservation.
 - (4) Other plans and studies such as:
 - (i) Small area and neighborhood plans;
 - (ii) Capital improvements programs;
 - (iii) Individual project plans (but excluding engineering and design costs related to a specific activity which are eligible as part of the cost of such activity under §§ 570.201-570.204);

- (iv) The reasonable costs of general environmental, urban environmental design and historic preservation studies; and general environmental assessment- and remediation-oriented planning related to properties with known or suspected environmental contamination. However, costs necessary to comply with 24 CFR part 58, including project specific environmental assessments and clearances for activities eligible for assistance under this part, are eligible as part of the cost of such activities under §§ 570.201–570.204. Costs for such specific assessments and clearances may also be incurred under this paragraph but would then be considered planning costs for the purposes of § 570.200(g);
 - (v) Strategies and action programs to implement plans, including the development of codes, ordinances and regulations;
 - (vi) Support of clearinghouse functions, such as those specified in Executive Order 12372; and
 - (vii) Developing an inventory of properties with known or suspected environmental contamination.
- (5) [Reserved]
- (6) Policy—planning—management—capacity building activities which will enable the recipient to:
- (1) Determine its needs;
 - (2) Set long-term goals and short-term objectives, including those related to urban environmental design;
 - (3) Devise programs and activities to meet these goals and objectives;
 - (4) Evaluate the progress of such programs and activities in accomplishing these goals and objectives; and
 - (5) Carry out management, coordination and monitoring of activities necessary for effective planning implementation, but excluding the costs necessary to implement such plans.

[53 FR 34439, Sept. 6, 1988, as amended at 56 FR 56127, Oct. 31, 1991; 60 FR 1915, Jan. 5, 1995; 71 FR 30035, May 24, 2006; 80 FR 42366, July 16, 2015; 85 FR 47910, Aug. 7, 2020]

Bonita Springs HUD Low/Moderate Income Areas



*Low/Mod Income Areas are areas that are 80% or less of the (AMI) Area Median Income

**CITY OF BONITA SPRINGS
AGENDA ITEM SUMMARY**

Green Sheet No. 23-01-007
January 17, 2024

REQUESTED MOTION: Discussion regarding potential projects for FY2025 U.S. Congressional appropriation funding requests.

REQUESTOR: Elly Soto McKuen, Senior Project Manager

AGENDA: City Manager's Items

STRATEGIC PRIORITY: 1) Stormwater Management, 2) Transportation, 3) Strengthen City Finances, 4) Environmental Protection

BACKGROUND: Each year the federal government develops an annual budget. Within the annual budget there is an opportunity for government entities, non-profits and various other organizations to be invited to work with their federal representative to submit a legislative request for local project funding.

On January 4, 2024 the City received a notice from Congressman Bryon Donalds' Office that legislative funding requests will be accepted until January 23, 2024 for consideration.

Staff has identified three (3) potential City projects for consideration. They are:

Potential Project	Design/Permitting and Construction Cost	Appropriation Request
Rosemary Drive Stormwater Drainage and Pedestrian Safety Improvement Project	\$3,589,015	\$1,400,000
Goodwin Street Stormwater Drainage and Pedestrian Safety Improvement Project	\$5,800,737	\$2,600,000
Leitner Creek Neighborhood Soccer Complex Construction Project	\$3,530,790	\$1,500,000

Staff is seeking Council approval to submit the three (3) projects above and consideration for additional projects that would benefit from congressional appropriation funding.

STAFF RECOMMENDATION: Discuss potential projects for FY2025 U.S. Congressional appropriation funding requests

ATTACHMENTS:

1. Congressman Bryon Donalds FY2025 Appropriations Request Webpage

REVIEWERS:

City Manager: Arleen Hunter
City Attorney: Derek Rooney
City Clerk: Mike Sheffield
Department Director: Matt Feeney

Council Action: Approved ___ Denied ___ Deferred ___ Other_____



CONGRESSMAN

BYRON DONALDS

Proudly Representing Southwest Florida District 19

SUBSCRIBE

MENU

FY2025 Appropriations Request Form

Congress will soon begin considering appropriations requests for FY2025.

To submit an appropriations request, please fill out this [form](#).

If your organization participates in federally funded programs, please fill out the following form carefully and accurately to detail your requests for program funding.

- Requests must be merit-based and comply with House rules.
- You will receive an email confirmation after submitting your request.
- You are able to edit a request after it is submitted, but please understand that if you edit your request after the deadline the edits are not guaranteed to be accepted by our office.
- If you have multiple requests, please submit a separate form for each request.
- Please stay consistent on formatting within your request.

*****Our current deadline for FY25 programmatic and language submissions for all subcommittees is Tuesday, January 23 at 5:00 PM EST*****

For assistance with this form please call the Washington, D.C. office at (202) 225-2536.

The rules of the House of Representatives prohibits Representatives from requesting earmarks. Congressional earmarks are defined in House Rule XXI:

"[T]he term "congressional earmark" means a provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing or recommend a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.

Washington, DC Office

1719 Longworth HOB
Washington, DC 20515
(202) 225-2536

Collier County Office

3299 Tamiami Trail East
Suite 105
Naples, FL 34112
(239) 252-6225

Lee County Office

1039 SE 9th Ave
Suite 308
Cape Coral, FL 33990
(239) 599-6033

