

**AGREEMENT FOR IMPLEMENTATION OF BLUEWATER BAY MSBU
HAZARD MITIGATION GRANT PROJECT PHASE II**

This **AGREEMENT** ("Agreement") is entered into this 21st day of August, 2018, by and between Okaloosa County, Florida through its Board of County Commissioners (the "County") and the Board of the Bluewater Bay Municipal Services Benefit Unit (the "MSBU") for the purpose of administering Phase II of the Hazard Mitigation Grant Agreement Number 18HM-H4-01-56-01-XXX, Project 4177-06-A ("Grant Agreement").

RECITALS

WHEREAS, the County has entered into a Federally Funded Subaward and Grant Agreement (Grant Agreement 18HM-H4-01-56-01-XXX, Project Number 4177-06-A) for Phase II of the Hazard Mitigation Grant related to the upgrading of the storm water drainage system and to mitigate the possibility for future flooding, in the area of the Bluewater Bay Municipal Service Area ("MSBU") more particularly located in an area bound by Southwind Drive, Dominica Way, Aruba Way and Curacao Way in Niceville, Florida 32578 (the "Project"); and

WHEREAS, as provided in Grant Agreement 18HM-H4-01-56-01-XXX, Project 4177-06-A, the total project cost for Phase II is \$249,888.00 for which the Federal share is \$187,416.00 (75%) and the required local match requirement is \$62,472.00 (25%); and

WHEREAS, FDEM has indicated that it will reallocate the amount of \$22,000 that was unused in Phase I and apply it to Phase II of the Project. As a result, the total Project cost will increase to \$271,888 of which the Federal share would increase to \$203,916.00 (75%) and the local match would be \$67,972.00 (25%); and

WHEREAS, of the local match, \$46,222.00 or 17% of the total Project Costs shall be derived from the MSBU and the County will provide the remaining \$21,750.00 or 8% of the total Project Costs which will be provided through in-kind services from the County Public Works Department; and

WHEREAS, the MSBU does not have the funding immediately available to meet its obligations under the local match and seeks to set up an agreement as to how that funding will be obtained; and

WHEREAS, the County's approval was conditioned on entering into an agreement with the MSBU concerning the administration of the Grant Agreement prior to encumbering any staff time for local match; and

WHEREAS, this Agreement memorializes the understanding as between the County and the MSBU as to the funding of the Project and the contribution of the local share from the MSBU.

NOW THEREFORE, in consideration of the mutual covenants expressed herein, the County and MSBU do hereby agree as follows:

Section 1. Recitals. All of the above recitals are true and correct and incorporated herein as essential terms of this Agreement.

Section 2. Generally. The project shall be as described in the Scope of Work of the fully executed subgrant agreement attached hereto as Attachment "A".

Section 3. MSBU Responsibilities.

A. Unless otherwise provided in Section 4 below, the MSBU shall be responsible for all Tasks and Deliverables described in Attachment "A". Any engineers, surveyors, or other contractors hired by the MSBU in fulfillment of this responsibility shall possess all the requisite state and local licenses and insurance.

B. All procurement, including contract award(s), shall be in compliance with the Okaloosa County Purchasing Manual and the laws of the State of Florida in effect at the time of such procurement.

C. The MSBU agrees to comply with and shall be bound by all terms of Hazard Mitigation Grant Agreement 18HM-H4-01-56-01-XXX, Project 4177-06-A.

D. The MSBU shall retain records and provide copies thereof to the County for any procurement done in performance of the project described in Attachment "A".

E. All invoices submitted by the MSBU for payment for any materials or services obtained pursuant to the Scope of Work provided in Attachment "A" shall be accompanied by appropriate backup documentation sufficient to verify status (or completion, if appropriate) of activities and deliverables.

F. Any record created in accordance with this Agreement shall be retained and maintained by the MSBU in accordance with the public records law, Florida Statutes Chapter 119.

G. The local cash match of \$46,222.00 or 17% of the total Project Costs shall initially be funded by the County and repaid by the MSBU in the following manner:

1) The County shall initially fund the MSBU's local match of \$46,222.00 through the use of its Surplus Funds for Special County Purposes and Projects as set forth in Ordinance 2016-21, as amended by Ordinance 2108-02.

2) Annually beginning with the special assessment levied on behalf of the MSBU by the Board of County Commissioners for Fiscal Year 2018-19, one third of the MSBU's local match due plus interest at a rate of 2.65% per annum, shall be withheld from the special assessments levied on behalf of the MSBU and reimbursed to the County for the funding of the MSBU's local match.

3) For Fiscal Year 2019-2020, one third of the MSBU's local match due plus interest shall be withheld from the special assessments levied on behalf of the MSBU for that year and reimbursed to the County for the funding of the second third of the MSBU's local match plus interest plus interest at a rate of 2.65% per annum.

4) For Fiscal Year 2020-2021, the final amount remaining of the MSBU's local match due plus interest shall be withheld from the special assessments levied on behalf of the MSBU for that year and reimbursed to the County for the funding of the final amounts due as the MSBU's local match plus interest plus interest at a rate of 2.65% per annum.

5) To the extent that there are additional grant proceeds available which would alleviate the need for the cash local match, then the County shall explore those possibilities to the extent that it would not impact on the ability to comply with the terms of the Grant Agreement.

Section 4. County Responsibilities

A. The County shall provide survey, engineering, and other work supporting the Scope of Work identified in Attachment "A" in an amount not to exceed \$21,750.00 or 8% of the total Project Costs, as an in-kind match in fulfillment of the local match required for this project.

B. The County shall process all invoices received for materials or services obtained pursuant to the Scope of Work provided in Attachment "A" in a timely manner and in accordance with all applicable laws and regulations.

C. The County shall notify the MSBU of any pending reporting deadlines no fewer than twenty-one (21) business days prior to a reporting deadline.

D. The County shall complete all quarterly and other reports required for under the Grant Agreement.

E. All reports shall include appropriate backup documentation as referenced in the subgrant agreement (Attachment A) to verify completion of activities and deliverables.

Section 5. Audits and Inspections

A. Both the County and Clerk of Courts reserve the right to audit and inspect the records of the MSBU as well as any vendors, contractors, subcontractors, recipients, or sub-recipient performing work under this Grant Agreement. Such audit or inspection shall be conducted with adequate notice and at shall be available at all reasonable times. Records shall be made available at a site located within the County.

B. These requirements shall apply to all contractors, vendors, subcontractors, second tier vendors and contractors, recipients and sub-recipients.

Section 6. Records Retention. All original copies of records pertaining to the work performed under this Grant Agreement shall be retained for a period of three (3) years or one (1) year after the applicable County audit has been published, whichever is later.

Section 7. It is agreed neither the County nor the MSBU assumes any liability and shall not be held responsible for the acts, omissions, and negligence of the officers, agents and employees of the other.

Section 8. Termination. This Agreement may be terminated by the County upon ninety (90) days written notice to the MSBU. The MSBU may not terminate this Agreement until all amounts paid by the County toward the MSBU's local match due plus interest have been reimbursed. Once all funds have been reimbursed to the County, then the MSBU may terminate this Agreement upon ninety (90) days written notice to the County.

Section 9. Entire Agreement. This Agreement and Attachment "A" as incorporated herein, contain the entire agreement between the parties and supersedes all prior oral or written agreements. The MSBU acknowledges that it has not relied upon any statement, representation, prior or contemporaneous written or oral promises, agreements or warranties, except such as are expressed herein. The terms and conditions of this Agreement can only be amended in writing upon mutual agreement of the parties and signed by both parties.

Section 10. Waiver. The waiver by a party of any breach or default in performance shall not be deemed to constitute a waiver of any other or succeeding breach or default. The failure of the County to enforce any of the provisions hereof shall not be construed to be a waiver of the right of the County thereafter to enforce such provisions.

Section 11. Notices. Any notice, demand, communication, or request required or permitted herein shall be in writing and delivered in person or sent by first class mail, postage prepaid as follows:

As to County: Okaloosa County
Attn: Director
Public Works Department
1759 S. Ferdon Boulevard
Crestview, FL 32536

As to MSBU: Bluewater Bay MSBU
Attn: Felix Beukenkamp
c/o Progressive Management
970 Gulf Shore Dr., Destin, FL 32541

Any party shall have the right, from time-to-time, to change the address to which notices shall be sent by giving the other party at least five (5) business days prior notice of the address change.

Section 12. This Agreement shall be construed in accordance with the applicable laws of the State of Florida and venue for enforcement of any provision under this Agreement shall be in Okaloosa County, Florida. If any provision of this Agreement violates any statute or rule of the State of Florida, it is considered modified to conform to that statute or rule of law. Further, in the event that a portion of this Agreement is found to be invalid, illegal or unenforceable, then that provision shall be severed from the Agreement and shall in no way affect the validity or enforceability of any other portion or provision of the Agreement.


Section 13. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damages pursuant to the terms or provisions of this Agreement.


IN WITNESS WHEREOF, the parties to this agreement have caused their names to be affixed by the proper officer thereof.

BLUEWATER BAY MSBU


Felix Beukenkamp, Chairman

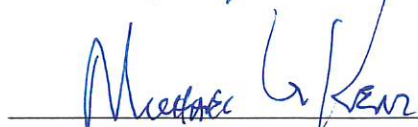
OKALOOSA COUNTY BOARD OF COUNTY COMMISSIONERS


Graham W. Fountain, Chairman

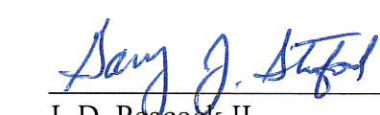



As to the MSBU:



Witness Signature


Witness Printed Name

Attest:


J. D. Peacock II
Clerk of the Circuit Court




Witness Signature


Witness Printed Name