

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

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**Meeting Date: August 22, 2023**                       **Consent**                       **Regular**  
    **Ordinance**                       **Public Hearing**

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**Department: Facilities Development & Operations**

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**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to approve: an Amended and Restated Agreement with the South Florida Fair and Palm Beach County Expositions, Inc. (“Fair”) for use of the Fair’s Expo Center West building (“Expo Center”) for sheltering special needs evacuees during emergencies (also known as the “Special Needs Shelter”) through August 21, 2043.

**Summary:** On December 15, 1998, the County entered into an agreement (1998 Agreement) with the Fair whereby the County funded a project to retrofit and harden the Expo Center for use as Special Needs Shelter. The 1998 Agreement included the installation of generators and other emergency power equipment (collectively, “Emergency Power Equipment”). The 1998 Agreement expired on December 14, 2018. In 2019, the County entered into an agreement R2019-0504 (2019 Agreement) with the Fair allowing the County to continue to be entitled to exclusive use and possession of the Expo Center immediately prior to, during, and after an emergency event, and required that County pay the Fair for such use. The 2019 Agreement also permitted the County to continue to be able to conduct periodic inspections and tests of the Expo Center and Emergency Power Equipment to ensure operability in case of an emergency event. Under the 2019 Agreement, the County was responsible for: 1) the restoration and repair of any and all damage to the Expo Center; 2) the inspection, maintenance, repair and replacement of the Emergency Power Equipment; 3) all injuries occurring during its use and possession of the Expo Center; and 4) hardening and improving the Expo Center to better support the County’s emergency use of the center, if the County so chooses. The County was also responsible for seeking reimbursement from FEMA for any use related restoration costs and emergency sheltering expenses, but remained financially and physically responsible for all restoration/repair damages regardless of FEMA’s reimbursement determination. The 2019 Agreement also addressed the July 2018 Emergency Power Equipment fuel tank’s release and the subsequent remediation required, and acknowledged that the County would submit an insurance claim against its policy and provide Fair with any insurance proceeds it received as a result of the fuel release insurance claim. This Amended and Restated Agreement incorporates all of these terms from the 2019 Agreement and, for FEMA reimbursement purposes, adds required federal terms and conditions. This Amended and Restated Agreement is for twenty (20) years and the County can terminate for any reason with ten (10) business day’s notice to Fair. **Continued on Page 3**

- Attachments:**  
1. Agreement  
2. Budget Availability Statement
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**Recommended By:** MR *Ernie C. Appl. Colby*                      *7/18/23*  
   **Department Director**                      **Date**

**Approved By:** *JCBaker*                      *7/27/23*  
   **County Administrator**                      **Date**

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2023	2024	2025	2026	2027
Capital Expenditures	\$1,100,000	\$100,000	100,000	100,000	100,000
Operating Costs	\$13,540	\$14,894	\$16,384	18,022	19,824
External Revenues					
Program Income (County)					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>	<b>\$1,113,540</b>	<b>\$114,894</b>	<b>\$116,384</b>	<b>\$118,022</b>	<b>\$119,824</b>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>					

Is Item Included in Current Budget: Yes X No         
 Does this item include the use of federal funds? Yes        No X

Budget Account No:

Fund <u>3804</u>	Dept <u>411</u>	Unit <u>B738</u>	Object <u>4907</u>	<u>\$100,000</u>
Fund <u>3950</u>	Dept <u>411</u>	Unit <u>Q014</u>	Object <u>4907</u>	<u>\$1,000,000</u>
Fund <u>0001</u>	Dept <u>410</u>	Unit <u>5220</u>	Object <u>4610</u>	<u>\$13,540</u>

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

Operating cost calculations for maintenance and repair are as follows and include a 10% annual increase:  
 1000KW Quarterly cost \$140 x 3 = \$420; Annual Cost \$2,800; Load Test \$1,300 Total \$4,520  
 350KW Quarterly cost \$140 x 3 = \$420; Annual Cost \$2,400; Load Test \$1,200 Total \$4,020  
 Parts & Materials, Labor, Misc. Repair Total \$5,000  
\$13,540

Funding for the replacement of the generators in FY 2023 & 2024 are included in Facilities Management County-Wide R&R CIP request using the Public Building Improvement Fund and Infrastructure Sales Tax Fund.

C. Departmental Fiscal Review: 

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development Comments:**

ASDelle 7/21/23  
 OFMB

J. J. Javelle 7/24/23  
 Contract Development and Control  
 Ted 7/24/23

**B. Legal Sufficiency:**

M. Jones 7/25/23  
 Assistant County Attorney  
 M. Jones

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**Summary:**

The annual operating cost to maintain the Emergency Power Equipment is estimated at \$13,540 for FY23. **Funding for the replacement of the Emergency Power Equipment in FY 2023-24 is included in Facilities Development and Operation's (FDO) countywide renewal/replacement capital improvements plan (CIP) request using the Public Building Improvement Fund and Infrastructure Sales Tax Fund.** The costs of the County's possession and exclusive use of the Expo Center during emergency events are determined on a case-by-case basis as per the fee schedule included as Exhibit A to this Amended and Restated Agreement. **(FDO Admin) District 6/Countywide (MWJ)**

**Background and Justification:**

The County has a long history supporting and assisting the Fair as the fairgrounds are open to and benefit all county residents. In the 1998 Agreement, the County agreed to reimburse the Fair for projects and improvements to the fairgrounds, including a parking lot and the retrofitting of the Expo Center, which the County could use as a Special Needs Shelter in the event of an emergency. The 1998 Agreement also provided for the installation of the Emergency Power Equipment which included two generators and a fuel tank, and required the Fair to repair and maintain this equipment. Over the course of the 1998 Agreement, the County has utilized the Expo Center as a shelter on multiple occasions as a result of emergency events.

In July 2018, a few months prior to the expiration of the 1998 Agreement, the fuel tank, which comprised part of the Emergency Power Equipment, released fuel which required remediation by Fair and resulted in both the Fair and the County, who have the same insurance carrier, filing insurance claims in regard to the incident. The insurance carrier has indicated that it will be paying the County on its claim and County in this Agreement acknowledges that it will forward all insurance proceeds it receives to the Fair, which incurred the costs associated with the spill and subsequent remediation. In negotiating the 2019 Agreement, the Fair advised that they do not use and derive no benefit from the Emergency Power Equipment. Due to this and to better ensure equipment operability, the County in the 2019 Agreement took responsibility for the inspection, maintenance, repair, and replacement of the Emergency Power Equipment.

The 2019 Agreement also preserved County's ability to access and exclusively use the Expo Center and to provide a shelter for special needs residents during emergencies. Under the 2019 Agreement, the County took responsibility for all damages to the shelter during its use, including if the damage was caused from the emergency event, and the County was designated as the responsible party for seeking reimbursement from FEMA. This puts County in the best position possible to facilitate the reimbursement process with FEMA. It also allows the County to control the restoration/repair process to ensure that the repairs are done in compliance with County standards and thus permit the County to continue to be able to use the facility as a shelter.

# **Attachment 1**

**Agreement (3 @ 31 pages each)**

**Exempt from Public Disclosure pursuant to  
Section 119.071(3) Florida Statutes.**

**“RESTRICTED” CONFIDENTIAL DOCUMENTS  
DO NOT COPY/RECORD.**

## **AMENDED AND RESTATED AGREEMENT**

**THIS AMENDED AND RESTATED AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY," and the SOUTH FLORIDA FAIR AND PALM BEACH COUNTY EXPOSITIONS, INC., a Florida nonprofit corporation organized under Chapter 616, Florida Statutes, hereinafter referred to as "FAIR".

### **WITNESSETH:**

**WHEREAS**, on April 16, 2019, the COUNTY and FAIR entered into an Agreement R2019-0504 (the 2019 Agreement), setting forth the terms and conditions by which the County would be entitled to use certain property owned by the FAIR; and

**WHEREAS**, this Agreement amends and restates, in its entirety, and replaces, the 2019 Agreement; and

**WHEREAS**, the COUNTY, under Florida Statutes Chapter 252, is responsible for safeguarding the lives of its citizens during emergencies and for establishing safe public shelter space for hurricane evacuations; and

**WHEREAS**, the FAIR is a non-profit organization organized and regulated by Chapter 616 of the Florida Statutes which owns approximately 122 acres in central Palm Beach County, Florida, which is located at 9067 Southern Boulevard, West Palm Beach, Florida ("Fairgrounds"); and

**WHEREAS**, the Fairgrounds contains various exhibit buildings comprising over 100,000 square feet of flat floor space ("Expo Center"), one of which buildings is commonly referred to as the Expo West ("Expo West") and is the West building of the two buildings connected together; and

**WHEREAS**, the parties entered into an agreement in 1998, under which the COUNTY provided FAIR with money and services for certain capital projects at the Fairgrounds (1998 Agreement), which 1998 Agreement expired in December, 2018; and

**WHEREAS**, under the 1998 Agreement, certain of the projects the COUNTY paid for involved retrofitting and hardening certain portions of the Expo West for use as an emergency shelter, and further, the COUNTY installed generators and other emergency power equipment; and

**WHEREAS**, the 1998 Agreement provided that in consideration for COUNTY's performance of these capital improvements to certain portions of the Expo West, COUNTY was entitled to the use and possession of Expo West known as the special care unit (now known as the

“Special Needs Shelter”) for sheltering evacuees during emergencies; the 1998 Agreement also addressed ongoing maintenance of the Special Needs Shelter; and

**WHEREAS**, when the 1998 Agreement expired, the County and the Fair entered into the 2019 Agreement so that the County could continue to use the facilities that it had paid to harden and improve as a Special Needs Shelter during emergencies and to document the maintenance responsibilities of the parties; and

**WHEREAS**, both parties now desire to amend and restate the 2019 Agreement to include federal contract clauses; and

**WHEREAS**, the countywide need for shelter facilities for evacuees continues and COUNTY requires full occupancy, use and possession of the Special Needs Shelter immediately prior to, during, and after an emergency event for emergency protective measures including sheltering evacuees; and

**WHEREAS**, this Agreement allocates legal responsibility for repairs and maintenance to the Special Needs Shelter on a long term and on-going basis as consideration for the establishment and securing to COUNTY of legal rights to possession and use of the Special Needs Shelter for sheltering and recovery operations in the event of an emergency; and

**WHEREAS**, the COUNTY had previously reviewed available properties in desired locations to serve as a Special Needs Shelter and due to the County’s prior investment in the facilities at the Fair as described above and due to lack of willing owners or available properties in desired locations, the COUNTY has determined to enter into this sole source agreement for the Special Needs Shelter with the FAIR; and

**WHEREAS**, the COUNTY had previously reviewed available properties in desired locations to serve as a Special Needs Shelter and due to the County’s prior investment in the facilities at the Fair as described above and due to lack of willing owners or available properties in desired locations, the COUNTY has determined to enter into this sole source agreement for the Special Needs Shelter with the FAIR, which is considered to be a quasi-governmental entity under Florida Law.

**NOW THEREFORE**, in accordance with the mutual covenants hereinafter set forth and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1  
PURPOSE OF AGREEMENT**

**Section 1.01 Recitals**

The parties affirm and incorporate the recitals set forth above.

### **Section 1.02 Purpose**

The Purpose of this Agreement is to set forth the understandings and responsibilities between the parties surrounding the use of the Special Need Shelter during an emergency and the legal responsibility for improvements to, maintenance and repair of the Special Needs Shelter, including its emergency power system during the term of this Agreement.

### **Section 1.03 Special Needs Shelter**

The Special Needs Shelter is located in what is referred to as Expo West in the Expo Center at the Fairgrounds. The Special Needs Shelter serves as an emergency shelter for the COUNTY. It was previously retrofitted, at COUNTY's expense, and the retrofitting project included: a) bracing of exterior wall panels; b) replacing of two (2) overhead roll-up doors; c) installing storm shutters for windows and glass doors; d) replacing of emergency exit doors; e) installing exterior wind walls to protect HVAC and other equipment, f) installing an emergency power system, and g) modifying the electrical distribution system for use as a Special Needs Shelter.

### **Section 1.04 Emergency Power System**

The COUNTY installed the emergency power system at the Special Needs Shelter at the COUNTY's expense under the prior agreement. The emergency power system is currently comprised of two generators (the Lift Station Generator and the Building Generator), the required transfer switches, panels and accessories. It also includes an enclosed wall to protect this equipment, a fuel tank, and all ancillary equipment (collectively the "Emergency Power System"), which the parties acknowledge and agreed are the property of the County. For the purpose of this Agreement, the Emergency Power System specifically excludes any and all electrical distribution system components supplying, regulating and/or controlling commercial power to Expo West and Special Needs Shelter beyond the transfer switch. The generators are located outside of the Special Needs Shelter and are used to provide emergency power to Expo West. The Emergency Power System is critical for providing power to the medical equipment required for special needs evacuees. The COUNTY as of the signing of this Agreement takes the Emergency Power System AS IS WHERE IS WITH ALL FAULTS.

### **Section 1.05 Administration of Agreement**

The COUNTY's Director, Facilities Development & Operations, or his/her designee, shall be responsible for all aspects of the administration of the terms and conditions of this Agreement concerning the COUNTY's obligations, unless otherwise determined by the County Administrator.

**ARTICLE 2**  
**COUNTY'S RIGHT TO POSSESSION AND EXCLUSIVE USE OF SPECIAL NEEDS**  
**SHELTER DURING EMERGENCY**

**Section 2.01 Possession and Exclusive Use of Special Needs Shelter**

In consideration of the mutual covenants and agreements set forth herein, FAIR grants to COUNTY the exclusive use and possession of the Special Needs Shelter during emergencies as set forth in this Agreement. The COUNTY and the FAIR agree to support and assist each other in the event the COUNTY is threatened by an emergency, including, but not limited to, a tropical storm, hurricane, or any other natural, man-made or technological emergency which County reasonably determines may result, in substantial injury or harm to the population and which reasonably requires the COUNTY's use of the Special Needs Shelter. The parties understand and agree that the emergency, and COUNTY's use of the Special Needs Shelter, may occur with little advance warning, or notice.

**Section 2.02 COUNTY's Rights and Responsibilities When in Possession of the Special Needs Shelter**

When the COUNTY determines that an emergency as defined in Section 2.01 exists, and as declared by the Board of County Commissioners, which requires the use and possession of the Special Needs Shelter, the COUNTY shall notify the FAIR of its activation and its right to exclusive use and possession of the Special Needs Shelter (Expo West) under Article II of this Agreement, and the following rights and responsibilities shall apply:

- a. The COUNTY shall make reasonable efforts to notify FAIR sufficiently in advance of the need to utilize the Special Needs Shelter. FAIR will be provided with a copy of the Declaration of Local State of Emergency or other document which states the reason for the use of the Special Needs Shelter.
- b. Prior to use and possession, COUNTY shall inspect and document the condition of the Special Needs Shelter.
- c. The COUNTY shall provide staff and logistic support to oversee and manage the use of the Special Needs Shelter.
- d. During COUNTY's use and possession of the Special Needs Shelter, the County shall be responsible for operations, including County staff and volunteers; and the County shall be responsible for oversight of care for evacuees and patients and for the care and custody of all emergency supplies and equipment, and the maintenance and repair of the Special Needs Shelter.
- e. During COUNTY's use and possession of the Special Needs Shelter, the COUNTY shall be responsible for the restoration and repair of any and all damage to the



Special Needs Shelter, including its furnishings, fixtures, equipment and other improvements located thereon and shall return the Special Needs Shelter to the same condition found prior to its use.

- f. Except for the negligence of the Fair or any of its agents, County shall be responsible for all injury to any and all persons located in, using, occupying or being sheltered in the Special Needs Shelter during such time that County is in possession of and using the Special Needs Shelter.
- g. If the Emergency Power System is damaged, the COUNTY shall be responsible for repairs.
- h. COUNTY shall be responsible for seeking reimbursement from FEMA, or other applicable State or federal agency for all emergency use related restoration costs and emergency sheltering expenses incurred as a result of COUNTY's use and possession of the Special Needs Shelter. Notwithstanding the aforesaid, COUNTY shall promptly restore the Special Needs Shelter and reimburse FAIR for those items that are the County responsibilities under this Agreement, regardless of FEMA's reimbursement determination.
- i. The COUNTY shall provide the FAIR with a daily report which will identify the length of time required before the COUNTY expects to return use and possession of the Special Needs Shelter to FAIR.
- j. During COUNTY's use and possession of the Special Needs Shelter, it may obtain and install all necessary equipment and emergency power required to effectively respond to the emergency event, and to power the Special Needs Shelter at COUNTY's risk.

Notwithstanding anything stated within this Section, or this Agreement to the contrary, the FAIR shall have sole use and exclusive possession of the Special Needs Shelter for the conduct of its statutorily required annual fair and it is agreed that notwithstanding any emergency, declared or otherwise, the COUNTY will not be entitled to possession from December 15<sup>th</sup> until February 15<sup>th</sup> for each year of this Agreement, unless otherwise agreed to by the FAIR in its sole discretion.

**Section 2.03 FAIR Rights and Responsibilities when COUNTY Uses Special Needs Shelter**

Upon the COUNTY providing notice to the FAIR under Section 2.02, the FAIR shall make reasonable efforts to assure that the Special Needs Shelter is reasonably free of obstructions and available to COUNTY within eight hours of the COUNTY's notice. Upon COUNTY's use and possession of the Special Needs Shelter, FAIR shall provide COUNTY with a contact name, phone number and email address, who shall be available to COUNTY at all times to act as the FAIR'S point of contact with the COUNTY during its use and possession of the Special Needs Shelter. At

the time of the signing of this Agreement the Fair's CEO, or the CEO's designee, shall be the COUNTY's Point of Contact as to all matters concerning the Special Needs Shelter.

**Section 2.04 Fees, Invoicing & Payment for COUNTY's Use and Possession of Special Needs Shelter**

- a. FAIR shall invoice COUNTY for all reasonable and necessary costs and expenses incurred as a result of FAIR's compliance with Article II of this Agreement.
- b. FAIR is only entitled to reimbursement for COUNTY's use and possession of the Special Needs Shelter, as well as all costs associated with staffing, maintenance or other services, equipment or supplies required under Article II of this Agreement to enable COUNTY to use and possess the Special Needs Shelter during the emergency.
- c. FAIR shall maintain specific records detailing the costs and expenses that FAIR incurred as a result of COUNTY's use and possession of the Special Needs Shelter. For staffing expenses, if any, FAIR shall maintain records detailing the tasks the staff performed, the hours worked each day, and any overtime hours worked.
- d. A current fee schedule for COUNTY's use and possession of the Special Needs Shelter is attached hereto and incorporated herein as Exhibit "A." FAIR may update this fee schedule annually, to be consistent and comparable with its normal and customary rates charged to its offseason licensees. In no event shall COUNTY be charged any more or less than the FAIR's promulgated annual rate schedule.
- e. In accordance with Exhibit A, FAIR shall invoice COUNTY within thirty (30) days of the emergency event, as well as provide COUNTY with its records detailing the costs and expenses incurred as a result of COUNTY's use and possession of the Special Needs Shelter. FAIR acknowledges that timely submission of this documentation is necessary to ensure claims are submitted within federal reimbursement time requirements.
- f. If FAIR incurs an expense that is not referenced in the approved fee schedule, COUNTY may negotiate with FAIR as to such an expense, and pay for such expense if it is mutually agreed to by both parties.

**ARTICLE 3**  
**ROUTINE OPERATION AND MAINTENANCE OF SPECIAL NEEDS SHELTER AND**  
**EMERGENCY POWER SYSTEM**

**Section 3.01 Special Needs Shelter Operation and Maintenance**

When COUNTY is not using the Special Needs Shelter during an emergency event, the FAIR is solely responsible for the operation and all on-going maintenance of the Expo West.

**Section 3.02 Inspection of Special Needs Shelter**

- a. Annual Storm Preparation Test.** Prior to Hurricane season of each year, COUNTY shall conduct a full test of the Special Needs Shelter and all attendant equipment to ensure the facility will meet the COUNTY's need during an emergency event. COUNTY shall coordinate only with FAIR, and not any other third party, to schedule said testing on a date and time that will not interfere with any shows or events or operations of the FAIR or its licensees. This annual test shall include, but not be limited to, COUNTY affixing all shutters and reinforced paneling to the facility, setting up electrical poles and medical equipment, verifying plumbing, electrical and other utility system requirements and confirming proper operation and condition of the Emergency Power System. The FAIR agrees to assist and work together with COUNTY to conduct this annual test. If the COUNTY, in its reasonable discretion, determines that necessary repairs to the Special Needs Shelter, excluding the Emergency Power System, are needed following this annual test, the FAIR shall make such repairs (less those repairs required to the Emergency Power System which are the responsibility of the County), at its sole expense, prior to June 1<sup>st</sup> of each year (so long as the repairs are necessary and reasonable).
- b. Periodic Inspections.** The COUNTY may periodically inspect the Special Needs Shelter. County shall coordinate only with FAIR, and not any other third party, to schedule said inspections on a date and time that will not interfere with any shows or events or operations of the FAIR or its licensees. Upon inspection, if the COUNTY, in its reasonable discretion, determines that necessary repairs or maintenance work is reasonably required, the FAIR shall cause such work to be performed, at its sole expense, in a timely manner (so long as the repairs are necessary and reasonable).

**Section 3.03 Emergency Power System Operation and Maintenance**

COUNTY is solely responsible for the operation and all timely maintenance, repair and replacement of the Emergency Power System, including both generators, the fuel tank and all attendant equipment. COUNTY is responsible for inspecting, testing, and maintaining the Emergency Power System, at its own expense. COUNTY shall be responsible to the FAIR for

the costs and expenses to repair any damages arising out of the placement and use of the Emergency Power System, including but not limited to any fuel spill, clean-up costs, and/or remediation, as well as dealings with the EPA, DEP, Palm Beach County ERM and associated entities. Notwithstanding the foregoing however, nothing in this Section 3.03 shall be construed as a waiver of County's sovereign immunity or shall be construed as consent to be sued by third parties.

- a. **County Access.** The FAIR shall permit access to COUNTY, and/or its designee, and shall fully co-operate with the COUNTY, and/or its designee at any time for inspection, testing, service, repair, maintenance, replacement or remediation related to the Emergency Power System, so long as COUNTY does not interfere with the routine operations of the FAIR, its licensees, invitees, or agents.
- b. **Notice.** The FAIR shall provide immediate notification to COUNTY of any irregularity, release of contents, or environmentally dangerous event related, or potentially related, to the fuel tank, generators and any other ancillary equipment associated with the Emergency Power System that is observed through the FAIR's observation of the Emergency Power System and surrounding area. For the purpose of this Section only, observation shall mean any irregularity that is deducted by sight, hearing or smell by FAIR personnel by the area in which the Emergency Power System is located. For avoidance of doubt, no legal obligation, affirmative duty or liability is placed upon FAIR or its personnel for observation of the Emergency Power System and surrounding area.
- c. **Incidental Beneficiary.** Both parties recognize that FAIR may receive an incidental benefit from the Emergency Power System in that it will continue to supply power to the Special Needs Shelter, including the administrative offices on the second floor, in the event of a power outage. This benefit is unintended and merely incidental to COUNTY's operation and maintenance of the Emergency Power System. This incidental benefit creates no obligation that COUNTY ensure FAIR has uninterrupted power coverage nor does it provide FAIR with any rights to require COUNTY to replace or repair any defect in the System. COUNTY, in its sole discretion, shall determine when, or if, any defect in the system shall be repaired or replaced. COUNTY has no obligation to respond to FAIR regarding any power outage. FAIR shall not be charged by COUNTY for any incidental use.
- d. **Fair Use Agreements.** In all Use Agreements with third parties, FAIR shall not indicate that it can provide backup generator power in the event of a power outage, if FAIR would be relying upon the Emergency Power System to provide the backup generator power. However, nothing shall preclude the FAIR or third parties from receiving the incidental benefits of the Emergency Power System if and when available.

#### **Section 3.04 Renewal/Replacement and Future Improvements**

The COUNTY may, at its expense, replace equipment, improve or harden the FAIR's facilities to better support the COUNTY's emergency use and possession of the Special Needs Shelter to the

extent that such replacements, improvements or hardening do not otherwise impact or diminish the FAIR's use of the FAIR's facilities and Expo Center and are approved in writing in advance by the FAIR.

**ARTICLE 4  
ADDITIONAL OBLIGATIONS OF FAIR**

**Section 4.01 Additional Obligations**

FAIR also agrees to the following:

- a. Having COUNTY logo appear on FAIR newsletters and brochures, including FAIR flyers.
- b. Use of FAIR electronic sign for COUNTY announcements or messages (twice per year).

**ARTICLE 5  
PAYMENT OF FUEL SPILL REMEDIATION COSTS FOR PRIOR INCIDENT**

In early July of 2018, the Emergency Power System fuel tank released fuel, requiring remediation work to be undertaken by the FAIR ("Prior Incident"). The FAIR submitted an insurance claim against its policy which was abandoned when the COUNTY submitted a claim under its policy for this same release. Using the FAIR's remediation documentation, COUNTY is currently diligently processing the claim for the Prior Incident with its insurer and will keep FAIR updated on the status. COUNTY agrees to promptly, after receipt, provide FAIR with any and all insurance proceeds COUNTY receives from its insurance carrier as a result of the claim the COUNTY filed against its insurance policy for the Prior Incident. The parties acknowledge that COUNTY's agreement to provide FAIR with such insurance proceeds shall not be interpreted, implied or imputed to be an indication of fault or liability on behalf of COUNTY in regard to the Prior Incident.

**ARTICLE 6  
INSURANCE/INDEMNIFICATION**

**Section 6.01 Insurance**

- a. **Liabilities.** Without waiving the right to sovereign immunity as provided by section 768.28, Florida Statutes, the COUNTY acknowledges to be self-insured for liabilities under Florida's sovereign immunity statute with current monetary waiver limits of \$200,000 per

person and \$300,000 per occurrence; or such limits that may change and be set forth by the legislature.

When requested, the COUNTY agrees to provide a Certificate of Insurance evidencing its self-insured status which the FAIR agrees to recognize as acceptable evidence of financial responsibility for COUNTY'S liabilities under this Agreement.

- b. **Pollution Liability Insurance.** Notwithstanding anything to the contrary set forth in this Section 6.01, COUNTY shall purchase, pay for, and maintain throughout the term of this Agreement, pollution liability insurance for the Emergency Power System storage tank with minimum coverage limits of One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) per aggregate, or as increased by the COUNTY as part of its normal and ordinary operations during the Term of this Agreement. At no time shall any policy deductible exceed \$100,000 per claim. The Policy shall provide coverage for third-party bodily injury and, or property damage, plus clean-up costs or corrective action. COUNTY shall be responsible for the payment of the policy deductibles for each claim.
- c. **Fire and Allied Lines Insurance.** FAIR shall at all times during the term of this Contract, purchase and maintain, Fire and Allied Lines insurance coverage for the Special Needs Shelter for not less than one hundred percent (100%) of its full replacement cost, providing protection with "All-Perils" coverage as provided by the "Special-Cause of Loss Form" together with, but not limited to, insurance against wind and hail, sprinkler leakage damage, vandalism, theft and malicious mischief. The proceeds of such insurance, so long as this Contract remains in effect, shall be used to repair or replace the Special Needs Shelter.

#### **Section 6.02 Indemnification**

FAIR shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of the negligence of the FAIR's officers, agents and employees in connection with the performance of the terms of this Agreement.

COUNTY shall protect, defend, reimburse, indemnify and hold FAIR, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of the negligence of the COUNTY's officers, agents and employees in connection with the performance of the terms of this Agreement.

The COUNTY as a governmental entity acknowledges the waiver of sovereign immunity for liability in tort contained in Florida Statutes Section 768.28, and acknowledges that such statute permits actions at law against the COUNTY to recover damages in tort for money damages up to the amounts set forth in such statute for injury or loss of property, personal injury, or death caused by the negligence or wrongful act or omission of an employee of the COUNTY while acting within

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the scope of the employee's office or employment under circumstances in which COUNTY, if a private person, would be liable under the general laws of the State of Florida.

The FAIR is also entitled to sovereign immunity as provided by section 768.28, Florida Statutes.

The foregoing indemnifications shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, by FAIR or COUNTY, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions or to be sued by a third party.

The provisions of this Section 5.02 shall survive the termination of this Agreement.

## **ARTICLE 7 LENGTH OF TERM AND TERMINATION**

### **Section 7.01 Length of Term and Commencement Date**

This Agreement shall take effect upon execution by both parties ("Commencement Date") and remain in effect for a period of twenty (20) years.

### **Section 7.02 Termination**

This Agreement may be terminated by FAIR upon ninety (90) days' prior written notice to the COUNTY in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Agreement through no fault of the FAIR. In the event this Agreement is terminated by the FAIR as provided hereinabove, the FAIR, at its election, shall notify COUNTY to remove its Emergency Power System and return the area to its original condition or, in the alternative, the FAIR may elect to have the COUNTY execute a bill of sale to FAIR for the Emergency Power System.

This Agreement may also be terminated by the COUNTY, with cause, upon five (5) business day's written notice to FAIR or without cause upon ten (10) business day's written notice to FAIR. In the event this Agreement is terminated by the COUNTY as provided herein above, the COUNTY shall remove its Emergency Power System and return the area to its original condition.

In either scenario where removal of the Emergency Power System is required, COUNTY shall have thirty (30) days to remove said System, and during said time, the liability, maintenance and insurance provisions contained within this Agreement shall remain in full force and effect.

Upon expiration of this Agreement, COUNTY shall have thirty (30) days to remove the Emergency Power System and return the area to its original condition. During said time, the liability, maintenance and insurance provisions contained within this Agreement shall remain in full force and effect.

**ARTICLE 8  
INCORPORATION OF FEDERAL TERMS AND CONDITIONS**

This Agreement may be funded in whole or in part with federal funds. The detailed federal representations and certifications and contract clauses are attached as **Exhibit B** (the "Federal Requirements"). The Federal Requirements are incorporated into this Agreement, and FAIR agrees to comply with the Federal Requirements at all times during the performance of this Agreement. To the extent of a conflict between the Federal Requirements and the provisions set forth herein, the Federal Requirements shall control. The Fair agrees to execute and return the Federal certifications attached hereto as **Exhibit B-1**.

**ARTICLE 9  
MISCELLANEOUS**

**Section 9.01 Successors and Assigns**

The COUNTY and the FAIR each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the COUNTY nor the FAIR shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other.

**Section 9.02 Remedies**

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

**Section 9.03 No Third Party Beneficiaries**

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or FAIR.

**Section 9.04 Independent Contractor**

The FAIR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. Except during the COUNTY'S use as a Special Needs Shelter, all persons engaged in any work or



services performed pursuant to this Agreement shall at all times, and in all places, be subject to the FAIR's sole discretion, supervision, and control. The FAIR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the FAIR's relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY. The FAIR does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

#### **Section 9.05 Access and Audits**

The FAIR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least five (5) years after completion or termination of this Agreement. The COUNTY, upon reasonable notice, shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the FAIR'S place of business.

#### **Section 9.06 Office of the Inspector General**

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Office of the Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the FAIR, its officers, agents, employees and lobbyists in relation to this Agreement in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 through 2-440, and punished pursuant to Section 126.69, Florida Statutes, in the same manner as a second degree misdemeanor.

#### **Section 9.07 Non-Discrimination**

The COUNTY is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the FAIR warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.

#### **Section 9.08 Severability**

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term

and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

**Section 9.09 Notice**

All notices required in this Agreement shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Director, Facilities Development & Operations  
2633 Vista Parkway  
West Palm Beach, FL 33411-5603

With copy to:

Palm Beach County Attorney's Office:  
301 North Olive Ave.  
West Palm Beach, Fl. 33401

If sent to the FAIR, notices shall be addressed to:  
South Florida Fair & Palm Beach County Expositions, Inc.  
ATTN: President/CEO  
9067 Southern Blvd.  
West Palm Beach, FL 33416

With copy to:

Foster & Fuchs, PA  
4425 Military Trail  
Suite 109  
Jupiter, FL 33458

**Section 9.10 Entirety of Contractual Agreement**

The COUNTY and the FAIR agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

**Section 9.11 Governmental Regulations**

The FAIR and COUNTY shall comply with all laws, ordinances and regulations of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, applicable to the terms of the Agreement contemplated herein. FAIR

and COUNTY are presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the terms of this Agreement.

**Section 9.12 E-Verify – Employment Eligibility**

FAIR warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended, and that it: (1) is registered with and uses the E-Verify System (E-Verify.gov) to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of the FAIR’s subcontractors performing the duties and obligations of this Agreement are registered with and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

COUNTY shall terminate this Agreement if it has a good faith belief that FAIR has knowingly violated Section 448.09(1), Florida Statutes, as may be amended.

**Section 9.13 Annual Budgetary Funding**

This Agreement and all obligations of the COUNTY hereunder are subject to and contingent upon annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners.

IN WITNESS WHEREOF, COUNTY and FAIR have executed this Agreement, or have caused the same to be executed as of the day and year first above written.

**ATTEST:**

**COUNTY:**

**JOSEPH ABRUZZO  
CLERK OF THE CIRCUIT COURT &  
COMPTROLLER**

**PALM BEACH COUNTY, a political  
subdivision of the State of Florida**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Gregg K. Weiss, Mayor


**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:**

**APPROVED AS TO TERMS AND  
CONDITIONS:**

By: *[Signature]* for M Jones  
County Attorney

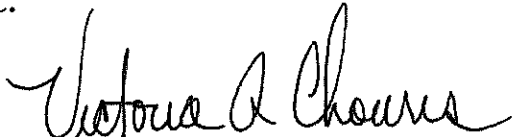
By: *[Signature]*  
Isami Ayala-Collazo, Director  
Facilities Development & Operations

**WITNESS:**

By:   
Lorge C. Fuchs,  
General Counsel

**FAIR:**

**SOUTH FLORIDA FAIR AND PALM  
BEACH COUNTY EXPOSITIONS,  
INC.**

By:   
Vicki Chouris, President and CEO

**Exhibit A  
2023 Fee Schedule**



Space Rental Quote  
Operational Cost Estimate  
Exhibit B to Contract When Executed

Event Name: \_\_\_\_\_ Date : \_\_\_\_\_

Event Dates: \_\_\_\_\_

Event Schedule: \_\_\_\_\_

Move In: \_\_\_\_\_ Move In: \_\_\_\_\_

Event: \_\_\_\_\_

The following is the rental quote for the facilities indicated below according to the above schedule.

**Space Rental**

Activity	Buildings/Area	Rate	Unit	Quantity	Rate	Quote
Move-In/Out Day	Expo Center East (49,051 S.F.)	2,475.00	day		0.00	0.00
Event Day	Expo Center East (49,051 S.F.)	4,950.00	day		0.00	0.00
Move-In/Out Day	1/2 of Expo Center East (24,525 S.F.)	1,650.00	day		0.00	0.00
Event Day	1/2 of Expo Center East (24,525 S.F.)	3,000.00	day		0.00	0.00
Move-In/Out Day	Expo Center West (35,700 S.F.)	1,650.00	day		0.00	0.00
Event Day	Expo Center West (35,700 S.F.)	3,300.00	day		0.00	0.00
					0.00	0.00
					0.00	0.00
					0.00	0.00
					0.00	0.00
					0.00	0.00
					0.00	0.00
					0.00	0.00
					0.00	0.00
					0.00	0.00
					0.00	0.00
					0.00	0.00
Move-In/Out Day	Building 6-10 (31,000 S.F)	1375	day		0.00	0.00
Event Day	Building 6-10 (31,000 S.F)	2750	day		0.00	0.00
Move-In/Out Day	Building 10 (11,490 S.F.)	750	day		0.00	0.00
Event Day	Building 10 (11,490 S.F.)	1500	day		0.00	0.00
	Facility Attendance Fee 1.00 per ticket		per tix		0.00	0.00
Total Space Rental					0.00	0.00

Signatures:

Promoter Acknowledgement: \_\_\_\_\_

Victoria A. Chouris: President/ CEO SFF \_\_\_\_\_

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

by the Licensee and is not intended to be a binding representation of cost. Actual cost will be determined by usage during the event period and prevailing rate at time of service.

**Operational Cost**

Utilities	Buildings/Area	Rate	Unit	Quantity	Cost	Actual
	Expo Center East	1,547.00	day		-	\$ -
	Move In/Out Utilities Fee	552.50	day		-	\$ -
	Expo West Center	1,547.00	day		-	\$ -
	Water & Sewage	200.00	event		-	\$ -
	Building 6-10	1,547.00	event		-	\$ -
	Trash	150.00	event		-	\$ -
					-	\$ -
	AGRIPLEX Large Building (22,100 S.F.)	250.00	day		-	\$ -
	AGRIPLEX Show Ring (24,000 S.F.)	250.00	day		-	\$ -
	South Lot	277.50	day		-	\$ -
	Outside Hookups	105.00	hookups		-	\$ -
	Inside hookups	85.00	hookups		-	\$ -
Personnel Charges:	PBSO DEPUTY	75.00	hour		-	\$ -
	PBSO SUPERVISOR	82.00	hour		-	\$ -
	Security Guard	25.00	hour		-	\$ -
	Overnight Security Guard	29.00	hour		-	\$ -
	Event Staff -event day/ set up	28.00	hour		-	\$ -
	Supervisor	39.00	hour		-	\$ -
	Event Clean-up	1,500.00	event		-	\$ -
	Electrician	45.00	hour		-	\$ -
	Carpenter	33.00	hour		-	\$ -
	Medical (EMT)	39.00	hour		-	\$ -
	Ticket Seller	19.50	hour		-	\$ -
	Ticket Taker	19.50	hour		-	\$ -
	Box Office Runner	22.50	hour		-	\$ -
	IT Specialist	36.00	hour		-	\$ -
	Parking Attendants- Supervisor	39.00	hour		-	\$ -
	Parking Attendants	23.00	hour		-	\$ -
Equipment Rental	Table	11.50	unit		-	\$ -
	Table 72"	12.00	unit		-	\$ -
	High Tops	8.00	unit		-	\$ -
	Padded Chairs	3.10	event		-	\$ -
	Metal Chairs	3.00	event		-	\$ -
	Risers	100.00	unit		-	\$ -
	Bike racks	10.00	event		-	\$ -
	Stage	4,500.00	event		-	\$ -
	Large Umbrella	75.00	unit/day		-	\$ -
	Risers- Seats 600 pax (104x28)	2,500.00	each		-	\$ -
	Risers -Seats 600 pax (74x 46)	2,500.00	each		-	\$ -
	Fencing	2.75	event		-	\$ -
	Cleaning Fee	25.00	event		-	\$ -
	Porta Lets	95.00	event		-	\$ -
	Porta Lets ADA	105.00	event		-	\$ -
						\$ -

Signatures:

Promoter Acknowledges:

Victoria A. Chouris: President/ CEO SFF

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

<b>RENTAL &amp; OPERATIONAL SAVINGS</b>	
Total Rental Savings	0.00
Total Operational Savings	0.00
<b>TOTAL</b>	<b>0.00</b>
<b>AGREED RENTAL &amp; OPERATIONAL ESTIMATE</b>	
Total Rental Quote	0.00
Total Operational Estimate	0.00
<b>TOTAL</b>	<b>0.00</b>

6/27/2023 8:57 AM

**EXHIBIT B  
FEDERAL REQUIREMENTS**

**FEMA Public Assistance CONTRACT CLAUSES**

**Definitions:**     *County = Palm Beach County, a political subdivision of the State of Florida*  
                          *FDEM = State of Florida Department of Emergency Management*  
                          *FEMA = Federal Emergency Management Agency, an Agency of the United States*  
                          *Department of Homeland Security,*  
                          *DHS = Department of Homeland Security*

**1. Equal Opportunity.**

Contractor shall at all times comply with the provisions of 41 CFR 60-1.4(b), the Equal Opportunity Clause, which is incorporated herein by reference.

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

(a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(c) The contractor will not discharge or in any manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(d) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising

the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The contractor and all subcontractors of contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60) and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **2. Contract Work Hours and Safety Act (40 U.S.C. § 3702 and 3704).**

Contractor shall comply with the Contract Work Hours and Safety Act (for contracts in excess of \$100,000 that involve the employment of mechanics or laborers) in accordance to 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 and 29 C.F.R. Part 1926.

(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 work week 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.

(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. In addition, such contractor and subcontractor shall

Exhibit B / Page 2 of 11



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 watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 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.

(3) Withholding for unpaid wages and liquidated damages. The DHS, FEMA, FDEM or County, shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or 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, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

### **3. Clean Air Act, Clean Water Act (for contracts exceeding \$150,000).**

#### **A. Clean Air Act (Contracts in excess of \$150,000)**

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to County and the FDEM and understands and agrees that the County and FDEM will, in turn, report each violation as required to assure notification to the County, FDEM, FEMA, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### **B. Federal Water Pollution Control Act (Contracts in excess of \$150,000)**

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the FDEM and County and understands and agrees that the FDEM and County will, in turn, report each violation as required to assure notification to the FDEM, County, FEMA, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**4. Suspension and Debarment (Certification required).**

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

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

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

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

A completed Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Participation form (attached hereto and titled Certification Regarding Debarment) is required in Contractor's sealed Bid or as otherwise required by the County. Upon request, successful Contractor agrees to provide the County with subsequent certification(s) for it and/or its suppliers, subcontractors and subconsultants after Contract award.

**5. Byrd Anti-Lobbying Amendment 31 U.S.C. § 1352 and 44 CFR Part 18 (as amended) (Certification required).**

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

A completed certificate (attached hereto and titled Byrd Anti-Lobbying) is required in Contractor's sealed Bid or as otherwise required by the County. Upon request, successful Contractor agrees to provide the County with subsequent certification(s) for it and/or its suppliers, subcontractors and subconsultants after Contract award.

**6. Recovered Materials.**

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired:

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (ii) Meeting contract performance requirements; or
- (iii) At a reasonable price.

Information about this requirement along with a list of EPA-designated items is available at EPA's Comprehensive Procurement Guidelines web site:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

## **7. Prohibition on Contracting for Covered Telecommunications Equipment or Services.**

### **(a) Definitions.**

**Backhaul** means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

**Covered foreign country** means the People's Republic of China.

**Covered telecommunications equipment or services** means:

- 1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of such entities);
- 2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- 3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
- 4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

**Interconnection arrangements** means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

**Roaming** means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

**Substantial or essential component** means any component necessary for the proper function or performance of a piece of equipment, system, or service.

**Telecommunications equipment or services** means telecommunications or video surveillance equipment or services, such as, but not limited to, mobile phones, land lines, internet, video surveillance, and cloud servers.

**(b) Prohibitions.**

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the U.S. Department of the Treasury to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service 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.

**(c) Exceptions.**

(1) This clause does not prohibit contractors from providing—

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Telecommunications equipment that cannot route or redirect user data traffic

or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

(i) Covered telecommunications equipment or services that:

- i. Are *not used* as a substantial or essential component of any system; *and*
- ii. Are *not used* as critical technology of any system.

(ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

**(d) Reporting requirement.**

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) **Subcontracts.** The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

**8. Domestic Preference for Procurements.**

As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products,

or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

*Produced in the United States* means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

*Manufactured products* mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

#### **9. Access to Records.**

The contractor agrees to provide County, FDEM, the FEMA Administrator, DHS, the Comptroller General of the United States, or any of their authorized representative's, access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the County and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

#### **10. Use of DHS Seal or Logo Prohibited.**

The Contractor shall not use the DHS or FEMA or County seals, logos, crests, or reproductions of flags or likenesses of any DHS agency officials or County officials without specific FEMA and County preapproval.

#### **11. FEMA Financial Assistance; Compliance with All Applicable Laws.**

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. Contractor shall comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives. Contractor agrees to comply with any and all applicable laws, rules and regulations of DHS, FEMA, County and the State, and/or the Federal government and in particular, such laws, rules, regulations and Executive Orders applicable to the receipt of Federal funding, which includes the DHS Standard Terms and Condition for grants and SF 424B and D which contain references to many cross-cutting Federal laws and regulations that may apply to a FEMA award. FEMA's grant award to County or FDEM, as may be applicable, for this disaster project, will contain all relevant federal laws, rules and regulations and is hereby incorporated herein by reference. In the event work is subcontracted, the Contractor agrees to include the requirements of this paragraph in all subcontracts made to perform this contract.

#### **12. No Obligation by Federal Government.**

The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the County, State, Contractor, or any other party pertaining to any matter resulting from the Contract.

**13. Program Fraud and False or Fraudulent or Related Acts (31 U.S.C. Chapter 38).**

The Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

**14. Affirmative Socioeconomic Steps.**

If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 CFR 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

**15. License and Delivery of Works Subject to Copyright and Data Rights.**

The Contractor grants to the County, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the County or acquire on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the County data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the County.

**16. Records Retention.**

Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than five (5) years after the date of final payment or the date of termination or expiration of this contract, whichever is longer; except that in the event of litigation or settlement of claims arising from the performance of this contract, Contractor agrees to maintain same until the County, FDEM, FEMA, DHS, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims.

**17. Notice of Federal Emergency Management Agency (FEMA) Reporting Requirements and Regulations.**

- A. General. The FDEM and County are using Public Assistance grant funding awarded by FEMA to the State/FDEM and/or Palm Beach County to pay, in whole or in part, for the costs incurred under this contract. As a condition of Public Assistance funding under (major disaster or emergency) declaration FEMA requires County and the FDEM/State of Florida to provide various financial and performance reporting.

(1) It is important that the contractor is aware of these reporting requirements, as the FDEM and County may require the contractor to provide certain information, documentation, and

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other reporting in order to satisfy reporting requirements to FDEM, DHS and other entities.

(2) Contractor shall comply with all such reporting requirements as necessary to satisfy and comply with FDEM and FEMA award requirements. Failure to do so is a material breach of this Contract.

(3) Failure of FDEM and County to satisfy reporting requirements to FEMA is a material breach of the FEMA-State Agreement, and could result in loss of Federal financial assistance awarded to fund this contract.

B. **Applicable Reporting Regulations and Policy.** Grant reporting includes both financial and program reporting requirements. There are a variety of applicable federal, State and local statutes, regulations, requirements, policies, and other sources setting forth various reporting requirements, including County policies and procedures, and FEMA program policies including, but not limited to, Subpart D, Post Federal Award requirements, Standards for Financial and Program Management, 2 C.F.R. § 200.300 through 2 C.F.R. § 200.345. Performance reporting includes, but is not limited to, the status of the project, the status of the funds, comparison of accomplishments to milestone objectives, and the reasons for delay or failed milestones.

C. **Financial Reporting.** The FDEM is required to submit to the following financial reports to FEMA:

(1) **Initial Report.** An initial Federal Financial Report (SF 425) no later than 30 days after FEMA has approved the first Public Assistance project.

(2) **Quarterly Reports.** Following submission of the initial report, quarterly Federal Financial Reports until submission of the final report described in the following subparagraph. Reports are due on January 30, April 30, July 30, and October 30.

(3) **Final Report.** A final Federal Financial Report within 90 days of the end of the period of performance for the Public Assistance grant.

D. **Performance Reporting.** The FDEM and/or County is required to submit the following financial reports to FEMA:

(1) **Initial Report.** An initial performance report no later than 30 days after FEMA has approved the first Public Assistance project for the applicable disaster declaration.

(2) **Quarterly Reports.** Following submission of the initial report, quarterly performance reports until submission of the final report described in the following subparagraph. Reports are due on January 30, April 30, July 30, and October 30.

(3) **Final Report.** A final performance report within 90 days of the end of the period of performance for the Public Assistance grant.

#### **18. Third Party Claims.**

Contractor hereby indemnifies and holds harmless: (a) the Federal Government, its employees and/or

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contractors; (b) the State of Florida, Division of Emergency Management, its employees and/or contractors; and (c) the County, its employees and/or contractors, from liability to third parties for claims asserted under this Contract. This section shall survive the termination or expiration of this Contract.

**EXHIBIT B-1**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND INELIGIBILITY  
(Contractor must sign and return with Contract)**

The Contractor certifies that:

- (a) This Contract is a covered transaction for purposes of 2 CFR, Part 180. As such, the Contractor is required to verify that none of the Contractor, its principals (defined at 2 CFR 180.995), or its affiliates (defined at 2 CFR 180.905) are excluded (defined at 2 CFR 180.940) or disqualified (defined at 2 CFR 180.935).
- (b) The Contractor must comply with 2 CFR Part 180, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (c) This certification is a material representation of fact relied upon by the County. If it is later determined that the Contractor did not comply with 2 CFR Part 180, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/ or debarment.
- (d) The Contractor agrees to comply with the requirements of 2 CFR Part 180, subpart C throughout the term of the contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions, including submission to Contractor of this Certification completed by its trade contractors, suppliers, subcontractors and subconsultants.

FIRM NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

FIRM'S AUTHORIZED OFFICIAL:

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Name and Title	Signature	Date
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**CERTIFICATION REGARDING LOBBYING**  
**(Contractor must sign and return with its contract)**

The undersigned Contractor certifies, to the best of his or her knowledge, that:

1. 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 an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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 (as amended by the Lobbying Disclosure Act of 1995). 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.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Firm's Authorized Official

\_\_\_\_\_  
Name and Title of Firm's Authorized Official

\_\_\_\_\_  
Date

**BUDGET AVAILABILITY STATEMENT**

REQUEST DATE: 7/11/2023    REQUESTED BY: Melicia Wilson/FDO    PHONE: 561-233-2544

PROJECT TITLE: South Florida Fair and Palm Beach County Expositions, Inc.  
(Same as CIP or IST, if applicable)

IST PLANNING NO.:

ORIGINAL CONTRACT AMOUNT: \$ 1,113,540

BCC RESOLUTION#:

REQUESTED AMOUNT: \$1,113,540

DATE:

CSA or CHANGE ORDER NUMBER:

LOCATION: 9067 Southern Blvd. West Palm Beach, FL 33411

BUILDING NUMBER: 1326

DESCRIPTION OF WORK/SERVICE LOCATION: South Florida Fair and Palm Beach County Expositions, Inc.

PROJECT/W.O. NUMBER:

CONSULTANT/CONTRACTOR:

PROVIDE A BRIEF STATEMENT OF THE SCOPE OF SERVICES TO BE PROVIDED BY THE CONSULTANT/CONTRACTOR:

CONSTRUCTION	\$1,100,000
MAINTENANCE	\$ 13,540
TOTAL	\$1,113,540

*\* By signing this BAS your department agrees to these CID staff charges and your account will be charged upon receipt of this BAS by FD&O. Unless there is a change in the scope of work, no additional staff charges will be billed. If this BAS is for construction costs of \$250,000 or greater, staff charges will be billed as actual and reconciled at the end of the project. If the project requires Facilities Management or ESS staff your department will be billed actual hours worked upon project completion.*

**BUDGET ACCOUNT NUMBER(S) (Specify distribution if more than one and order in which funds are to be used):**

FUND:	DEPT:	UNIT:	OBJ:
3804	411	B738	4907 - \$ 100,000
3950	411	Q014	4907 - \$1,100,000
0001	411	5220	4610 - \$ 13,540

**IDENTIFY FUNDING SOURCE FOR EACH ACCOUNT: (check and provide detail for all that apply)**

Ad Valorem (Amount \$ _____)	Infrastructure Sales Tax (Amount \$ _____)
State (source/type: _____ Amount \$ _____)	Federal (source/type: _____ Amount \$ _____)
Grant (source/type: _____ Amount \$ _____)	Impact Fees: (Amount \$ _____)
Other (source/type: _____ Amount \$ _____)	

Department: FACILITIES DEVELOPMENT & OPERATIONS

BAS APPROVED BY: 

DATE 7/19/2023

ENCUMBRANCE NUMBER: \_\_\_\_\_