

## SUBAWARD AGREEMENT BETWEEN BROWARD COUNTY AND THE [REDACTED] FOR CARES ACT FUNDING

This Agreement ("Agreement") is made and entered by and between Broward County, a political subdivision of the State of Florida ("County"), and the [REDACTED], a municipality of the State of Florida ("Municipality") (each a "Party" and collectively referred to as the "Parties").

### RECITALS

A. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security ("CARES") Act was signed into law, providing over \$2 trillion in economic relief to assist with the impact of the COVID-19 pandemic, \$8.3 billion of which was allocated to the State of Florida.

B. Based on its population, County qualified for a direct payment allocation and received \$340,744,702 in funding from the Department of the Treasury under the Coronavirus Relief Funds program, Catalog of Federal Domestic Assistance ("CFDA") No. 21.019.

C. County's municipalities have proposed that the County allocate a portion of the funds it received pursuant to the CARES Act to the County's municipalities and County has agreed to make available a portion of the funds it received from the CARES Act to the County's municipalities based on the CARES for One Broward Funding Plan attached hereto as Exhibit G.

D. County wishes to subaward a portion of the funds it received from the CARES Act to Municipality as provided in this Agreement.

E. Municipality is a sub-recipient as defined under 2 CFR § 200.93; and has been identified as an eligible local government that has incurred costs due to the COVID-19 public health emergency that are eligible for reimbursement under the Coronavirus Relief Fund Program, CFDA No. 21.019.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE 1. DEFINITIONS

1.1. **Board** means the Board of County Commissioners of Broward County, Florida.

1.2. **CARES Act** means Section 601 of the Social Security Act (42 U.S.C. et seq.), as added by Section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-138), and all rules and regulations relating thereto, as amended.

1.3. **CARES Funds** means the funding provided to County pursuant to the CARES Act and which is subject to the restrictions and requirements of the CARES Act.

1.4. **Contract Administrator** means the County Administrator or such other person designated by the County Administrator in writing.

1.5. **Eligible Expenditures** means expenditures that are eligible for reimbursement using CARES Funds, in accordance with the CARES Act as set forth in Exhibit F to this Agreement.

1.6. **Project** means each project, activity, service, procurement, or other expenditure that will be implemented by Municipality as described in Exhibit A to this Agreement.

## **ARTICLE 2. EXHIBITS**

The following exhibits are attached hereto and fully incorporated herein:

<b>Exhibit A</b>	<b>Schedule of Projects</b>
<b>Exhibit B</b>	<b>Budget</b>
<b>Exhibit C</b>	<b>Project Timelines</b>
<b>Exhibit D</b>	<b>Request for Payment Documentation Requirements</b>
<b>Exhibit E</b>	<b>Federal Provisions</b>
<b>Exhibit F</b>	<b>Eligible Expenditures</b>
<b>Exhibit G</b>	<b>CARES for One Broward Funding Plan</b>

## **ARTICLE 3. TERM AND TIME OF PERFORMANCE**

3.1. **Term.** The term of this Agreement shall begin on the date it is fully executed by the Parties (“Effective Date”) and shall end on December 30, 2020 (“Initial Term”), unless earlier terminated pursuant to the terms of this Agreement.

3.2. **Fiscal Year.** The continuation of this Agreement beyond the end of any County fiscal year (October 1 through September 30) is subject to both the appropriation and the availability of CARES Funds in accordance with Chapter 129, Florida Statutes.

3.3. **Time of the Essence.** Unless expressly waived by the Contract Administrator in writing, time is of the essence in Municipality’s performance of its duties, obligations, and responsibilities under this Agreement.

## **ARTICLE 4. PROJECT**

4.1. **CARES Funds.** Municipality shall implement the Projects stated in Exhibit A attached hereto, as may be amended from time to time. Unless otherwise stated in Exhibit A, a Project shall not be eligible for any funding under this Agreement unless all of the Project’s elements are Eligible Expenditures. Municipality certifies that each expenditure for the Project that is funded with CARES Funds is an Eligible Expenditure, and covenants that each such expenditure will at all times be an Eligible Expenditure.

4.2. **Amendments to Projects.** At any time prior to November 1, 2020, Municipality may request modifications to the Schedule of Projects (Exhibit A) and corresponding changes to the

Budget (Exhibit B) and the Project Timelines (Exhibit C), including to add, remove, or modify Project(s) and/or modify the scope, budget, or timeline of Project(s). Municipality shall request any modification to the Schedule of Projects by submitting for County's review a written request to County that includes proposed amended exhibits incorporating the modification requests. Municipality shall provide any supporting documentation reasonably requested by County to facilitate a determination of whether the Projects, as modified, consist of Eligible Expenditures. If County determines that the Projects, as modified, consist of Eligible Expenditures, and the associated modifications to the Budget and the Project Timelines are approved in writing by the County Administrator, the Contract Administrator may approve such amended exhibits by written notice to Municipality and, upon such written notice, such amended exhibits shall be automatically incorporated herein and shall replace the corresponding exhibits. In addition, the Parties may amend this Agreement to incorporate the approved modifications, and the County Administrator is authorized to execute any such amendment on behalf of County.

4.3. Project Timeline. Municipality must comply with the Project Timelines set forth in Exhibit C for each Project, which Project Timelines shall not extend past the deadline for expenditures stated in Section 5.5. If Municipality fails to meet any of the deadlines for a Project set forth in Exhibit C by thirty (30) days or more, upon written notice by the Contract Administrator and effective as of the date of such written notice, the Project will become ineligible for CARES Funds under this Agreement, the Project shall be deemed to be automatically removed from this Agreement without the need for a formal amendment, and County shall have no further obligation to fund the Project. The County Administrator is authorized to reallocate the CARES Funds to other Projects or to other purposes including to other County projects or to projects by other municipalities, as determined in the sole discretion of the County Administrator. The County Administrator's authority to remove and reallocate CARES Funds pursuant to this Section 4.3 shall be in addition to County's right to reallocate CARES Funds pursuant to Section 5.5.

4.4. Monitoring and Reporting. County will carry out periodic subrecipient monitoring and evaluation activities as determined necessary in County's sole discretion or as required by Uniform Grant Guidance, 2 CFR §§ 200.330 through 332. County has the right to conduct a full review of any or all Projects at any time. County's evaluation of a Project may include, but not be limited to, compliance with the terms of this Agreement and comparisons of planned versus actual progress relating to the Project's scheduled expenditures. Upon County's request, Municipality shall promptly furnish to County such records and information requested by County related to a Project. Municipality shall meet with County at reasonable times and with reasonable notice to discuss the Projects.

4.5. Unaudited and Final Financial Reports. On or before January 1, 2021, Municipality must submit a financial report identifying all CARES Funds received under this Agreement ("Unaudited Financial Report"). The Unaudited Financial Report shall contain sufficient information for County to determine if the expenditures conform to this Agreement and are eligible for funding under the CARES Act. The Unaudited Financial Report must include appropriate footnote disclosures in support of the financial information items presented, including disclosure of any

issue of noncompliance with this Agreement or applicable law. Unless Municipality is required to complete an audit under 2 C.F.R. Part 200, on or before July 1, 2021, Municipality must submit an audited financial report identifying all CARES Funds received under this Agreement (“Final Report”). The Final Report must be audited and certified by an independent CPA, at Municipality’s expense, and include an opinion as to whether the financial information in the report is presented in accordance with Generally Accepted Accounting Principles. The audit shall contain sufficient information for County to determine if the expenditures conform to this Agreement and are eligible for funding under the CARES Act. The Final Report must include appropriate footnote disclosures in support of the financial information items presented, including disclosure of any issue of noncompliance with this Agreement or applicable law.

#### **ARTICLE 5. FUNDING AND METHOD OF PAYMENT; PROVISIONS RELATING TO THE USE OF CARES ACT FUNDS**

5.1. Maximum Funds Payable. The maximum amount payable to Municipality under this Agreement is the Total CARES Funds amount stated in the Budget (Exhibit B). All financial obligations of County under this Agreement are subject to the availability of CARES Funds, as more specifically described herein. No County funds other than CARES Funds shall be due or payable to Municipality under this Agreement.

**[BSO Municipalities ONLY:** County recognizes that Municipality contracts with the Broward Sheriff’s Office (BSO) for fire rescue and/or law enforcement services and Municipality’s allocation of CARES Funds for Personal Protective Equipment (“PPE”) as proposed in the CARES for One Broward Funding Plan, attached as Exhibit G, is based on the total Municipality FTEs, which includes sworn and certified full time employees for fire rescue and/or law enforcement services, all or a portion of whom are employed by BSO. Municipality has requested and County has agreed to designate a portion of Municipality’s allocation of CARES Funds for PPE expenses related to total sworn or certified BSO full time employees in the amount listed for the BSO PPE Allocation amount in the Budget (Exhibit B). The BSO PPE Allocation shall be made available by County to BSO for reimbursement for PPE previously purchased or for future purchases of PPE.]

5.2. Invoicing.

5.2.1. Monthly Expenditures. No later than ten (10) calendar days after the end of each month during the Term (except the month of December), Municipality shall request payment from County for all Eligible Expenditures in accordance with Exhibit B that were incurred by Municipality during the prior month by furnishing to County a request for payment in the form approved by the Contract Administrator and supporting documentation as provided in Exhibit D (collectively, “Request for Payment”), including a certification by the chief administrative officer and the chief financial officer of Municipality, or such other persons designated by Municipality with authority to act in similar capacities, that all funds received and utilized to date under this Agreement were utilized only for Eligible Expenditures. Following receipt of a Request for Payment, County shall review the Request for Payment to determine whether the Request for Payment

complies with the terms of this Agreement. If a Request for Payment includes subcontractor expenses, whether paid by Municipality on a “lump sum” or other basis, such expenses must be included in the Request for Payment with no markup and stated in the actual amount paid by Municipality. County may, in its discretion, deny a Request for Payment to Municipality if Municipality fails to comply with this section or provide any of the documentation set forth in Exhibit D.

5.2.2. Expenditures Prior to the Effective Date. For Eligible Expenditures incurred prior to the Effective Date, Municipality shall submit a Request for Payment no later than ten (10) calendar days after the Effective Date.

5.2.3. Expenditures During the Month of December. For any Eligible Expenditures incurred during the month of December 2020, Municipality shall submit a Request for Payment no later than December 10, 2020.

5.3. Payment; Deadline to Request Payment. If Municipality is in compliance with the terms of this Agreement, including the procedures for Requests for Payment set forth in this article, County shall reimburse Municipality (subject to all terms and conditions of this Agreement) in accordance with Exhibit B for Project expenses that are determined by County to be Eligible Expenditures, unless a suspension of payment as provided for in Section 5.6 has occurred. Municipality shall not be entitled to reimbursement for any Requests for Payment received by County after December 10, 2020.

5.4. Withholding by County. Notwithstanding any provision of this Agreement to the contrary, County may withhold, in whole or in part, payment to the extent necessary to ensure utilization of CARES Funds in accordance with this Agreement, applicable law, and the CARES Act. The amount withheld shall not be subject to payment of interest by County. Upon written notice by County, payment may be withheld by County for the duration of any failure of Municipality to comply with a term, condition, or requirement of this Agreement; County shall promptly pay the amount withheld to Municipality when Municipality’s noncompliance is cured to the reasonable satisfaction of Contract Administrator, provided that at such time Municipality is in full compliance with all other material terms and conditions of the Agreement.

5.5. Deadline for Expenditures. Municipality shall not submit Requests for Payment, and shall not be reimbursed, for any expenditures incurred after December 10, 2020. If after December 10, 2020, any CARES Funds allocated to Municipality under this Agreement have not been previously requested by Municipality pursuant to a Request for Payment (“Remaining Funds”), County shall be relieved of any further financial obligation to Municipality for the Remaining Funds and the County Administrator may reallocate the Remaining Funds to another municipality or Eligible Expenditure (including eligible expenditures by County).

5.6. Suspension of Payment. County may suspend payment, in whole or in part, to Municipality under this Agreement upon the occurrence of any of the following events:

(a) ineligible use by Municipality of CARES Funds under this Agreement or the CARES Act; (b) Municipality's failure to comply with terms of this Agreement; (c) failure to submit reports as required by this Agreement; (d) submission of incorrect or incomplete reports or Requests for Payment in any material respect; or (e) Municipality's failure to comply with the indemnification obligations under this Agreement. If County elects to suspend payment to Municipality pursuant to this section, County shall provide written notice to Municipality specifying the actions that must be taken by Municipality as a condition precedent to resumption of payments and specifying a reasonable date by which Municipality must take such actions. If County determines that the specified actions were taken by Municipality by the date set forth in the notice, County shall resume payments under this Agreement.

5.7. Recoupment. Municipality shall be required to repay to County any CARES Funds determined by County, in County's reasonable discretion, to be ineligible for reimbursement under the CARES Act, or determined by the U.S. Department of Treasury to be ineligible use(s) of CARES Funds. Municipality shall also be required to repay to County (a) any CARES Funds overpaid to Municipality by County; (b) any CARES Funds expended by Municipality, or any of its subcontractors, in violation of this Agreement; or (c) any CARES Funds County is required to refund that were paid to Municipality under this Agreement or proceeds from or interest on such amounts, including proceeds from sales or disposals of assets purchased by Municipality using CARES Funds and interest received by Municipality on CARES Funds held in interest-bearing accounts, if applicable. Municipality shall repay any amounts required to be repaid to County under this Agreement from nonfederal sources within thirty (30) days after written notice is provided by County. If such amounts are not timely repaid, County may, in its sole discretion, withhold payment on any pending or subsequent Requests for Payment by Municipality, or offset Municipality's obligation to repay County under this Agreement by applying it as a credit against any other funds (except ad valorem tax revenues derived from the Municipality's voter-approved debt service millage) owed by County to Municipality under this or any other agreement or any other payment obligation. Municipality agrees that the repayment obligations under this section shall apply regardless of whether CARES Funds were believed or determined by County to be eligible for reimbursement to Municipality prior to the occurrence of the event triggering the repayment obligation hereunder. Municipality waives any present or future defense, counterclaim, or setoff, regardless of the basis, known or unknown, that Municipality may have to any action by County in enforcing the repayment obligation set forth in this section.

5.8. Security. In addition to County's rights under this Agreement, and notwithstanding any distribution requirement otherwise provided in Florida law, the Florida Administrative Code, the Florida Department of Revenue's rules and procedures, or any other law, rule, regulation or procedure, if Municipality fails to repay County as required in Section 5.7, Municipality authorizes County to withhold from any revenues, including taxes (except ad valorem tax revenues derived from the Municipality's voter-approved debt service millage) and fees, that County collects on behalf of Municipality an amount equal to the amount owed by Municipality, which shall be held in a separate account as security until Municipality repays to County all sums owed pursuant to this Agreement.



## ARTICLE 6. MUNICIPALITY COVENANTS

6.1. CARES Funds Eligibility Criteria. Municipality acknowledges and agrees that the CARES Act provides that CARES Funds may only be utilized to cover expenses that (a) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); (b) were not accounted for in Municipality's budget most recently approved as of March 27, 2020; and (c) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020. Municipality further acknowledges and agrees that CARES Funds may not be used to fill shortfalls in government revenue or to cover expenditures that would not otherwise qualify as eligible expenses under the CARES Act. Municipality warrants and represents that Municipality will only request, receive, or accept CARES Funds under this Agreement for Eligible Expenditures that comply with all of these requirements and limitations and all requirements and limitations of the CARES Act, including as such may be amended.

6.2. Use of CARES Funds. Municipality represents and agrees that the funding provided by County to Municipality under this Agreement will be utilized by Municipality only for the Projects, each of which is an Eligible Expenditure as permitted under the CARES Act, as specified in Exhibit A and in accordance with the Project budget set forth in Exhibit B and the Project Timelines set forth in Exhibit C.

6.3. Proceeds. Municipality shall not sell or otherwise dispose of any assets acquired using CARES Funds in exchange for compensation (monetary or in-kind). If Municipality sells or otherwise disposes of any assets acquired using CARES Funds in exchange for compensation of any kind prior to December 30, 2020, Municipality shall transfer the proceeds from any such sale or disposal, if any, to County, or pay County the cash equivalent of the in-kind value, promptly, but no later than fifteen (15) business days after receipt by Municipality of such proceeds.

6.4. Grants or Loans. Any refund or repayment of a grant or loan, in whole or in part, made by Municipality to any recipient or borrower using CARES Funds must be transferred to County promptly, but no later than fifteen (15) business days after receipt by Municipality of the repayment from the recipient or borrower of the grant or loan.

6.5. Interest. If any CARES Funds are prepaid directly to Municipality, any interest earned or other investment proceeds received by Municipality on such CARES Funds, including by deposit in an interest bearing account, shall be used only for Eligible Expenditures for the Projects, and if unspent on December 30, 2020, must be transferred by Municipality to County promptly, but no later than fifteen (15) business days after receipt by Municipality of the interest or proceeds.

6.6. No Independent Funding Obligation. Municipality acknowledges and agrees that County is not obligated by the CARES Act or any other law, rule, or regulation to provide any CARES Funds to Municipality, that County voluntarily has elected to distribute a portion of CARES Funds to Municipality, and that County's obligation to provide CARES Funds to Municipality shall be limited to the CARES Funds as set forth in Exhibit B and subject to the terms and conditions of this Agreement.

## **ARTICLE 7. INDEMNIFICATION**

To the extent authorized by Section 768.28, Florida Statutes, Municipality shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of Municipality, its officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, Municipality shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. If considered necessary by the Contract Administrator and the County Attorney, any sums due Municipality under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

## **ARTICLE 8. AUDITING**

8.1. Audit Rights. In addition to the federal audit requirements of Section 8.4, County shall have the right to audit the books, records, and accounts of Municipality and any subcontractors (collectively, "Audited Entities") providing goods or services for which funding or reimbursement is sought under this Agreement (the "Contract Records"). Audits, reviews, monitoring, inspections, and investigations conducted pursuant to this Agreement may include, but are not limited to, on-site visits by County staff, interviews of staff of any of the Audited Entities, review of performance and financial reports, determining and monitoring appropriate corrective action, and issuing management letters on deficiencies or weaknesses identified. Audited Entities shall fully comply and cooperate with any auditing and monitoring activities deemed appropriate by County.

8.2. Retention of Records. Audited Entities shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement and performance under this Agreement. All such books, records, and accounts shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request by the Contract Administrator to do so, Audited Entities shall make same available in written form at no cost to County.

Contract Records include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, drawings, receipts, vouchers and memoranda, and any and all other documents that pertain to rights, duties, obligations, or performance relating to the Projects. Contract Records



include hard copy and electronic records, written policies and procedures, time sheets, payroll records and registers, cancelled payroll checks, estimating work sheets, correspondence, invoices and related payment documentation, general ledgers, insurance rebates and dividends, and any other records pertaining to rights, duties, obligations or performance relating to the Projects of any of the Audited Entities.

Audited Entities shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to the Projects or this Agreement for at least five (5) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). The Projects and all expenditures relating to the Projects shall be subject to County's review, critique, and analysis for the duration of the Project.

8.3. Audit Results. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment made or based upon such entry. If an audit or inspection in accordance with this section discloses overpricing or overcharges to County of any nature in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of County's audit shall be reimbursed to County by Municipality in addition to any required adjustments for the overcharges. Any adjustments or payments due as a result of such audit or inspection shall be made by Municipality to County within thirty (30) days after presentation of County's findings to Municipality.

8.4. Audit Requirements. Municipality shall comply with the requirements, standards, and the applicable provisions set forth in the Single Audit Act (31 U.S.C. Sections 7501-7507) and the related provisions of 2 C.F.R. Part 200 (Uniform Guidance), including 2 C.F.R. Part 200.303, 2 C.F.R. Part 200.330 through 332, and Subpart F, Audit Requirements. Municipality shall comply with the audit requirements set forth in 2 C.F.R. Part 200, Subpart F, Audit Requirements, Section 215.97, Florida Statutes, applicable Rules of the Department of Financial Services, and Chapters 10.550 (local government entities) or Chapter 10.650 (nonprofit and for profit organizations), Rules of the Auditor General, State of Florida, as applicable. Copies of the reporting package required under 2 C.F.R. Part 200 must be filed with County the earlier of thirty (30) calendar days after receipt of the Auditor's Report(s), or nine (9) months after the end of the audit period. All CARES Funds provided by County must be shown via explicit disclosure in Municipality's annual financial statements or the accompanying notes to the financial statements.

8.5. Municipality shall comply with all requirements of the U.S. Department of Treasury Office of Inspector General, including the requirement to register with SAM.gov.

## **ARTICLE 9. TERMINATION**

9.1. County's obligations under this Agreement are subject to the availability of CARES Funds. If CARES Funds become unavailable, County may terminate this Agreement upon written notice to Municipality no less than three (3) days prior to the effective termination date stated in the

notice. This Agreement may also be terminated by the Board upon fifteen (15) days' prior written notice to Municipality if the Board determines that the emergency circumstances of the COVID-19 crisis require that the CARES Funds be otherwise allocated. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances if the County Administrator determines that termination is necessary to protect the public health, safety, or welfare.

9.2. This Agreement may be terminated for cause by the aggrieved Party if the Party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved Party identifying the breach.

9.3. This Agreement may be terminated for cause by County for reasons including, but not limited to any of the following:

9.3.1. Repeated submission by Municipality (whether negligent or intentional) for payment of false or incorrect Requests for Payment;

9.3.2. Fraud, misrepresentation, or material misstatement in the performance of this Agreement by Municipality or its subcontractor(s);

9.3.3. Municipality's failure to comply with applicable federal, state, or local law or regulations; or

9.3.4. Municipality's utilization of the CARES Funds provided under this Agreement in a manner that violates applicable law, the CARES Act, or for uses or purposes other than the Projects.

9.4. This Agreement may be terminated for convenience by either Party, which termination date shall be not less than thirty (30) days after the date of such written notice.

9.5. Notice of termination shall be provided in accordance with the "Notices" section of this Agreement except that notice of termination by the County Administrator to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

9.6. If this Agreement is terminated for any reason, County may, in County's reasonable discretion, reimburse Municipality upon receipt of a Request for Payment in accordance with the terms of this Agreement for documented and committed Eligible Expenditures related to a Project incurred by Municipality prior to the date of Municipality's receipt of the written notice of termination. For purposes of this Agreement, documented and committed Eligible Expenditures related to a Project means any verifiable expense that has already been incurred by Municipality and cannot be recovered, including, but not limited to a purchase order for payment of materials and supplies, executed by Municipality or subcontractor on Municipality's behalf, for a Project under this Agreement. Notwithstanding the above, Municipality shall not expend, or commit to expend, any funds for Eligible Expenditures related to a Project after written notice of termination is provided by Municipality to County or received by Municipality

from County. Any payment by County pursuant to this section is subject to all applicable provisions of this Agreement, including the sections surviving termination of this Agreement as set forth in Section 11.22. In addition to any right of termination stated in this Agreement, County shall be entitled to seek any and all available remedies, whether stated in this Agreement or otherwise available at law or in equity, all such remedies being cumulative.

#### **ARTICLE 10. INSURANCE**

10.1. Municipality is a governmental entity and is fully responsible for the acts and omissions of its agents or employees, subject to any applicable limitations of Section 768.28, Florida Statutes.

10.2. Upon request by County, Municipality must provide County with written verification of liability protection that meets or exceeds any requirements of Florida law. If Municipality holds any excess liability coverage, Municipality must ensure that Broward County is named as an additional insured and certificate holder under such excess liability policy and provide evidence of same to County.

10.3. If Municipality maintains broader coverage or higher limits than the minimum coverage required under Florida law, County shall be entitled to such broader coverage and higher limits on a primary and noncontributory basis. County's insurance requirements shall apply to Municipality's self-insurance.

10.4. If Municipality contracts with a subcontractor to provide any of the services for a Project, Municipality shall require that each subcontractor procure and maintain insurance coverage that adequately covers each subcontractor's exposure based on the services provided by that subcontractor. Municipality must ensure that all such subcontractors name "Broward County" as an additional insured and certificate holder under the applicable insurance policies. Municipality shall not permit any subcontractor to provide services for a Project until the insurance requirements of the subcontractor under this section are met. If requested by County, Municipality shall furnish evidence of insurance of all such subcontractors.

10.5. County reserves the right, but not the responsibility, to periodically review any and all insurance policies.

#### **ARTICLE 11. MISCELLANEOUS**

11.1. Nondiscrimination. No Party may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Municipality shall include the foregoing or similar language in its contracts with subcontractors for goods or services that constitute Eligible Expenditures.

11.2. Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with Municipality to manage and supervise the performance of this

Agreement. Any determination by the Contract Administrator that this Agreement authorizes the Contract Administrator to make shall be binding on the Parties. Unless expressly stated otherwise in this Agreement or otherwise set forth in an applicable provision of the Broward County Procurement Code, Broward County Code of Ordinances, or Broward County Administrative Code, the Contract Administrator may exercise any ministerial authority in connection with the day-to-day management of this Agreement.

11.3. Public Records. The Parties agree and stipulate that both Parties are subject to Florida public records laws and shall fully comply with same. At the request of County, Municipality shall, in accordance with applicable law, respond to any request for public records received by County relating to the Project. Any other public records request shall be responded to by the receiving party. Each Party shall cooperate upon request by the other Party and provide any requested records to enable the Party to respond to a public records request.

Any material submitted to County that Municipality contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET." In addition, Municipality must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. If a third party submits a request to County for records designated by Municipality as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Municipality. Municipality shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a public records request by a third party.

11.4. Independent Contractor. Nothing in this Agreement constitutes or creates a partnership, joint venture, or any other relationship between the Parties or between County and any Subcontractor. Neither Party nor its agents shall act as officers, employees, or agents of the other Party. Neither Party shall have the right to bind the other Party to any obligation not expressly undertaken by that Party under this Agreement.

11.5. Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County or Municipality, nor shall anything included herein be construed as consent by County or Municipality to be sued by third parties in any matter arising out of this Agreement. County and Municipality are subdivisions of the State of Florida, as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of their respective employees pursuant to Section 768.28, Florida Statutes.

11.6. Third-Party Beneficiaries. Neither Municipality nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that

there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

11.7. Notices. In order for a notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR COUNTY:

Broward County  
Attn: County Administrator  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Email address: [bhenry@broward.org](mailto:bhenry@broward.org)

With a copy to:

Broward County  
Attn: County Attorney  
115 South Andrews Avenue, Room 423  
Fort Lauderdale, Florida 33301  
Email address: [ameyers@broward.org](mailto:ameyers@broward.org) and [aashton@broward.org](mailto:aashton@broward.org)

FOR MUNICIPALITY:

[REDACTED]  
[REDACTED]  
[REDACTED]

Email address: [REDACTED]

11.8. Assignment. Neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by Municipality without the prior written consent of County. Any assignment, transfer, encumbrance, or subcontract in violation of this section (unless County subsequently consents thereto in writing) shall be void and ineffective, constitute a breach of this Agreement, and permit County to immediately terminate this Agreement, in addition to any other remedies available to County at law or in equity, all such remedies being cumulative.

11.9. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. County's or Municipality's failure to enforce any provision of this Agreement shall not be deemed a waiver

of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

11.10. Compliance with Laws. Municipality must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations. Municipality hereby accepts and shall comply with the additional terms for federally funded contracts set forth in Exhibit E, to the extent applicable, and shall include such applicable federal provisions in any contracts with Subcontractors.

11.11. Representation of Authority. The Parties represent and warrant that this Agreement constitutes the legal, valid, binding, and enforceable obligation of each Party, that execution of this Agreement is within each Party's legal powers, and that each individual executing this Agreement is duly authorized by all necessary and appropriate action to do so on behalf of that Party and does so with full legal authority.

11.12. Severability. If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

11.13. Joint Preparation. This Agreement has been jointly prepared by the Parties, and shall not be construed more strictly against either Party.

11.14. Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days, unless otherwise expressly stated. To be effective, any approval under this Agreement made by or on behalf of County must be in writing.

11.15. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of Articles 1 through 11 of this Agreement, the provisions contained in Articles 1 through 11 shall prevail and be given effect unless otherwise expressly stated herein.



11.16. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, EACH OF MUNICIPALITY AND COUNTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

11.17. Amendments. Except as expressly authorized herein, no modification, amendment, or alteration in the terms or conditions contained in this Agreement shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by duly authorized representatives of County and Municipality.

11.18. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

11.19. Payable Interest

11.19.1. Payment of Interest. County shall not be liable to pay any interest to Municipality for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Municipality waives, rejects, disclaims, and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This subsection shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

11.19.2. Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, one quarter of one percent (0.25%) simple interest (uncompounded).

11.20. Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

11.21. Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

11.22. Survivability. Notwithstanding any expiration or termination of this Agreement, the following provisions shall survive expiration and termination: Section 4.5 (Final Financial Report); Section 5.5 (Deadline for Expenditures); Section 5.7 (Recoupment); Section 5.8 (Security); Article 6 (Municipality Covenants); Article 7 (Indemnification); Article 8 (Auditing); Section 11.3 (Public Records); Section 11.5 (Sovereign Immunity); Section 11.6 (Third-Party Beneficiaries); Section 11.16 (Law, Jurisdiction, Venue, Waiver of Jury Trial); and Section 11.19 (Payable Interest); and this Section 11.22 (Survivability).

(The remainder of this page is intentionally blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its County Administrator, authorized to execute same by Board action on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and Municipality, signing by and through its \_\_\_\_\_ duly authorized to execute same.

COUNTY

WITNESS:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name of Witness)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name of Witness)

BROWARD COUNTY, by and through  
its County Administrator

By \_\_\_\_\_  
County Administrator

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600

By \_\_\_\_\_  
Alicia C. Lobeiras  
Assistant County Attorney

By \_\_\_\_\_  
Annika E. Ashton  
Deputy County Attorney (Date)

Draft Municipal CARES ILA  
08/08/2020  
#524671v13  
RDH/AEA/ACL

**SUBAWARD AGREEMENT BETWEEN BROWARD COUNTY  
AND THE                      FOR CARES ACT FUNDING**

**MUNICIPALITY**

ATTEST:

CITY OF \_\_\_\_\_

\_\_\_\_\_  
CITY CLERK

By: \_\_\_\_\_  
CITY MAYOR

\_\_\_\_\_  
Print Name

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

I HEREBY CERTIFY that I have approved  
this Agreement as to form and legal  
sufficiency subject to execution by the parties:

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

**EXHIBIT A**  
**SCHEDULE OF PROJECTS**

DRAFT

**EXHIBIT B  
BUDGET**

**Total CARES Funds: \$ [\_\_\_\_\_]**

[BUDGET DETAILS]

DRAFT



**EXHIBIT C  
PROJECT TIMELINES**

DRAFT

**EXHIBIT D**  
**REQUEST FOR PAYMENT DOCUMENTATION REQUIREMENTS**

**Required Documentation**

Municipality shall submit the documentation itemized below (“Required Documentation”) with each invoice for CARES Funds.

Required Documentation includes:

1. Completed Request for Payment in the form approved by the Contract Administrator;
2. A certification in accordance with Section 5.2 that all funds received and utilized to date under this Agreement were utilized only for Eligible Expenditures;
3. A certification from Municipality’s administrator or the administrator’s authorized representative that the work, services, or activities, or materials being invoiced have been received or completed;
4. Documentation of costs associated with any Municipality personnel providing any services for the Project, if applicable;
5. An executed copy of each subcontractor contract authorizing work, services, or activities to be performed for the Project, if applicable and not previously submitted to County;
6. A certified copy of the purchase order or other Municipality document authorizing the work, services, activities, or materials for which Municipality is invoicing;
7. A copy of all subcontractor invoices for the Project indicating the work, services, or activities rendered or materials purchased and the dates for same, certified by Municipality’s administrator or manager of the Project, as applicable;
8. Any additional documentation required by any additional provision of Federal Law; and
9. Any additional documentation that may be reasonably requested by Contract Administrator.

**EXHIBIT E**  
**FEDERAL PROVISIONS**

1. Municipality shall comply with the following Federal provisions, if applicable, and shall include such applicable Federal provisions in Clerk's contracts with Subcontractors, including all applicable provisions set forth in 2 C.F.R. Appendix II to Part 200:

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

b. Municipality shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

c. Municipality agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C until the termination or expiration of this Agreement. Municipality further agrees to include a provision requiring such compliance in its lower tier covered transactions relating to this Agreement. Municipality affirms and verifies that neither Municipality, nor any of its principals (defined at 2 C.F.R. § 180.995) or 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).

d. The foregoing subsections are material representations of fact relied upon by County. If it is later determined that Municipality did not comply with 2 C.F.R. Part 180, subpart C or 2 C.F.R. Part 3000, subpart C, in addition to remedies available to County, the federal government may pursue available remedies, including, but not limited to suspension and/or debarment.

e. Municipality shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Among other things, Municipality shall procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recover materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000.00; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

2. By execution of this Agreement, Municipality certifies that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a

member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.

c. Municipality shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

d. This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Municipality certifies or affirms the truthfulness and accuracy of each statement of the foregoing certification and disclosure, if any. In addition, Municipality understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

**EXHIBIT F**  
**SCHEDULE OF ELIGIBLE EXPENDITURES**

A. Categories of Eligible Expenditures:

1. Medical expenses such as:

- a) COVID-19-related expenses of public hospitals, clinics, and similar facilities.
- b) Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs.
- c) Costs of providing COVID-19 testing, including serological testing.
- d) Emergency medical response expenses, including emergency medical transportation, related to COVID-19.
- e) Expenses for establishing and operating public telemedicine capabilities for COVID-19- related treatment.

2. Public health expenses such as:

- a) Expenses for communication and enforcement by State, territorial, local, and Tribal governments of public health orders related to COVID-19.
- b) Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and individuals with disabilities in community settings, and other public health or safety workers in connection with the COVID-19 public health emergency.
- c) Expenses for disinfection of public areas and other facilities, e.g., nursing homes, in response to the COVID-19 public health emergency.
- d) Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety.
- e) Expenses for public safety measures undertaken in response to COVID-19.
- f) Expenses for quarantining individuals.

3. Payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

4. Expenses of actions to facilitate compliance with COVID-19-related public health measures, such as:
  - a) Expenses for food delivery to residents, including, for example, senior citizens and other vulnerable populations, to enable compliance with COVID-19 public health precautions.
  - b) Expenses to facilitate distance learning, including technological improvements, in connection with school closings to enable compliance with COVID-19 precautions.
  - c) Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions.
  - d) Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions.
  - e) COVID-19-related expenses of maintaining state prisons and county jails, including as relates to sanitation and improvement of social distancing measures, to enable compliance with COVID-19 public health precautions.
  - f) Expenses for care for homeless populations provided to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.
5. Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency, such as:
  - a) Expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures.
  - b) Expenditures related to a State, territorial, local, or Tribal government payroll support program.
  - c) Unemployment insurance costs related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.
6. Any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the CARES Act eligibility criteria.



**EXHIBIT G**  
**CARES For One Broward Funding Plan**

DRAFT