

STATE OF ALABAMA §
MONTGOMERY, AL §

SUBAWARD GRANT AGREEMENT

This Subaward Grant Agreement (hereinafter "Agreement") is made by and entered into between the State Lands Division acting by and through its Commissioner of the State of Alabama Department of Conservation and Natural Resources (hereinafter "ADCNR") and the city of Foley (hereinafter "Subrecipient") (ADCNR and Subrecipient may be referred to collectively hereafter as "Parties"). Pursuant to this Agreement, ADCNR and Subrecipient agree as follows:

1. PURPOSE AND IDENTITY:

The purpose of this Agreement is to implement the provisions of Section 309 of the Coastal Zone Management Act of 1972, as amended, and to fulfill the objectives outlined in the Project Description (attached and hereinafter referred to as "Attachment A") in accordance with the provisions of this Agreement, all applicable laws, and requirements set forth in the Specific Award Conditions (attached and hereinafter referred to as "Attachment B"). Attachment A and Attachment B are hereby incorporated by reference and made a part of this Agreement and shall be considered as binding as any other provision of this Agreement.

2. AGREEMENT SCOPE OF SERVICES:

Subrecipient hereby agrees, in proper sequence and in the time herein specified, to perform all tasks, to obtain all permits, to pay all fees, and to provide all necessary labor, materials, equipment, services and facilities necessary to fulfill all terms and requirements associated with this Agreement according to and in compliance with all applicable laws, rules, regulations, executive orders, ordinances and codes of federal, state and local governments, including, but not limited to, as all requirements set forth pursuant to the Department of Commerce Financial Assistance Standard Terms and Conditions (April 2019) (hereby incorporated by reference and currently available at https://www.ntia.doc.gov/files/ntia/publications/departments_of_commerce_standard_terms_conditions_30_april_2019.pdf). Subrecipient further agrees and acknowledges that the ADCNR is relying upon the Subrecipient to stay current as to requirements and at all times maintain compliance with all requirements associated with performance under this Agreement and the underlying federal award.

3. FEDERAL AWARD INFORMATION:

Information as to the federal award associated with this Agreement per 2 C.F.R. § 200.332 includes the following:

| | | |
|---|--|--------------------------------------|
| 1 | Subrecipient name | City of Foley |
| 2 | Subrecipient's unique identity identifier | H1R1JL526DY5 |
| 3 | Federal Award Identification Number (FAIN) | NA20NOS4190183 |
| 4 | Federal Award Date (date of the award to the pass-through entity (PTE) from the Federal agency) | October 1, 2020 – September 30, 2023 |
| 5 | Subaward period of performance start and end date | Effective Date to September 30, 2023 |
| 6 | Amount of Federal Funds obligated by this action by the PTE | \$60,235 |
| 7 | Total amount of Federal Funds obligated to the subrecipient by the PTE, including the current subaward | \$60,235 |

| | | |
|----|--|---|
| 8 | The total amount of the Federal award committed to the subrecipient by the PTE | \$60,235 |
| 9 | Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA): | NOAA Award Document: NA22NOS4190163 Task 309-01: Community Resilience Initiative Project Title: Beaulah Heights Stormwater Management Plan – City of Foley |
| 10 | Name of the Federal awarding agency, PTE, and contact information for the PTE's awarding official | Federal Awarding Agency: U.S. Department of Commerce, National Oceanic Atmospheric Administration PTE: Alabama Department of Conservation and Natural Resources Christopher M. Blankenship, Commissioner 64 N. Union Street, Suite 468 Montgomery, AL 36130 (36104, Physical Zip) |
| 11 | CFDA number and name, dollar amount available under Federal Award | 11.419, Coastal Zone Management Administration Awards, \$1,660,000 |
| 12 | Identification of whether the award is for R&D | This is not a Research & Development Award. |
| 13 | Indirect cost rate for the Federal award (including the de minimis rate, if applicable) | 18.43% |
| 14 | Requirements imposed by the PTE on the subrecipient so that the Federal award is used in accordance with Federal statutes and the terms of the original grant award | See Attachment B, Specific Award Conditions |
| 15 | Any additional requirements that the PTE imposes on the subrecipient in order for the PTE to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports | See Section 9. Closeout of the Subaward Procedures; and See Section 13. Reporting and Final Products |
| 16 | The approved Federally recognized indirect cost rate, or if none exists, a rate negotiated between the PTE and the subrecipient, or a de minimis rate | 0.00% |
| 17 | A requirement that the PTE and auditors have access to the subrecipient's records and financial statements | See Section 12. Assurances, B. Records Access, Retention, and Audits |
| 18 | Appropriate terms and conditions concerning closeout of the subaward | See Section 9. Closeout of the Subaward Procedures |

4. AGREEMENT FUNDING AMOUNT:

ADCNR's funding commitment under this Agreement shall be within the budgetary limits as described herein and shall not exceed a total of sixty thousand two hundred thirty-five and no/100 Dollars (\$60,235).

5. SUBRECIPIENT CONTRIBUTION:

The Subrecipient shall provide a contribution in the amount of zero and no/100 Dollars (\$0.00) in cash as part of performance under this Agreement.

6. ALLOWABLE COSTS:

Costs allowed under this Agreement ("Allowable Costs") shall be determined in accordance with provisions of all applicable federal, state, and local laws and all other requirements of this Agreement which shall also include, but not be limited to, the following:

- A. Subrecipient agrees that any expenditure related to any type of lower tier contract or subaward support prior to execution of a written agreement and, as applicable, prior to approval for a lower tier agreement pursuant to Paragraph 10, shall not qualify as an Allowable Cost.
- B. Subrecipient shall immediately notify ADCNR in writing in the event, subsequent to execution of this Agreement, it receives other financial assistance to support or fund any activity related to the Scope of Services for this Agreement. Subrecipient further agrees that no costs funded by such other sources constitute Allowable Costs.
- C. As outlined in 2 C.F.R. § 200.458, Subrecipient's costs incurred prior to the execution of this Agreement but during the initial performance period outlined in the Grant Award letter are allowable costs to the extent necessary for the efficient and timely performance of the scope of work.
- D. Subrecipient acknowledges that reimbursement for indirect costs is contingent upon ADCNR's approval of Subrecipient's indirect cost rate following Subrecipient's submission of all necessary supporting documentation including, but not limited to, a federally approved Negotiated Indirect Cost Rate Agreement.
- E. Subrecipient agrees that all disbursed funds shall be expended solely for Allowable Costs and that the amount of any expenditure determined by ADCNR not to constitute an Allowable Cost shall be immediately returned to ADCNR in such manner as specified by ADCNR.

7. AGREEMENT TERM:

The Subrecipient shall commence performance of this Agreement on the date of the Commissioner's signature (Effective Date), and shall complete performance to the satisfaction of ADCNR no later than September 30, 2023 (hereinafter "Agreement Term").

8. REIMBURSEMENT PAYMENTS:

Disbursements pursuant to this Agreement shall be made on a reimbursement basis as follows:

- A. Invoices with required supporting documentation detailing the Allowable Costs to be reimbursed (including, but not limited to, applicable documentation as to compliance with procurement standards, non-federal cost share requirements, indirect cost rate, etc.) and a description of activities conducted during the invoiced period, shall be submitted to the following:

ADCNR/State Lands Division, Coastal Section
Atten: Amy King

31115 Five Rivers Blvd.
Spanish Fort, AL 36527
Voice: 251-621-1216 Amy.King@dcnr.alabama.gov

- B. Subrecipient may invoice no more frequently than monthly for reimbursement of Allowable Costs.
- C. Subrecipient acknowledges that due to annual State of Alabama fiscal year closeout procedures, ADCNR is not able to process payments in the month of September. Accordingly, requests for payment not submitted to ADCNR sufficiently in advance of September will not be processed prior to commencement of the closeout period. In addition, only Allowable Costs incurred during an active fiscal year performance period are eligible for reimbursement. Requests for payment not received by deadlines set by ADCNR which are intended to be sufficiently in advance of the October 30 deadline for each fiscal year performance period, will not be eligible for reimbursement. It is Subrecipient's sole responsibility to confirm applicable deadlines each year and to ensure timely submission of all requests for reimbursement.
- D. Subrecipient's final request for reimbursement of Allowable Costs under this Agreement must be received by ADCNR no later than October 30, 2023.
- E. While funding under this Agreement shall be on a reimbursement-only basis for Allowable Costs, if at any time any funds disbursed by ADCNR are for any reason not expended (or, for example, are returned/credited to Subrecipient subsequent to payment of an invoice), Subrecipient shall immediately notify ADCNR and return such funds in such timeframe and manner as specified by ADCNR.

9. CLOSEOUT OF THE SUBAWARD PROCEDURES:

Subrecipient shall promptly begin the closeout process upon the conclusion of the period of performance. Final invoices must be submitted to ADCNR in accordance with the time period specified in this Agreement. Deliverables include, but are not limited to, programmatic and financial reports. Final payments to Subrecipient may be withheld until all closeout documents and deliverables have been received by ADCNR. In particular, the Subrecipient must submit to ADCNR:

- A. A final invoice, marked "FINAL", no later than 30 days following termination of the Agreement.
- B. A final Performance Report.
- C. A final Federal Financial Report, form SF-425.
- D. A patent report, if applicable.
- E. A property report, if applicable.

10. LOWER TIER AGREEMENTS:

Except as otherwise stipulated in Attachment A, Subrecipient agrees it will perform all services related to the Agreement and will not engage a lower tier subrecipient or contractor to provide any services without prior written approval from ADCNR. Subrecipient acknowledges that costs related to services obtained without such prior written approval shall not constitute Allowable Costs.

11. CONTINGENCY / FUNDING AVAILABILITY / PRORATION:

Subrecipient acknowledges and agrees the commencement and continuation of the Agreement, as well as any funding to be disbursed pursuant to this Agreement, is contingent upon the availability and actual receipt by ADCNR of funds under the program funding designated for this Agreement. Subrecipient further acknowledges and agrees, in the event of the proration of the fund from which payment under

this Agreement is to be made, the Agreement will be subject to termination.

12. ASSURANCES:

The Subrecipient certifies compliance with the following assurances:

A. DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS: The Subrecipient and its principals, to the best of its knowledge and belief,

- i. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- ii. have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property;
- iii. are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph 12. A. ii of this certification; and
- iv. have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.

B. RECORDS ACCESS, RETENTION, AND AUDITS:

- i. Access to Records: The Inspector General of the Department of Commerce, the Comptroller General of the United States, the Alabama Department of Examiners of Public Accounts, ADCNR, or any of their authorized auditors and representatives, shall have the right to access any pertinent books, documents, papers, and records of the Subrecipient, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. This right also includes timely and reasonable access to the Subrecipient's personnel for the purpose of interview and discussion related to such documents. See 2 C.F.R. § 200.336.
- ii. Record Retention: Subrecipient shall maintain all records and accounts associated with this Agreement, including, but not limited to, property, personnel, and financial records, in accordance with ADCNR's records retention policy (https://archives.alabama.gov/officials/rdas/conservation_rda.pdf) and 2 C.F.R. § 200.333. Such shall be retained for a minimum of six (6) years after the date of final payment under this Agreement or as otherwise required pursuant to the Department of Conservation and Natural Resources Records Disposition Authority available at https://archives.alabama.gov/officials/rdas/conservation_rda.pdf, whichever period expires later, for inspection by any of the above entities, and copies thereof shall be furnished if requested.
- iii. Audit Requirements: Subrecipient shall follow all audit requirements under this Agreement, and applicable Federal, State, and local laws including, but not limited to, 2 C.F.R. § 200, Subpart F. Subrecipient shall also ensure applicable lower tier compliance. Pursuant to Alabama Act 94-414, the Subrecipient must forward a copy of every audit report issued as a result of this Agreement where public funds are received and/or disbursed to: Department of Examiners of Public Accounts; P.O. Box 302251; Montgomery, AL 36130-2251; Atten: Audit Report

Repository.

- iv. Survival: The foregoing access, record retention, and audit requirements shall survive the Agreement Term and remain a continuing obligation of the Subrecipient.

C. CONFLICT OF INTEREST:

Subrecipient by his/her/its signature, certifies to the best of his/her/its knowledge and belief, no conflict of interest (or appearance of conflict), personal, or organizational, in any manner existed or now exists which has, has had, or may have any effect on this Agreement or any activity/expenditure associated with this Agreement. By execution of this Agreement, Subrecipient certifies that a written conflict of interest policy consistent with 2 C.F.R. § 200.318 covering each activity associated with or funded pursuant to this Agreement is currently in effect and at all times will remain in effect during the Agreement Term. In the event Subrecipient subsequently cannot maintain this certification during the Agreement Term, Subrecipient shall immediately notify ADCNR in writing. Subrecipient shall also immediately suspend any related expenditures/activities until the potential issue has been resolved to ADCNR's satisfaction and Subrecipient receives written approval from ADCNR to resume such expenditures/activities.

D. POLITICAL ACTIVITY:

The Subrecipient shall comply with the Hatch Act (5 U.S.C. 1501 et seq.) regarding political activity by public employees or those paid with federal funds.

E. RIGHTS TO INVENTIONS MADE BY SMALL BUSINESS FIRMS AND NONPROFIT ORGANIZATIONS:

The Subrecipient shall comply with Public Law 96-620, amended Chapter 18 of Title 35, United States Code regarding patent rights in inventions made with Federal funding by nonprofit organizations and small business firms.

F. NONDISCRIMINATION:

Subrecipient will comply with all State and Federal statutes relating to nondiscrimination. These include but are not limited to:

- i. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin;
- ii. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex;
- iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps;
- iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age;
- v. The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
- vi. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- vii. §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-

- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- viii. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; and, as applicable:
- ix. Title II of the Americans with Disabilities Act of 1990, as amended and as applicable;
- x. USDOJ regulations at 43 C.F.R. Part 17 and 41; and
- xi. Presidential Executive Order 13166 (Limited English Proficiency), as well as
- xii. Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and
- xiii. The requirements of any other nondiscrimination statute(s) which may apply to the application.

G. TREATMENT OF DISPLACED PERSONS:

The Subrecipient shall comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (P.L. 91-646), which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs, regardless of Federal participation in purchases.

H. LOBBYING ACTIVITY:

- i. Compliance: Subrecipient shall comply with 2 C.F.R. §§ 200.450 and 200.454, which incorporates the provisions of 31 U.S.C. § 1352; OMB guidance and notices on lobbying restrictions; Department of Commerce regulations published at 15 C.F.R. Part 28; and all other applicable Federal, State and local laws related to lobbying activities. Subrecipient further acknowledges and agrees it is responsible for ensuring compliance as to subgrantees and contractors.
- ii. Certification: Subrecipient hereby certifies, by execution of this Agreement, that no Federal appropriated funds have been paid or will be paid, by or on behalf of Subrecipient, 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.
- iii. Lower Tier Certification: Subrecipient further agrees to include the above certification in all applicable lower tier agreements.
- iv. Notification: If subsequent to execution of this Agreement, Subrecipient becomes aware of any information indicating any certification potentially is no longer accurate or indicating any potential non-compliance issue, it shall immediately notify ADCNR in writing. Subrecipient shall also immediately suspend any related expenditures/activities until the potential issue has been resolved to ADCNR's satisfaction and Subrecipient receives written approval from ADCNR to resume such expenditures/activities.

I. ENVIRONMENTAL STANDARDS:

The Subrecipient shall comply with environmental standards which may be prescribed pursuant to the following:

- i. Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;

- ii. Notification of violating facilities pursuant to EO 11738;
- iii. Protection of wetlands pursuant to EO 11990;
- iv. Evaluation of flood hazards in floodplains in accordance with EO 11988;
- v. Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended (16 U.S.C. §§ 1451 et seq.);
- vi. Conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.);
- vii. Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and
- viii. Protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

J. FLOOD INSURANCE:

The Subrecipient shall comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) requiring participation in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

K. NATIONAL WILD AND SCENIC RIVER SYSTEM:

The Subrecipient shall comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

L. NATIONAL HISTORIC PRESERVATION:

The Subrecipient shall comply with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a-1 et seq.).

M. DRUG FREE WORKPLACE:

Subrecipient shall comply with the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C § 8102), and Department of Commerce implementing regulations at 2 C.F.R. Part 1329, which require that the Subrecipient as a non-federal entity take certain actions to provide a drug-free workplace.

N. TITLE VI AND EQUAL EMPLOYMENT OPPORTUNITY:

The Subrecipient will comply with Title VI of the Civil Rights Act of 1964 (88-352) and all requirements issued pursuant to that title. In accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this contract.

There shall be no discrimination against any employee who is employed in the work covered by this Agreement, or against any applicant for such employment, because of race, color, religion, sex, national origin, age or disability covered by the Americans with Disabilities Act. This provisionshall 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 Subrecipient shall insert a similar provision in all subcontracts for services covered by this Agreement.

O. REDUCING TEXT MESSAGING WHILE DRIVING:

Pursuant to Executive Order 13513 (Federal Leadership on Reducing Text Messaging While Driving), the Subrecipient is encouraged to adopt and enforce policies that ban text messaging while driving, including conducting initiatives of the type in section 3(a) of the Order.

13. REPORTING AND FINAL PRODUCTS:

- A. The Subrecipient shall submit to ADCNR periodic reports on programmatic and fiscal operations. These reports shall be submitted in the form and manner determined by ADCNR. It is expressly agreed that full compliance with programmatic, fiscal, and reporting requirements is a condition for the continuation of funds under this Agreement. Failure to submit such reports in a timely manner could result in the termination or suspension of funds.
- B. The Subrecipient agrees to furnish one (1) electronic copy of performance progress reports due on April 10 and October 10 of each year this Agreement is in effect. A final report is due ten days after the close of the Agreement if the closing date is other than March 31 or September 30. These reports shall include, but not be limited to the following:
 - i. Activities undertaken during the period;
 - ii. Difficulties encountered;
 - iii. Changes needed; and
 - iv. Observations and/or recommendations.
- C. The Subrecipient agrees to deliver all final products by closing date of this Agreement. For publishable products such as data, reports or other documents, the Subrecipient agrees to deliver one (1) paper copy and one (1) electronic copy in the format specified by ADCNR in AttachmentB.
- D. All reports shall be submitted to the following:

ADCNR/State Lands Division, Coastal Section
 Atten: Amy King
 31115 Five Rivers Blvd.
 Spanish Fort, AL 36527
 Voice: 251-621-1216 Amy.King@dcnr.alabama.gov

14. PROCUREMENT:

Subrecipient shall conduct all procurement actions consistent with all applicable Federal, State, and local requirements including, but not limited to, provisions of 2 C.F.R. §§ 200.318 through 200.326.

15. PROPERTY RIGHTS AND STANDARDS:

The provisions of 2 C.F.R. §§ 200.310 through 200.316 apply to Federal property rights and the acquisition of real property, equipment, supplies and intangible property to the extent authorized by this Agreement.

16. PROTECTIONS FOR WHISTLEBLOWERS:

In accordance with 41 U.S.C. § 4712, neither the Subrecipient or any of its contractors (vendors), or subcontractors may discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing information to a person or entity listed below that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant:

- A. A Member of Congress or a representative of a committee of Congress;
- B. An Inspector General;
- C. The Government Accountability Office;
- D. A Federal employee responsible for contract or grant oversight or management;
- E. An authorized official of the Department of Justice or other law enforcement agency;
- F. A court or grand jury; and/or
- G. A management official or other employee of the Subrecipient, vendor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

17. NO AGENCY:

By entering into this Agreement, Subrecipient understands and agrees it is not an agent of the State, its officers, employees, agents or assigns. The Subrecipient is an independent entity from the State and nothing in this Agreement creates an agency relationship between the Parties.

18. FINANCIAL MANAGEMENT SYSTEM:

The financial management system of the Subrecipient must provide all information required by 2 C.F.R. § 200.02(b).

19. NOT A DEBT OF THE STATE:

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article XI, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this Agreement shall contravene any statute or constitutional provision or amendment, either now in effect or which may, during the course of this Agreement, be enacted, then that conflicting provision in the Agreement shall be deemed null and void.

20. TERMINATION:

In addition to other termination provisions provided herein, this Agreement may be terminated as follows:

- A. If, in the determination of ADCNR, Subrecipient fails to fulfill in timely and proper manner its obligations under this Agreement or violates any of the covenants, agreements, or stipulations of this Agreement ADCNR, in addition to all other available remedies, shall thereupon have the right to terminate this Agreement by giving written notice to Subrecipient of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date. In that event,

at the option of ADCNR, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by Subrecipient under this Agreement shall become the property of ADCNR.

- B. ADCNR may terminate this Agreement at any time without cause by giving written notice to Subrecipient of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date. In that event, at the option of ADCNR, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by Subrecipient under this Agreement shall become the property of ADCNR.
- C. If the Agreement is terminated by ADCNR, as provided herein, Subrecipient shall promptly submit a statement detailing the actual services performed and associated Allowable Costs to date of termination. The Subrecipient shall immediately return any remaining funds to ADCNR in such timeframe and manner as specified by ADCNR.

21. PUBLICATIONS:

Any and all publications produced in whole or in part under this Agreement shall have prior ADCNR approval and contain proper acknowledgements as stipulated in Attachment B.

22. ALTERNATIVE DISPUTE RESOLUTION:

In the event of any dispute between the Parties, senior officials of both Parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail and the dispute involves the payment of money, a party's sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama. For any and all other disputes arising under the terms of this Agreement which are not resolved by negotiation, the Parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center for Dispute Resolution of the Alabama State Bar.

23. NOT ENTITLED TO MERIT SYSTEM:

Subrecipient understands and agrees that nothing in this Agreement entitles Subrecipient or its employees or agents to any benefits of the Alabama State Merit System.

24. BOYCOTT:

In compliance with Act 2016-312, Subrecipient hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which the State can enjoy open trade.

25. AMENDMENTS:

ADCNR may from time to time, request amendments to various provisions of this Agreement. Such amendments, which are mutually agreed upon between ADCNR and Subrecipient, must be in writing and approved by all signatory/authorities prior to becoming effective.

26. ASSIGNMENT:

Subrecipient shall not assign, transfer, pledge, mortgage, encumber or hypothecate this Agreement, or any rights to, interests therein or claims arising thereunder, to any party or Parties, without the express prior written approval of ADCNR.

27. IMMIGRATION COMPLIANCE:

By signing this Agreement, the Subrecipient affirms, for the duration of the Agreement, that it will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, if found to be in violation of this provision, Subrecipient shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

28. INDEMNIFICATION AND HOLD HARMLESS:

- A. Subrecipient agrees to protect, defend, indemnify, save and hold harmless the State of Alabama and ADCNR, and any and all of their officers, agents, and employees, from and against any and all claims, demands, expense and liability arising out of injury or death to any person, or the damage, loss or destruction of any property, which may occur or in any way grow out of, any act or omission of ADCNR, its officers, agents, and employees, the Subrecipient, and the Subrecipient's agents, servants, employees, and subcontractors. Subrecipient's obligation and duty to protect, defend, indemnify, save and hold harmless ADCNR and its agents and employees shall include and extend to any and all costs, expenses, attorney fees, judgements, awards, and settlements incurred by the Parties or their agents or employees as a result of any claims, demands, and/or causes of action arising out of the performance of the obligations or objectives set forth herein. Subrecipient agrees to investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claims are groundless, false or fraudulent.
- B. Subrecipient further agrees it releases from liability and waives its right to sue the State of Alabama and ADCNR, and their officers, agents, and employees, regarding any and all claims resulting in any physical injury, economic loss, or other damage or loss as a result of or related in any way to the Agreement.
- C. The provisions of this Paragraph 28 shall survive the Agreement Term and remain a continuing obligation of Subrecipient.

29. NOTICE:

Contact information of Parties for purposes of providing notice pursuant to the terms of this Agreement will be as set forth below, unless and until updated information is provided:

To ADCNR:

Alabama Department of Conservation and Natural Resources
 Atten: Christopher M. Blankenship, Commissioner
 64 N. Union Street, Suite 468
 Montgomery, AL 36130 (36104, Physical Zip)

All notices required to be given to the Subrecipient under this Agreement, applicable law or administrative rules shall be sufficient if sent by U.S. mail or overnight courier to the following address:

To SUBRECIPIENT:

City of Foley
 Atten: Ralph Hellmich, Mayor
 407 E. Laurel Avenue
 Foley, AL 36535

30. CHOICE OF LAW / VENUE:

Subrecipient agrees that the laws of the State of Alabama shall govern and be controlling and binding over the provisions of the rights herein granted, and that, notwithstanding any provision to the contrary, the venue of any legal action brought in connection herewith shall be the Circuit Court of Montgomery County, Alabama.

31. ENFORCEMENT OF RIGHTS AND OBLIGATIONS:

Failure of ADCNR to strictly or promptly enforce the rights and obligations herein shall not operate as a waiver thereof.

32. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon the successors and assigns of the respective Parties hereto.

33. SEVERABILITY:

In the event any terms or provisions of this Agreement are deemed to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms or provisions hereof.

34. SUPERSEDES:

ADCNR and Subrecipient represent that this Agreement supersedes all proposals, oral and written, all previous contracts, agreements, negotiations, and all other communications between the Parties with respect to the subject matter hereof.

35. GOVERNING LAW / SOVEREIGN IMMUNITY:

This Agreement and related matters shall be construed in accordance with and governed by the substantive and adjective laws of the State of Alabama, including but not limited to the State's right of immunity from suit as provided by Article 1 Section 14 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, without regard to its conflicts of law provisions.

36. FORCE MAJEURE:

In the case of a Force Majeure Event as defined herein, ADCNR reserves the right to immediately terminate the Agreement without prior notice to Subrecipient. Should this occur, neither party shall be liable for or be considered in breach of this Agreement due to any failure to perform its obligations as a result of a cause beyond its control, including, without limitation: (i) acts of God; (ii) flood, fire or explosion; (iii) actions, embargoes, quarantines, or blockades in effect on or after the date of this Agreement; (v) national, state, or regional emergency whether ongoing or occurring on or after the date of this Agreement; (vi) public health emergencies, outbreak, epidemic, or pandemic, whether ongoing or occurring on or after the date of this Agreement, including, without limitation, COVID-19; or (ix) any other event which is beyond the reasonable control of such party (each of the foregoing, a "Force Majeure Event").

37. REVIEW AND EXECUTION:

The Parties acknowledge and agree that each party has had the opportunity to be represented by counsel in connection with reviewing and executing this Agreement. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguity in this Agreement against the party that drafted it, has no application and is expressly waived.

38. DAVIS-BACON WAGES:

As applicable, Davis-Bacon prevailing wage rates (as determined by the Department of Labor for applicable areas) must be paid for all construction projects.

39. BUY AMERICA ACT:

The State and each Subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or Subrecipient, to purchase only steel, iron, and manufactured products produced in the USA with Federal funds, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification to and approved by the Secretary of Transportation.

[signatures on following page]

IN WITNESS WHEREOF, ADCNR and the Subrecipient have executed this Agreement as of the date of ADCNR Commissioner's signature below ("Effective Date"):

ALABAMA DEPARTMENT OF CONSERVATION
AND NATURAL RESOURCES

Recommended:

Patricia Powell McCurdy
Director
State Lands Division

Christopher M. Blankenship
Commissioner

Date: _____

CITY OF FOLEY

Ralph Hellmich
Mayor

FY2020/2021
Task 309 – 01
City of Foley

PROJECT DESCRIPTION

TITLE: BEAULAH HEIGHTS STORMWATER MANAGEMENT PLAN – CITY OF FOLEY

Description

The Alabama Department of Conservation and Natural Resources, State Lands Division, Coastal Section will provide funding to the City of Foley to develop a stormwater management plan for the community of Beaulah Heights.

Products/Outcomes

1. Develop a Stormwater Management Plan

The city will develop a stormwater plan for the Beaulah Heights community to identify areas for stormwater management to include areas for stormwater storage and conveyance to Wolf Creek. This will also include areas for the stormwater to be treated for non-point source pollutants.

The plan will include assessing and documenting the risks and vulnerability to flooding in this community through review of existing data and the development of maps/GIS or similar data to develop a project to reduce flooding through construction of a stormwater system. Furthermore, the plan will identify sources of pathogens to the stormwater system and propose projects for pathogen reduction.

Outreach for the project will consist of developing a steering committee with the community residents. Initially there will be discussions of the flooding and septic tank issues. Maps will be developed to pinpoint flood prone areas from stormwater. Following the development of the stormwater plan, there will be community meetings to discuss the plan and projects developed. The plan will be further reviewed by City Public Works to determine if city forces can implement some of the projects immediately.

2. Project Timeline:

Quarter 1: Gather data and identify needs for the city staff and gain community support

Quarter 2: Draft plan (deliverable) identifying potential stormwater management measures

Quarter 3: Finalize draft and gain community input

Quarter 4: Finalize plan (deliverable) and community outreach with printed and electronic information (deliverable)

3. Budget and Invoicing

All non-federal match shall be provided by the city in the amount below as cash match. All invoices must be received within thirty (30) days of the close of any fiscal year (September 30) and final invoices must be received within thirty (30) days of the close of the agreement.

| Category | Federal | Non-Federal (Foley) | Total |
|--------------------|-----------------|----------------------------|-----------------|
| <i>Subcontract</i> | \$60,235 | \$0 | \$60,235 |
| Total | \$60,235 | \$0 | \$60,235 |

Specific Award Conditions

CITY OF FOLEY

ADCNR Grant# FOLEY-CZM-309-21-1

These conditions are part of the NOAA Specific Award Conditions. Please review carefully.

1) ACKNOWLEDGEMENTS

The cover of the title page of all reports, studies, or other documents, published or distributed electronically or hardcopy, and acknowledgement pages of websites and webpages, that are supported in whole or in part by this award or any subawards shall acknowledge the financial assistance provided by the Alabama Department of Conservation and Natural Resources, State Lands Division and by the Coastal Zone Management Act of 1972, as amended, administered by the Office for Coastal Management, National Oceanic and Atmospheric Administration. Wording for the acknowledgement is as follows:

Funding for this project provided by the Alabama Department of Conservation and Natural Resources, State Lands Division, Coastal Section, in part, by a grant from the National Oceanic and Atmospheric Administration, Office for Coastal Management, NOAA Award # 20NOS4190183.

2) ENVIRONMENTAL DATA AND PUBLICATIONS

- A. Data Sharing: Environmental data collected or created under this Grant, Cooperative Agreement, or Contract must be made publicly visible and accessible in a timely manner, free of charge or at minimal cost that is no more than the cost of distribution to the user, except where limited by law, regulation, policy, or national security requirements. Data are to be made available in a form that would permit further analysis or reuse: data must be encoded in a machine-readable format, preferably using existing open format standards; data must be sufficiently documented, preferably using open metadata standards, to enable users to independently read and understand the data. The location (internet address) of the data should be included in the final report. Pursuant to NOAA Information Quality Guidelines, http://www.cio.noaa.gov/services_programs/IQ_Guidelines_103014.html, data should undergo quality control (QC) and a description of the QC process and results should be referenced in the metadata. Failure to perform quality control does not constitute an excuse not to share data. Data without QC are considered "experimental products" and their dissemination must be accompanied by explicit limitations on their quality or by an indicated degree of uncertainty.
- B. Timeliness: Data accessibility must occur no later than publication of a peer-reviewed article based on the data, or two years after the data are collected and verified, or two years after the original end date of the grant (not including any extensions or follow-on funding), whichever is soonest, unless a delay has been authorized by the NOAA funding program.
- C. Disclaimer: Data produced under this award and made available to the public must be accompanied by the following statement: "These data and related items of information have not been formally disseminated by NOAA, and do not represent any agency determination, view, or policy."
- D. Failure to Share Data: Failing or delaying to make environmental data accessible in accordance with the submitted Data Management Plan, unless authorized by the NOAA Program, may lead to enforcement actions, and will be considered by NOAA when making future award decisions. Funding recipients are responsible for ensuring these conditions are also met by sub-recipients and subcontractors.
- E. Funding acknowledgement: Federal funding sources shall be identified in all scholarly publications. An Acknowledgements section shall be included in the body of the publication stating the relevant Grant Programs and Award Numbers. In addition, funding sources shall be reported during the publication submission process using the FundRef mechanism (<https://www.crossref.org/services/funder-registry/>) if supported by the Publisher.
- F. Manuscript submission: The final pre-publication manuscripts of scholarly publications produced with NOAA funding shall be submitted to the NOAA Institutional Repository at <https://repository.library.noaa.gov/> after acceptance, and no later than upon publication, of the paper by a journal. NOAA will produce a publicly-visible catalog entry directing users to the published version of the article. After an embargo period of one year after publication, NOAA shall make the manuscript itself publicly visible, free of charge, while continuing to direct users to the published version of record.
- G. Data Citation: Publications based on data, and new products derived from source data, must cite the data used according to the conventions of the Publisher, using unambiguous labels such as Digital Object Identifiers (DOIs). All

data and derived products that are used to support the conclusions of a peer-reviewed publication must be made available in a form that permits verification and reproducibility of the results.

- H. Failure to perform quality control does not constitute an excuse not to share data. Data without QC are considered "experimental products" and their dissemination must be accompanied by explicit limitations on their quality or by an indicated degree of uncertainty.

3) SAFETY

The Subrecipient is responsible for safety in the project, including the safety of project personnel, associates, visitors, and volunteers.

4) IMPLEMENTING PROJECT ACTIVITIES

Prior to implementing a project activity developed as part of a planning activity funded under this agreement, the Subrecipient must ensure that the work will be conducted in accordance with appropriate Federal, state, and local laws.

5) FIELD WORK

The Subrecipient must ensure that any field work conducted as part of education, training or volunteer programs/activities will be conducted in accordance with appropriate Federal, state and local laws and will follow recognized best practices for minimizing impacts to the human and natural environment.

6) EQUIPMENT PURCHASES

Requests for purchase of equipment not specified in the Scope of Services must be submitted in writing to State Lands Division and approved by State Lands Division.

7) LOBBYING

No funds may be used for the payment of membership dues to any entity to engage in lobbying activities, as provided in 2 CFR §§ 200.450 and 200.454.

8) UNOCCUPIED AIRCRAFT SYSTEMS

If this project involves Unoccupied Aircraft Systems (UAS or drone technology), the Subrecipient is responsible for complying with NOAA's UAS requirements identified in the April 2017 Memo from NOAA's Office of Marine and Aviation Operations (OMAO) prior to the expenditure of funds on UAS projects in National Estuarine Research Reserves. In addition, for any UAS activities in a project, it is the responsibility of the Subrecipient to ensure it has complied with applicable Federal, state, local laws and have the appropriate permits in hand prior to conducting drone operations.

9) SEXUAL ASSAULT AND HARASSMENT - VESSELS

If the use of a vessel under NOAA contract, order, grant, or cooperative agreement is involved and the non-Federal entity employees are anticipated to be crew members aboard the vessel, this award is subject to the NOAA Sexual Assault and Sexual Harassment Prevention and Response Policy Applicable to Financial Assistance Awards involving the use of a vessel under NOAA contract, order, grant, or cooperative agreement (May2018). The full specific award condition is at http://www.noaa.gov/grants/vessel_assault_policy.html.

10) DOCUMENTATION FORMATS

All final documentation prepared under this agreement will be submitted electronically in any of the following formats (or earlier versions of the formats): Microsoft Word 2010, Microsoft Excel 2010, Microsoft Access 2010, Microsoft Publisher 2010, Microsoft PowerPoint 2010; Adobe Acrobat 8.0. Exceptions to the document submission protocols and digital formats listed above must be pre-approved by State Lands Division.

11) NO-COST EXTENSION – PRIOR APPROVAL REQUIRED

A no-cost extension must be submitted in writing to the State Lands Division 45 or more days prior to the agreement term end date. No-cost extensions may not be exercised merely for the purpose of using unobligated funds. Approval will be made by State Lands Division based on the following requirements:

- The written request must clearly state why the extension is needed, the remaining activities that need to be completed, and what funds are still available to support the activity.
- The request to extend the agreement term should be submitted to State Lands Division at least 45 days prior to the expiration of the agreement. Failure to meet this requirement is sufficient grounds for rejection of the request.
- Any extension request submitted to State Lands Division after the expiration of the agreement will be denied.

If the extension request is approved, this action will result in an amendment to the agreement. Tasks and notifications will be generated and routed to the Subrecipient and ADCNR for full execution of the amendment.