

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

Meeting Date: ~~November 17, 2020~~ *December 8, 2020* Consent Regular
 Ordinance Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

- A) **receive and file:** An emergency agreement with Jupiter Stadium, Ltd. (JSL) for purchases and improvements to the Roger Dean Chevrolet Stadium (Stadium) for COVID-19 (“Agreement”) in a not to exceed amount of \$615,670 through December 30, 2020; and
- B) **ratify** the signature of the County Administrator for the above emergency Agreement related to COVID-19.

Summary: The Governor of the State of Florida issued a Public Health Emergency on Sunday, March 1, 2020, and a State of Emergency on Monday, March 9, 2020 due to the COVID-19 pandemic. Palm Beach County also issued a local state of emergency on Friday, March 13, 2020. The County owns the Stadium in Jupiter which is operated, managed and used by JSL, a partnership between two MLB teams, the St. Louis Cardinals and the Miami Marlins. Staff has worked with JSL to identify purchases and improvements to the Stadium necessary due to COVID-19 that were not budgeted for which will further a safe environment at the Stadium for visitors. The Agreement provides a not to exceed amount of \$615,670 for purchases and improvements due to COVID-19 through December 30, 2020. Due to the Declaration of Emergency issued by Palm Beach County, the County Administrator has the ability to enter into the Agreement. Pursuant to section 2-80.22 of the Equal Business Opportunity (EBO) Ordinance and the County PPM CW-O-043, this contract is exempt from the EBO requirements. The funding source for this agreement is the Coronavirus Aid, Relief, and Economic Security (CARES) Act Relief Fund. **(FDO Admin) Countywide (MWJ)**

Background & Justification: In 1996, the County entered into a Developer Agreement (R96-879D, as amended) and Sport Facility Use Agreement (R96-877D as amended) with JSL for the use and operation of the Stadium including the adjacent two-team baseball training facilities, clubhouses, playing fields, on-site parking areas and related structures and improvements, both of which agreements have been amended several times over the years. The First Restated Sports Facility Use Agreement (R2011-0694) replaced the original Sports Facility Use Agreement and extended the term to April 2027. The extension of the Use Agreement was instrumental in retaining not only the St. Louis Cardinals and Miami Marlins, the teams which comprise JSL, but the Mets in St. Lucie. The existence of the three teams in close proximity to each other was the driving force behind attracting the Houston Astros and Washington Nationals to the area and securing spring training on the Treasure Coast for another 30 years. MLB Spring Training brings an immense economic and tourism impact to Palm Beach County. The County’s baseball facilities also provide year-round economic tourism impacts by hosting regional and national baseball tournaments. Staff has worked closely with JSL to identify purchases and improvements to the Stadium necessary due to COVID-19 that will further a safe environment at the Stadium for visitors.

Attachments:
Agreement

Recommended By: *[Signature]* *10/27/20*
Department Director Date

Approved By: *[Signature]* *11/16/2020*
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2021	2022	2023	2024	2025
Capital Expenditures					
Operating Costs	\$615,670				
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	<u>\$615,670</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
# ADDITIONAL FTE POSITIONS (Cumulative)					

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

Budget Account No:
 Fund 1160 Dept 410 Unit CV01 Object 4900
 Fund _____ Dept _____ Unit _____ Revenue Source _____


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

Coronavirus Aid, Relief, and Economic Security (CARES) Act Relief Fund.

C. Departmental Fiscal Review: 


III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:


 OFMB 10/31/2020


 Contract Development and Control
11-12-2020

B. Legal Sufficiency:


 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

**EMERGENCY AGREEMENT FOR PURCHASES AND
IMPROVEMENTS TO ROGER DEAN CHEVROLET STADIUM
FOR COVID-19**

October **THIS AGREEMENT** ("Agreement") is made and entered into this *23rd* day of *October*, 2020, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY," and Jupiter Stadium, Ltd., a Florida limited partnership, hereinafter referred to as "LIMITED PARTNERSHIP".

RECITALS:

WHEREAS, COVID-19, a respiratory illness caused by a virus that spreads rapidly from person to person and may result in serious illness or death, constitutes a clear and present threat to the lives, health, welfare, and safety of the people of Palm Beach County; and

WHEREAS, on March 9, 2020, Governor Ron DeSantis issued Executive Order 20-52 declaring a State of Emergency for the State of Florida as a result of the COVID-19 pandemic; and

WHEREAS, on March 13, 2020, pursuant to Section 252.38(3)(a)(5), Florida Statutes, Palm Beach County declared a State of Emergency as a result of the COVID-19 pandemic, which has since been extended in accordance with applicable law; and

WHEREAS, the COUNTY and LIMITED PARTNERSHIP have previously entered into that certain agreement known as the First Restated Sports Facility Use Agreement dated May 3, 2011 (R2011-0694) ("Use Agreement") under which the Limited Partnership uses, operates and maintains the baseball stadium commonly known as the Roger Dean Chevrolet Stadium and the adjoining baseball training complex (collectively, the "Stadium Complex"), all of which is owned by the COUNTY; and

WHEREAS, the COUNTY has determined that immediate emergency purchases and improvements are needed for the Stadium Complex to protect the health, safety, welfare, and interests of the citizens of Palm Beach County, Florida, as well as the public in general; and

WHEREAS, the CARES Act provides funding to cover expenses that are necessary expenditures incurred due to COVID-19 which expenses are not accounted for in the most recent COUNTY budget; and

WHEREAS, this Agreement is exempt from federal, state and local laws and ordinances which require competitive bidding, and related County policies and procedures as an Emergency; and

WHEREAS, both parties now desire to enter in to this Agreement wherein the terms concerning the emergency purchases and improvements for the Stadium Complex related to COVID19 are set forth.

NOW THEREFORE, in accordance with the mutual promises contained herein, the COUNTY and LIMITED PARTNERSHIP agree as follows:

ARTICLE 1 - RECITALS

The parties affirm and incorporate the recitals set forth above.

ARTICLE 2 – SERVICES

The LIMITED PARTNERSHIP agrees to make all emergency purchases and improvements for the Stadium Complex as specifically set forth in **Exhibit A**, which is attached hereto and incorporated herein.

For improvements to the Stadium Complex, the LIMITED PARTNERSHIP agrees to follow all of the approval conditions set out on **Exhibit B**, which is attached hereto and incorporated herein.

The COUNTY'S representative/liaison during the performance of this Agreement shall be Isami Ayala-Collazo, Deputy Director Facilities Development & Operations, telephone no. 561.233.1447 or email IAyalaCollazo@pbcgov.org.

The LIMITED PARTNERSHIP'S representative/liaison during the performance of this Agreement shall be Mike Bauer, whose title is General Manager, telephone no. 561-630-1840 or email mike@rogerdeanchevroletstadium.com.

ARTICLE 3 - SCHEDULE

Upon full execution of this Agreement, the LIMITED PARTNERSHIP shall begin work and continue working on the purchases and improvements for the Stadium Complex in accordance with the completion schedule referenced in **Exhibit A**. Regardless of the schedule for completion set forth in **Exhibit A**, all work and improvements shall be completed by LIMITED PARTNERSHIP by December 15, 2020, and all payments for all work and improvements shall be made by COUNTY by December 30, 2020.

ARTICLE 4 - PAYMENTS TO LIMITED PARTNERSHIP

Not to Exceed Amount. The County shall timely pay any and all costs (including applicable taxes) paid by LIMITED PARTNERSHIP for work, purchases and improvements for the Stadium Complex as set forth in **Exhibit A**. The County shall make such payments directly to the LIMITED PARTNERSHIP upon the completion of each specific improvement identified in **Exhibit A** within the timeframe required hereunder and in accordance with the requisition process outlined below. Unless agreed to in writing by COUNTY, the COUNTY shall only be required to pay for costs paid by the LIMITED PARTNERSHIP that do not exceed the cost for the specific

improvement identified in **Exhibit A** and do not exceed \$615,670.00 in total costs for all purchases and improvements identified in **Exhibit A**.

Requisition Process. On or before the fifth (5th) Day of each month, the LIMITED PARTNERSHIP shall be entitled to submit to the COUNTY a payment certification and requisition for costs (including applicable taxes) incurred in making the improvements, which shall include a copy of the vendor's invoice or the consultant's or contractor's application for payment, certified by the LIMITED PARTNERSHIP in accordance with the requirements of **Exhibit C**, which is attached hereto and incorporated herein. The LIMITED PARTNERSHIP agrees to deliver to the COUNTY such supporting materials as the COUNTY may reasonably require, and which the LIMITED PARTNERSHIP has reasonable access to obtain. Unless the COUNTY disputes all or a portion of any charge set forth in said payment certification and requisition, the COUNTY shall make payments to the LIMITED PARTNERSHIP in the amounts due within 30 days from the date of receipt of a complete payment certification and requisition from the LIMITED PARTNERSHIP. To the extent that the County disputes all or part of the payment requested by the payment certification and requisition, the County shall make partial payment of the non-disputed amount and provide notice of the disputed amount and reason for the dispute to the LIMITED PARTNERSHIP within ten (10) days of receipt of the payment certification and requisition.

ARTICLE 5 – TERMINATION

The LIMITED PARTNERSHIP shall be in default with respect to any specific improvement identified in **Exhibit A** if LIMITED PARTNERSHIP fails to perform the obligations required of the LIMITED PARTNERSHIP under this Agreement with respect to such improvement within the timeframe required in **Article 3**. If the LIMITED PARTNERSHIP defaults, the LIMITED PARTNERSHIP shall reimburse the COUNTY for any funds received corresponding to any and all improvements not completed within the timeframe required in **Article 3**.

ARTICLE 6 - PERSONNEL

The LIMITED PARTNERSHIP represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. LIMITED PARTNERSHIP warrants that all services shall be performed by fully qualified and properly licensed personnel, who are authorized or permitted under state and local law to perform such services. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

ARTICLE 7 - TAXES

Subject to the requisition process outlined in Article 4 hereof, the LIMITED PARTNERSHIP shall pay all taxes, levies, duties and assessments of every nature which may be applicable to any work under this Agreement. The Agreement sum and any agreed variations thereof shall include all taxes imposed by law. LIMITED PARTNERSHIP shall make any and all payroll deductions required by law. LIMITED PARTNERSHIP herein indemnifies and holds the COUNTY harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

The indemnity provision of this section shall survive the termination or expiration of this Agreement.

ARTICLE 8 - INDEMNIFICATION

The LIMITED PARTNERSHIP agrees to protect, defend, reimburse, indemnify and hold the COUNTY and its respective agents, employees and elected officials free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including attorney's fees at trial and appellate levels) and causes of action of every kind and character against, or in which the COUNTY is named or joined, for any damage to property or the environment, economic losses, or bodily injury (including death) incurred or sustained by any person, arising out of, or in incident to, or in connection with the LIMITED PARTNERSHIP's performance, non-performance or purported performance under this Agreement.

The LIMITED PARTNERSHIP further agrees to hold harmless and indemnify the COUNTY for fines, citations, court judgments, insurance claims, restoration costs, damages, or other liability resulting from the LIMITED PARTNERSHIP's activities pursuant to this Agreement, whether or not LIMITED PARTNERSHIP was negligent or even knowledgeable of any events precipitating a claim or arising as a result of any situation involving the LIMITED PARTNERSHIP's activities.

In case the COUNTY shall be made a party to any litigation commenced against the LIMITED PARTNERSHIP or by the LIMITED PARTNERSHIP against any third party related to the LIMITED PARTNERSHIP's activities or obligations pursuant to this Agreement, then the LIMITED PARTNERSHIP shall protect and hold harmless the COUNTY and conduct the defense thereof at the LIMITED PARTNERSHIP's expense and by the LIMITED PARTNERSHIP's counsel, which counsel shall be reasonably satisfactory to the COUNTY.

The foregoing indemnification shall not apply to the extent any claims, liability, expenses, losses, fines and damages arise from the negligent or willful acts of the COUNTY and its respective agents, employees and elected officials.

The LIMITED PARTNERSHIP will hold the COUNTY harmless and will indemnify the COUNTY for any funds which the COUNTY is obligated to refund the federal government arising out of the wrongful or negligent conduct of activities and administration by the LIMITED PARTNERSHIP, including but not limited to, the failure to maintain proper records as set forth in this Agreement.

The indemnity provisions of this section shall survive the termination or expiration of this Agreement.

ARTICLE 9 - SUCCESSORS AND ASSIGNS

The COUNTY and the LIMITED PARTNERSHIP each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement.

Except as above, neither the COUNTY nor the LIMITED PARTNERSHIP shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other.

ARTICLE 10 – GOVERNING LAW; VENUE; REMEDIES; NO THIRD PARTY BENEFICIARIES

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

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

ARTICLE 11 - ARREARS

The LIMITED PARTNERSHIP shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any agreement, debt, obligation, judgement, lien, or any form of indebtedness. The LIMITED PARTNERSHIP further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

ARTICLE 12 - INDEPENDENT CONTRACTOR RELATIONSHIP

The LIMITED PARTNERSHIP is, and shall be, in the performance of all work, services and activities under this Agreement, an independent contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the LIMITED PARTNERSHIP's sole direction, supervision, and control. The LIMITED PARTNERSHIP shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the LIMITED PARTNERSHIP's relationship and the relationship of its employees to the COUNTY shall be that of an independent contractor and not as employees or agents of the COUNTY.

The LIMITED PARTNERSHIP does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

ARTICLE 13 - ACCESS AND AUDITS; INSPECTOR GENERAL

The LIMITED PARTNERSHIP shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for 1) at least five (5) years after completion or termination of this Agreement or (2) if any litigation, claim or audit is started before the expiration of the five (5) year period, the records must be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the LIMITED PARTNERSHIP's place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County Agreements, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the LIMITED PARTNERSHIP, its officers, agents, employees, and lobbyists in order to ensure compliance with Agreement requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

ARTICLE 14 - NONDISCRIMINATION

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

ARTICLE 15 - SEVERABILITY

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

ARTICLE 16 - PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the LIMITED PARTNERSHIP certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 17 - NOTICE

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

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

With copy to:

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

If sent to the LIMITED PARTNERSHIP, notices shall be addressed to:

Daniel J. Good
Vice President Business Development
St. Louis Cardinals
700 Clark Street
St. Louis, MO 63102

And

Caroline O'Connor
Chief Operating Officer
Miami Marlins
501 Marlins Way
Miami, FL 33125

And

Michael Bauer
General Manager
Roger Dean Chevrolet Stadium
4751 Main Street
Jupiter, FL 33458

With copies to:

Ashwin Krishnan, Esq.
Vice President and General Counsel
Miami Marlins
501 Marlins Way
Miami, Florida 33125

And

Michael Whittle, Esq.
General Counsel
St. Louis Cardinals
700 Clark Street
St. Louis, MO 63102

ARTICLE 18 - ENTIRETY OF AGREEMENT

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

ARTICLE 19 - REGULATIONS; LICENSING REQUIREMENTS

The LIMITED PARTNERSHIP shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. LIMITED PARTNERSHIP is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

ARTICLE 20 - SCRUTINIZED COMPANIES

As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the LIMITED PARTNERSHIP certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725. Pursuant to F.S. 287.135(3)(b), if LIMITED PARTNERSHIP is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Agreement may be terminated at the option of the COUNTY.

When contract value is greater than \$1 million: As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the LIMITED PARTNERSHIP certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized

Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria.

If the COUNTY determines, using credible information available to the public, that a false certification has been submitted by the LIMITED PARTNERSHIP, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of contract renewal, if applicable.

ARTICLE 21 - PUBLIC RECORDS

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the LIMITED PARTNERSHIP: (i) provides a service; and (ii) acts on behalf of the COUNTY as provided under Section 119.011(2) F.S., the LIMITED PARTNERSHIP shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The LIMITED PARTNERSHIP is specifically required to:

- A. Keep and maintain public records required by the COUNTY to perform services as provided under this Agreement.
- B. Upon request from the COUNTY'S Custodian of Public Records, provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The LIMITED PARTNERSHIP further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement, if the LIMITED PARTNERSHIP does not transfer the records to the public agency.
- D. Upon completion of the Agreement the LIMITED PARTNERSHIP shall transfer, at no cost to the COUNTY, all public records in possession of the LIMITED PARTNERSHIP unless notified by COUNTY'S representative/liaison, on behalf of the COUNTY'S Custodian of Public Records, to keep and maintain public records required by the COUNTY to perform the service. If the LIMITED PARTNERSHIP transfers all public records to the COUNTY upon completion of the Agreement, the LIMITED PARTNERSHIP shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the LIMITED PARTNERSHIP keeps and maintains public records upon completion of the Agreement, the LIMITED PARTNERSHIP shall meet all applicable requirements for retaining public records. All records stored electronically by the LIMITED PARTNERSHIP must be provided to COUNTY, upon request of the COUNTY'S Custodian

of Public Records, in a format that is compatible with the information technology systems of COUNTY, at no cost to COUNTY.

Failure of the LIMITED PARTNERSHIP to comply with the requirements of this article shall be a material breach of this Agreement. COUNTY shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. LIMITED PARTNERSHIP acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE LIMITED PARTNERSHIP HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LIMITED PARTNERSHIP'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

ARTICLE 22 - COUNTERPARTS

This Agreement, including the exhibits referenced herein, may be executed in one or more counterparts, all of which shall constitute collectively but one and the same Agreement. Each party may execute the Agreement through electronic or manual means.

ARTICLE 23 – E-VERIFY – EMPLOYMENT ELIGIBILITY

A. LIMITED PARTNERSHIP warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended. No later than January 1, 2021, LIMITED PARTNERSHIP shall: (1) register with and use the E-Verify System (E-Verify.gov), to electronically verify the employment eligibility of all newly hired workers; and (2) verify that all of the LIMITED PARTNERSHIP's contractors and subcontractors performing any duties and obligations under this Agreement are registered with and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

B. LIMITED PARTNERSHIP shall obtain from each of its contractors and subcontractors an affidavit stating that the contractor or subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. LIMITED PARTNERSHIP shall maintain a copy of any such affidavit from a contractor or subcontractor for, at a minimum, the duration of the contract or subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.

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

D. If COUNTY has a good faith belief that LIMITED PARTNERSHIP's contractor or subcontractor has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, COUNTY shall notify LIMITED PARTNERSHIP to terminate its contract with the contractor or subcontractor and LIMITED PARTNERSHIP shall immediately terminate its contract with the contractor or subcontractor.

E. If COUNTY terminates this Agreement pursuant to the above, LIMITED PARTNERSHIP shall be barred from being awarded a future contract by COUNTY for a period of one (1) year from the date on which this Agreement was terminated. In the event of such contract termination, LIMITED PARTNERSHIP shall also be liable for any additional costs incurred by COUNTY as a result of the termination.

ARTICLE 24 - INCORPORATION OF FEDERAL TERMS AND CONDITIONS

This Agreement will be funded in whole or in part with federal funds. The detailed federal representations and certifications and contract clauses are attached as **Exhibit D** (the "Federal Requirements"). The provisions and certifications set forth in **Exhibit D** attached hereto are incorporated into this Agreement and LIMITED PARTNERSHIP agrees to comply with such provisions and certifications at all times during the performance of this Agreement. LIMITED PARTNERSHIP agrees to include the applicable Federal Requirements in all contracts and subcontracts which LIMITED PARTNERSHIP enters into to accomplish the scope of work under this Agreement. LIMITED PARTNERSHIP agrees to obtain from all vendors, contractors and consultants the certifications attached hereto as **Exhibits D-1 and D-2**. To the extent of a conflict between the provisions set forth in **Exhibit D** and the provisions set forth herein, the provisions of **Exhibit D** control.

ARTICLE 25 – MLB SUBSERVIENCE

Notwithstanding any other provision of this Agreement, this Agreement and any rights or exclusivities granted by the LIMITED PARTNERSHIP hereunder shall in all respects be subordinate to the MLB Rules and Regulations. The issuance, entering into, amendment or implementation of any of the MLB Rules and Regulations shall be at no cost or liability to any MLB Entity or to any individual or entity related thereto. No rights, exclusivities or obligations involving the Internet or any interactive or on-line media (as defined by the applicable MLB Entities) are conferred by this Agreement, except as are specifically approved in writing by the applicable MLB Entities. In the event that any act or omission of the LIMITED PARTNERSHIP to comply with the MLB Rules and Regulations affects the rights of the COUNTY under this Agreement or deprives the COUNTY of the benefits of this Agreement, the parties hereto will work in good faith to amend the terms of this Agreement to neutralize the effect. The LIMITED PARTNERSHIP agrees in any event that if compliance by it with MLB Rules and Regulations

results in a failure of the LIMITED PARTNERSHIP to fulfill its obligations under this Agreement, the COUNTY may enforce remedies for the LIMITED PARTNERSHIP's failure to fulfill its obligations as provided in this Agreement.

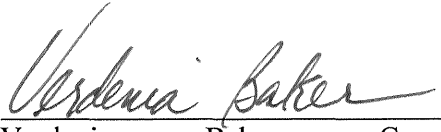
Capitalized terms used in this section that are not defined in this Agreement shall have the meaning set forth in the Use Agreement.

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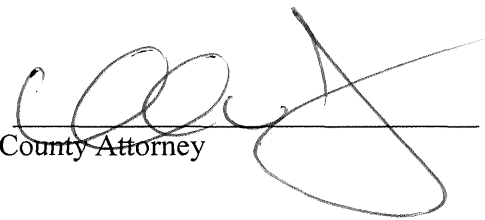
IN WITNESS WHEREOF, COUNTY and LIMITED PARTNERSHIP have executed this Agreement, or have caused the same to be executed as of the day and year first above written.

COUNTY:

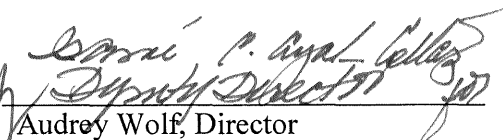
PALM BEACH COUNTY, a political subdivision of the State of Florida

By: 
Verdenia Baker, County
Administrator

APPROVED AS TO LEGAL SUFFICIENCY:

By: 
County Attorney

APPROVED AS TO TERMS AND CONDITIONS:

By: 
Audrey Wolf, Director
Facilities Development &
Operations

WITNESS:

By: Martha C. Rodger

**LIMITED PARTNERSHIP:
Jupiter Stadium, Ltd., a Florida Limited
Partnership
By: JS Stadium, Inc.**

By: Daniel J. Good
Daniel J. Good, Co-Chairman

WITNESS:

**LIMITED PARTNERSHIP:
Jupiter Stadium, Ltd., a Florida Limited
Partnership
By: JS Stadium, Inc.**

By: Frederick J. Moore

By: Caroline D. O'Connor
Caroline O'Connor, Co-Chairman

EXHIBIT A
SCOPE OF WORK AND SCHEDULE
COVID-19 Emergency Purchases and Improvements

Exhibit A

Exhibit A
Roger Dean Chevrolet Stadium COVID-19 Mitigation Building Modifications & Equipment Supplies Purchases

	Item	Priority	Price	Volume	Vendor	Notes	Total Cost
Stadium Modifications							
1	Retrofit Sinks to touch free faucets in practice field towers	4	600.00	7.00	Metro Plumbing	7 Faucets in backfield bathrooms with touchless faucets	4,200.00
2	Guest sanitization equipment (disinfectant, sanitizer station cartridge refills, masks, gloves, etc.)	1	70,250.00	1.00	Dade Paper	Staff/guest sanitization equipment	70,250.00
3	Clorox 360 cleaning supplies	1	7,750.00	1.00	Dade Paper	60025 clorox total 360 system with supplies	7,750.00
4	Portable backpack electrostatic sprayers	1	2,875.00	8.00	Dade Paper	Vp300 back pack electrostatic sprayer	23,000.00
5	Acrylic/ Plexiglass partitions for Media work stations, TV & Radio Broadcast Booths, Press Box, Guest Services, Box Office and VIP Suite areas	1	25,750.00	1.00	Signarama WPB	Clear 36x30 dividers and 36x24 dividers with 24" brackets	25,750.00
6	In stadium signage promoting all best practices, policies and procedures. (mask wearing, social distancing, hand washing, hygiene and other).	1	10,500.00	1.00	Signarama WPB	Corex Best Practice signs; A-Frame signage for guests	10,500.00
7	Floor and wall graphics to help maintain social distancing	1	6,250.00	1.00	Signarama WPB	8x8 Floor Graphics; Dots; rectangles for multi surfaces	6,250.00
8	Signage for seats within the seating bowl that will be closed due to social distancing requirements - In lieu of seat removal	2	8.35	5,000.00	AMI Graphics - MLB & MiLB partner	5,000 units x \$7.74 cpu + tax & delivery	41,750.00
9	Restroom social distancing & best practice signage	1	5,250.00	1.00	Signarama WPB	Floor graphics, wall signs, Exit/Entry signs; Do-Not Use, etc.	5,250.00
10	Cleaning, sanitation, disinfectant, touchless paper towel dispenser parts, EPA products, touchless hand sanitizer units and supplies	2	117,500.00	1.00	Dade Paper	Cleaning supplies	117,500.00
11	Urinal, stall, and sink signage/tape to allow for 6 ft. distancing	3	1,000.00	1.00	Dade Paper	Signage/tape for social separation / distancing purposes	1,000.00
12	Tables & chairs for reconfiguration of entrance gates	4	12,500.00	1.00	The Home Depot Pro	6 ft. tables, Chairs & covers	12,500.00
13	HEPA HVAC filters (Cardinals Clubhouse)	1	275.00	40	Same kind found at many PBC Government offices & PBC Senior Living Centers. From Carrier - local	OptiClean™ Negative Air/ Air Scrubber Machines 1500 CFM Model #: FN1AAF015000 (40 units)	11,000.00
14	HEPA HVAC filters (Marlins Clubhouse)	1	275.00	40	3 units - same kind found at many PBC Government offices & PBC Senior Living Centers. From Carrier - local	OptiClean™ Negative Air/ Air Scrubber Machines 1500 CFM Model #: FN1AAF015000 (40 units)	11,000.00

Roger Dean Chevrolet Stadium COVID-19 Mitigation Building Modifications & Equipment Supplies Purchases							
	Item	Priority	Price	Volume	Vendor	Notes	Total Cost
	Concessions/ Retail Modifications / Tickets						
15	Touchless Foot Pedal Ticket Scanners, 7 units, 52" Height, 45 lbs.	2	5,790.00	7.00	Tickets.com	Tickets.com - includes: Units, adapter & license	40,530.00
16	Concessions / F&B: Appetize Point-of-Sale Mobile ordering add-on; Frictionless Mobile web ordering with QR code; Virtual Kiosk, Waiter & Hawker.	3	32,250.00	1.00	tapin2	Mobile POS for in-seat F&B purchases	32,250.00
17	EMV chip readers. Cashless, touchless POS system	2	39,000.00	1.00	Appetize, through Delaware North	Virtual kiosks (Touchless, cashless Food & Beverage Kiosks Mobile POS System, bundled for all needs, virtual kiosk	39,000.00
18	Buffet / Serving Station plexiglass which includes fabrication	2	560.00	9.00	https://www.katom.com/028-9260.html	3 of each needed, 48", 60", 73.25" sneeze guards for various stations throughout the Cool Zone, Corona Beach House and Suites	5,040.00
19	Misting equipment for sanitizing equipment	2	3,000.00	1.00	www.germ-fogger.com/germ-fogger-backpack-product-information/	.8 Gallon	3,000.00
20	Plexiglass for F&B Concession Stands POS	1	92.00	90.00	www.actionservicesgroup.com - Portable mobile counter top unit	31.5"H X 23.75"W - \$92 cpu	8,280.00
21	Signage for Retail Merchandise operations	1	4,000.00	1.00	Signarama WPB	Cashless 3x4 signs; Plexiglass dividers; Floor graphics, etc.	4,000.00
22	Acrylic/Plexiglass partitions for retail store and kiosk registers	1	3,750.00	1.00	Signarama	Clear Acrylic sneeze guard dividers = 5x36 and 10x36	3,750.00
23	Credit Card Scanners / Merchant Services for Retail ops	2	500.00	6.00	Clover.com	\$500 each, will need to add a wifi booster for these areas, not sure if they will be compatible with our current BofA merchant contract.	3,000.00
24	Ticket operations signage	1	200.00	20.00	Signarama WPB	10 x 36 acrylic sneeze guards (individual cut) 20 x \$195 ea.	4,000.00
25	Acrylic/Plexiglass partitions for ticket windows & work stations	1	170.00	15.00	Signarama WPB	5x36 acrylic sneeze guards (with cut out & legs) 15 x \$165 ea.	2,550.00

Roger Dean Chevrolet Stadium COVID-19 Mitigation Building Modifications & Equipment Supplies Purchases

	Item	Priority	Price	Volume	Vendor	Notes	Total Cost
	Parking & Screening						
26	Cones to assist w/ traffic flow and social distancing	4	15.00	100.00	Uline.com	18" Teal (100 @ \$15 cpu)	1,500.00
		4	10.00	100.00	Uline.com	12" Lime Green (100 @ \$10 ea.)	1,000.00
27	Stanchions at entrance gates to maintain social distancing at entrances and other common gathering areas	2	110.00	150.00	Uline.com	10 ft. with retractable strap \$109 unit x 150	16,500.00
28	Eight foot security barricades to set up along walking paths and in front of main entrance	4	173.00	100.00	Uline.com	100 security barricades 40.5" x 102"	17,300.00
29	Signage for parking lots	1	15.00	100.00	Elite, Letters & Logos	Corex 18 x 24 signs; 100 x \$15 ea.	1,500.00
		1	45.00	60.00	Elite, Letters & Logos	3x8 A-Frame \$45 ea.	2,700.00
30	Portable tents and temporary shade canopies for guest and gameday employee parking, entrance and screening areas	2	3,330.00	3.00	Tent Renters Supply - Tampa	20x25 Tents	9,990.00
		2	1,600.00	4.00	Tent Renters Supply - Tampa	15x15 Tents	6,400.00
		2	1,200.00	6.00	Tent Renters Supply - Tampa	10x10 Tents	7,200.00
31	CEIA-USA Metal Detector walk through units	2	5.00	3,650.00	CEIA /USA	Five Walk Through Metal Detectors - Touchless & contact free; plus service plan & adaptors	18,250.00
32	Handheld Thermometers	4	66.00	30.00	Uline.com	Handheld LED thermometers (\$66 cpu, delivered x 15)	1,980.00
33	Touchless POS System for Parking & Program Operations	2	11,250.00	1.00	ParkHub	ParkHub Touchless POS System for Parking & Program ops	11,250.00
34	ParkHub integration with Tickets.com	2	27,000.00	1.00	ParkHub	Wireless integration set-up, activation for backend and communication with Tickets.com	27,000.00
						Total:	\$615,670.00
						Priority 1:	197,530.00
						Priority 2:	346,410.00
						Priority 3:	33,250.00
						Priority 4:	38,480.00
						Total:	\$615,670.00

EXHIBIT B
STADIUM COMPLEX IMPROVEMENTS APPROVAL CONDITIONS

1. The title to and ownership of all improvements to the Stadium Complex shall be vested in the County.
2. All Stadium Complex improvement projects shall be performed in a good and workmanlike manner using good quality materials and supplies, and components and replacement parts that are of equal or better quality than the quality of those being repaired or replaced and shall be performed through completion.
3. The Limited Partnership shall obtain all development approvals and permits from the appropriate regulatory agencies prior to commencing any Stadium Complex improvement projects and shall perform all such Stadium Complex improvement projects in compliance with all government laws, regulations, rules, ordinances, and orders
4. For all construction contracts involving on-site work at the Stadium Complex in excess of \$200,000, the Limited Partnership shall require construction contractors to furnish a payment and performance bond equal to the cost of the improvements and in the form required under Section 255.05, Florida Statutes, which bond shall name County as a dual obligee. The form of the bond shall be approved by the County.
5. Limited Partnership shall also require all consultants/contractors performing on-site work at the Stadium Complex (i.e., excluding consultants/contractors only providing goods/services and direct shipment of equipment to Stadium Complex) to furnish satisfactory evidence, as applicable, of statutory Worker's Compensation insurance, comprehensive general liability insurance, comprehensive automobile insurance, and physical damage insurance on a Builder's Risk form with the interest of the Limited Partnership endorsed thereon, in such amounts and in such manner as the Limited Partnership may reasonably require. The Limited Partnership shall require that all consultants/contractors performing on-site work at the Stadium Complex to name County as an additional insured and/or third-party beneficiary to all insurance policies, and indemnify and hold County harmless from and against all claims, liability, expense, loss, cost, damages or causes of action, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of the consultant/contractor's negligence in connection with the work on the improvements.
6. The Limited Partnership shall notify all parties performing work or providing materials relating to a Stadium Complex improvement project that the County's property is not subject to liability under the Construction Lien Law of the State of Florida. If so requested by County, the Limited Partnership shall file a notice satisfactory to County in the Public Records of Palm Beach County, Florida, stating that County's estate shall not be subject to liens for improvements made by the Limited Partnership. In the event that a construction lien is filed against the County's property in connection with any work performed by or on behalf of the Limited Partnership, the Limited Partnership shall satisfy such claim, or transfer same to security, within thirty (30) days from the date of filing. In the event that the Limited Partnership fails to transfer or satisfy such claim within the thirty (30) day period, County may do so and thereafter charge the Limited Partnership all costs

incurred by County in connection with the satisfaction or transfer of such claim, including attorneys' fees, and the Limited Partnership shall promptly pay to County all such costs upon demand.

7. Within sixty (60) days following the Limited Partnership's receipt of a certificate of occupancy or certificate of completion, as appropriate, for the Stadium Complex improvement projects, the Limited Partnership shall have prepared and deliver to the FDO Director: one (1) complete set of as-built drawings in a hardcopy format, one (1) complete set of as-built drawings in a PDF format, one (1) complete set of as-built drawings in Auto CADD files in the latest version acceptable by FDO and all warranty certificates resulting from the Stadium Complex improvement projects.

8. Renewal and replacement of the items funded under this Agreement will follow the provisions of Article 7 of the Use Agreement.

9. For the projects on **Exhibit A** entitled "Thermometers", the Limited Partnership shall comply with all laws, ordinances and regulations applicable to the operation and use of this technology and applicable to the data derived from the use of this technology. The Limited Partnership shall post signage notifying the public that temperature scans are in use and that by passing through the scanners or entering the facility, the public consents to the scan.

In accordance with Article 8 of this Agreement, the Limited Partnership agrees to protect, defend, reimburse, indemnify and hold the County free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including attorney's fees at trial and appellate levels) and causes of action of every kind and character against, or in which the County is named or joined, arising out of, or in incident to, or in connection with the Limited Partnership's use of temperature scanners. The indemnification provisions of this section shall survive the termination or expiration of this Agreement.

EXHIBIT C
PAYMENT CERTIFICATION AND REQUISITION

Board of County Commissioners
Palm Beach County, Florida

Name of Agreement: Emergency Agreement for Purchases and Improvements to Roger Dean Chevrolet Stadium (“Agreement”)

Payee: Jupiter Stadium, Ltd. (“LIMITED PARTNERSHIP”)

Amount to be Paid: \$ _____

The LIMITED PARTNERSHIP has submitted a payment certification and requisition (with accompanying bills) to Palm Beach County, Florida (the “COUNTY”) for payment for the above-referenced Agreement of the Amount set forth above from moneys held by the Clerk. In this regard, the undersigned hereby certify as follows:

- (i) that the obligation described above was incurred and is a proper charge against the Agreement;
- (ii) that the obligations described above have been incurred by, or through, the LIMITED PARTNERSHIP and that each item thereof is a proper charge against the Agreement and has not been the basis of any previous withdrawal;
- (iii) that all prior distributions made pursuant to previous payment requisitions relating to this Agreement were applied in the manner set forth in such payment requisition;
- (iv) that all required insurance and governmental approvals needed for the improvements to Stadium Complex, at this time, are in full force and effect;
- (v) that the Work performed to date has been satisfactorily performed in accordance with your contractual requirements with your consultants and/or subcontractors; and
- (vi) that there has not been filed with or served upon the COUNTY or the LIMITED PARTNERSHIP a notice of any valid lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any moneys payable to any of the persons named in such requisition which has not been released or will not be released simultaneously with the payment of such obligation.

Jupiter Stadium, Ltd.

By: _____
Signature

Print Name: _____

Title: _____

EXHIBIT D
FEDERAL REQUIREMENTS

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

**FEMA PUBLIC ASSISTANCE CONTRACT CLAUSES / TREASURY'S CORONAVIRUS
RELIEF FUND**

1. Records Requirements.

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

B. Access to Records. The following access to records requirements apply to this contract:

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

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

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

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

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

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

(1) It is important that the Contractor is aware of these reporting requirements, as the FDEM and County may require the Contractor to provide certain information, documentation, and other reporting in order to satisfy reporting requirements to FDEM, DHS and other entities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Suspension and Debarment (Certification required)

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

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

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

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

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

6. Energy Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

7. Recovered Materials.

- A. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired:
 - (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - (ii) Meeting contract performance requirements; or
 - (iii) At a reasonable price.
- B. Information about this requirement along with a list of EPA-designated items is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

8. Mandatory standards and policies relating to energy efficiency.

Contractor is required to comply with mandatory standards and policies related to energy efficiency that are contained in the state energy conservation plan issued in accordance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871) (42 U.S.C. 6201).

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

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

10. **Federal Criminal Law**

False Statements Act. The False Statement Act sets forth liability for, among other things, any person who knowingly submits a false claim to the federal government or causes another to submit a false claim to the government or knowingly makes a false record or statement to get a false claim paid by the government. 31 U.S.C. §§ 37293733. For example, a false claim could include false billing documentation submitted by the County from a Contractor of any tier under a FEMA award.

11. **FEMA Financial Assistance**

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

12. **Discriminatory Vendor/Contractor List**

An entity or affiliate who has been placed on the discriminatory vendor list may not: submit a bid on a contract to provide goods or services to a public entity; submit a bid on a contract with a public entity for the construction or repair of a public building or public work; submit bids on leases of real property to a public entity; award or perform work as a vendor, contractor, supplier, subcontractor, or consultant under contract with any public entity; nor transact business with any public entity. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and intends to post the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity at (850) 487-0915.

13. **No Obligation by Federal Government**

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

14. **Use of DHS seal or logo prohibited**

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

15. Nondiscrimination

Contractor must not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, English proficiency, or disability.

Contractor carrying a program or activity under a FEMA award must not, on the grounds of race, color, creed, national origin, sex, age, English proficiency, or disability, exclude a person from participation in, deny him/her benefits, or subject him/her to discrimination.

Contractors must adhere to any federal implementing regulations and other requirements that the Department and the FEMA have with respect to nondiscrimination.

16. Equal Opportunity

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

During the performance of this contract, the Contractor agrees as follows:

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

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

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

(d) The Contractor will send to each labor union or representative of workers with which

it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

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

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

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

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

the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

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

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

18. Coronavirus Relief Fund

Reimbursement under this Agreement may be from funds distributed from the U.S. Treasury's Coronavirus Relief Fund. Fund payments are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance, 2 C.F.R. § 200.303 regarding internal controls, §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements. Any party receiving such funds shall comply with said provisions, and shall fully cooperate with any other party's compliance with said provisions.

19. Third Party Claims

Contractor hereby indemnifies and holds harmless: (a) the Federal Government, its employees and/or contractors; (b) the State of Florida, Division of Emergency Management, its employees and/or contractors; and (c) the County, its employees and/or contractors, from liability to third parties for claims asserted under this contract. This section shall survive the termination or expiration of this contract.

EXHIBIT D-1

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND
VOLUNTARY EXCLUSION-LOWER TIER PARTICIPANT**

The Vendor certifies that:

- (a) This contract is a covered transaction for purposes of 2 CFR, Part 180 and 2 CFR Part 3000. As such, the Vendor is required to verify that none of the Vendor, its principals (defined at 2 CFR 180.995), or its affiliates (defined at 2 CFR 180.905) are excluded (defined at 2 CFR 180.940) or disqualified (defined at 2 CFR 180.935).
- (b) The Vendor must comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (c) This certification is a material representation of fact relied upon by the County. If it is later determined that the Vendor did not comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C, in addition to remedies available to FDEM and the County, the Federal Government may pursue available remedies, including but not limited to suspension and/ or debarment.
- (d) The Vendor agrees to comply with the requirements of 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Vendor further agrees to include a provision requiring such compliance in its lower tier covered transactions, including submission to Vendor of this Certification completed by its suppliers, subcontractors and subconsultants.

VENDOR NAME: _____

ADDRESS: _____

VENDOR'S AUTHORIZED OFFICIAL:

_____	_____	_____
Name and Title	Signature	Date

EXHIBIT D-2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

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

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date