

STATE OF ALABAMA     )

COUNTY OF BALDWIN    )

### SUB-GRANTEE FUNDING AGREEMENT

THIS AGREEMENT is made and entered into by and between the Baldwin County Commission, the honorable county governing body of Baldwin County, Alabama, a political subdivision of the State of Alabama, hereinafter referred to as the "COMMISSION," and CHARLES MCINNIS and DONNA MCINNIS, THE SUB-GRANTEES and residents of Baldwin County (unincorporated), hereinafter referred to collectively as the "SUB-GRANTEES":

#### WITNESSETH

WHEREAS, the COMMISSION has received approval from the State of Alabama Emergency Management Agency for a grant (the "Grant") from the Federal Emergency Management Agency ("FEMA") through its Hazard Mitigation Grant Program ("HMGP"). The Grant, HMGP 4406-0002, funding is provided by FEMA to the Alabama Emergency Management Agency ("AEMA") which then provides the funding to the COMMISSION which reimburses the SUB-GRANTEES. The funding is to be used as follows:

**The SUB-GRANTEES will use the Hazard Mitigation Grant Program funds from FEMA, administered by AEMA through the COMMISSION, for the flood mitigation project of structure elevation of a residential structure, as listed in the approved Statement of Work ("SOW") included in the State-Sub-Recipient Disaster Assistance Agreement between the COMMISSION and AEMA.**

WHEREAS, FEMA as the funding entity and AEMA as the Administering entity desire to have the COMMISSION manage and execute the Hazard Mitigation Grant Program Sub-Award at the local level, and therefore, in consideration of the public benefits moving each to the other, it is mutually agreed by and between the COMMISSION, as the Sub-Recipient, and the SUB-GRANTEES as follows:

#### I. AUTHORITY

The COMMISSION has the authority to act as a pass-through entity as prescribed by the Alabama Emergency Management Agency to manage and coordinate grant activities through its Building Department (Hazard Mitigation Coordinator) and its Emergency Management Agency, a Department of the Baldwin County Commission, Planning & Grants Division.

The SUB-GRANTEES represent, acknowledge and warrant to the COMMISSION the following:

- a. SUB-GRANTEES understand and accept that they are responsible for all costs;
- b. SUB-GRANTEES agree to provide proof, upon request, to the COMMISSION that they are able to pay for all costs. Such proof may include, but is not limited to, providing bank and/or financial statements, and/or obtaining a bond in an amount determined in the sole discretion of the COMMISSION;
- c. SUB-GRANTEES are fiscally solvent and able to pay all contractor(s)/vendor(s) for the work performed and for any materials needed;
- d. SUB-GRANTEES acknowledge reimbursement is not guaranteed by the COMMISSION as it is contingent on compliance with all terms in this Agreement and the State-Sub-Recipient Disaster Assistance Agreement;
- e. SUB-GRANTEES understand that the timeframe for reimbursement by FEMA through AEMA is subject to AEMA and FEMA's determination and not that of the COMMISSION. The COMMISSION will process reimbursements in a timely manner;
- f. SUB-GRANTEES bear the full burden of funding the project and ensuring its continuance without delay due to insufficient funds in the interim between satisfied claims for federal fund reimbursement;
- g. SUB-GRANTEES agree they are authorized by law to receive grant funds to be used for the eligible FEMA-awarded project from the COMMISSION, and such activity will not be in violation of Article IV, Section 94, or amendments thereto, of the Constitution of Alabama 1901, or any other constitutional or statutory provision;
- h. SUB-GRANTEES will perform work pursuant to the approved Statement of Work and the State-Sub-recipient Disaster Assistance Agreement; and
- i. SUB-GRANTEES will comply with all rules and regulations application to the Grant funds, including the procurement standards in 2 CFR Sections 200.318 through 200.326.

## **II. REIMBURSEMENT PROCEDURE**

The STATE OF ALABAMA, through the AEMA, will reimburse the SUB-GRANTEES, through the COMMISSION in accordance with all applicable statutes, rules and regulations related to the Grant, up to a maximum of \$143,487.00 in HMGP 4406-0002 funds for the work performed by the SUB-GRANTEES in accordance with this Agreement, the State-Sub-Recipient Disaster Assistance Agreement and the approved Statement of Work.

## **III. APPROPRIATION**

The SUB-GRANTEES will submit a request to the COMMISSION that details the project costs eligible for reimbursement by the Grant funds and any other such pertinent information as may be needed as determined by the COMMISSION. This includes original invoices from contractors and/or vendors for services, supplies, and work performed for this flood mitigation structure elevation mitigation project. All grant funds must be expended no later than May 1, 2023.

The SUB-GRANTEES shall assist in providing documentation to the COMMISSION for expenditures, as follows:

1. The SUB-GRANTEES shall submit invoices and any other documentation needed for grant file requirements and reimbursement claims filed by the COMMISSION through AEMA to FEMA on behalf of the SUB-GRANTEES.

2. The SUB-GRANTEES shall provide evidence that the matching funds, if required, are being paid or have been expended. If using volunteer hours for the purpose of satisfying the matching funds, the SUB-GRANTEES shall provide monthly time sheets of volunteer hours worked for auditing purposes.

3. The SUB-GRANTEES shall provide any additional information deemed necessary by the COMMISSION.

SUB-GRANTEES agree to supply to the COMMISSION, within 30 days from a written request to do so, all applicable data and documentation that is necessary for the COMMISSION to ensure the proper expenditure of the subject grant funds.

SUB-GRANTEES shall, on a quarterly basis, file with the COMMISSION a report of its activities related to the subject grant funds. Quarterly progress reports are required each quarter until project completion. The first quarterly progress report will be due no later than January 15, 2021 and will report on activities completed during 1st quarter 2020 (Oct 2020- Dec 2020). Each subsequent report will be due on the first of the month following the end of each quarter (April 1, July 1, Oct 1, and January 1).

#### **IV. TERM AND TERMINATION**

This Agreement shall cover reimbursement activities provided by the COMMISSION to the SUB-GRANTEES during the time period of October 22, 2020 through May 1, 2023 to concur with the following timeframe detailed in the State Sub-Recipient Agreement between AEMA and the COMMISSION:

“The Sub-recipient will begin project work within 90 days of approval of the award and complete all items of work by the specified period of performance May 1, 2023 unless an extension is granted to extend the time frame.”

Any changes to the timeline, or other requested changes to the Budget or Statement of Work are strictly prohibited unless requested in writing to FEMA by the COMMISSION through AEMA. The COMMISSION does not guarantee any result regarding any requests for changes to the timeline, Budget, or Statement of Work.

The SUB-GRANTEES and the COMMISSION further agree that this Agreement may be terminated at any time by either party upon the issuance of a thirty (30) day written notice to the other of intent to terminate the same. In the event of termination by either party, the SUB-

GRANTEES shall refund to the COMMISSION any portion of the Grant proceeds which the COMMISSION is required to pay back, forfeit, or reimburse pursuant to the Grant.

## **V. NON-DISCRIMINATION AND COMPLIANCE**

The SUB-GRANTEES hereby covenant and agree that, in performing their responsibilities and obligations hereunder, the SUB-GRANTEES, their officers, agents or employees will not, on the grounds of race, color, sex, religion, national origin, disability or age, discriminate or permit discrimination against any person or groups of persons in any manner. The SUB-GRANTEES further agree to comply with all applicable laws, ordinances and regulations, and this Agreement shall be subject to the terms and conditions contained in the State-Sub-Recipient Disaster Assistance Agreement between the Baldwin County Commission and AEMA, which is hereby expressly incorporated into and made a part of this Agreement. The SUB-GRANTEES also agree to comply with all applicable state or federal regulations in receiving and accounting for said Grant funds received by the COMMISSION through AEMA as set out in State-Sub-Recipient Disaster Assistance Agreement. The SUB-GRANTEES also agree to assist the COMMISSION, as deemed necessary by the COMMISSION, in complying with the terms and conditions contained in State-Sub-Recipient Disaster Assistance Agreement, including, but not limited to, reporting and audit requirements. The SUB-GRANTEES further agree to comply with all COMMISSION procurement policies and procedures, as necessary. The SUB-GRANTEES must adequately safeguard all property and must ensure that it is used solely for authorized purposes. The SUB-GRANTEES should also keep accurate records regarding the use and status of the property and ensure the proper use, maintenance, protection, and preservation of such property.

The SUB-GRANTEES shall furnish all records pertaining to the Grant funds to the COMMISSION, upon request. The COMMISSION shall perform site visits, which will include examination of such property and corresponding records kept by the SUB-GRANTEES to ensure the integrity of the use of the Grant funds. Theft, destruction, or loss of property shall be reported to the COMMISSION immediately. Property will only be transferred for property disposal if it is certified as no longer serviceable and coordinated in advance with the COMMISSION and the Alabama Emergency Management Agency.

## **VI. INDEMNITY**

The SUB-GRANTEES hereby acknowledge, covenant and agree that they shall fully indemnify, defend, and hold harmless the COMMISSION, its Commissioners, departments, employees, supervisors, agents, representatives and attorneys from any and all claims, demands, notices, violations, findings, actions or orders of whatsoever kind or character which may arise from, or which are in any way related to, elevating the property, work covered by the statement of the work, or any other work done and duties or obligations performed pursuant to this Agreement, the State-Sub-Recipient Disaster Assistance Agreement, and any other related Agreement, including any action or services provided or performed by the SUB-GRANTEES or any of its officers, agents or employees, including, without limitation, attorney fees and legal expenses and costs incurred as a result of the COMMISSION enforcing, defending or complying with this

Agreement, or otherwise addressing or defending any actions or claims related in any way to this Agreement.

If in any event the COMMISSION is required to pay back, forfeit, or reimburse any portion of the grant funding subject hereto, SUB-GRANTEES shall voluntarily and immediately remit and submit to the COMMISSION an amount equaling such portion required to be paid back, forfeited or reimbursed.

This provision shall survive the expiration or termination of this Agreement.

#### **VII. NO THIRD-PARTY BENEFICIARIES OR AGENCY**

It is the intent of the parties of this Agreement that they be the only parties to the Agreement and to expressly exclude third party beneficiaries. Nonparties to the Agreement may not claim benefits under the Agreement. The creation of an agency is strictly prohibited, and SUB-GRANTEES are forbidden to act on behalf of or bind the COMMISSION for any purpose or reason.

#### **VIII. CHOICE OF LAW**

This Agreement in all respects, including without limitation its formation, validity, construction, enforceability, and available remedies, shall be governed by the laws of the State of Alabama, without regard to Alabama conflict of law principles. Any action to enforce, challenge or construe the terms of this Agreement shall be litigated exclusively in the Circuit Court of Baldwin County, Alabama.

#### **IX. AMENDMENT**

This Agreement may be amended or modified only by the written consent and agreement of the parties to this Agreement at the time of such amendment.

#### **X. WAIVER**

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce every provision of this Agreement.

#### **XI. BINDING EFFECT**

This Agreement shall inure to the benefit of, and shall be binding upon, each of the parties hereto and their respective successors and assigns.

## **XII. ENTIRE AGREEMENT**

This Agreement and the documents referred to in this Agreement constitute the entire agreement between the parties, and there are no other representations, conditions, covenants or agreements which shall be binding upon the parties.

## **XIII. RULE OF CONSTRUCTION**

The parties hereto acknowledge that each party and its counsel have reviewed and revised this Agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments hereto.

## **XIV. MISCELLANEOUS**

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless context requires otherwise.

## **XV. CAPTIONS**

The captions used in connection with the sections of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Agreement, or be used in interpreting the meanings and provisions of this Agreement.

## **XVI. REPRESENTATIONS AND WARRANTIES**

The SUB-GRANTEES represent and warrant that they have the authority to enter into this Agreement on the terms and conditions contained herein, and the COMMISSION represents and warrants that it has the authority to enter into this Agreement on the terms and conditions contained herein.

## **XVII. SEVERABILITY**

In the event that any of the provisions, or portions thereof, of this Agreement shall be held void or unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

## **XVII. NUMBER OF ORIGINALS**

There is only one original of this Agreement which shall be retained by the COMMISSION.

**IN WITNESS WHEREOF**, the parties hereto, by and through their duly authorized representatives, have executed this Agreement as of the date of approval of the Chairman of the Baldwin County Commission.

**Property Owner**  
**Address Line 1**  
**Address Line 2**

BY: \_\_\_\_\_

NAME (TYPED)

ATTEST:

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

\_\_\_\_\_/\_\_\_\_\_  
NOTARY DATE

STATE OF ALABAMA  
COUNTY OF BALDWIN

I, \_\_\_\_\_, a Notary Public in and for said County in said State, hereby certify that NAME, whose name as SUB-GRANTEE, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, executed the same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public, Baldwin County, Alabama  
My Commission Expires: \_\_\_\_\_

**Property Co-Owner**

Address Line 1  
Address Line 2

BY: \_\_\_\_\_

NAME (TYPED)

ATTEST:

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

\_\_\_\_\_/\_\_\_\_\_  
NOTARY DATE

STATE OF ALABAMA  
COUNTY OF BALDWIN

I, \_\_\_\_\_, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_ NAME \_\_\_\_\_, whose name as SUB-GRANTEES, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, executed the same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public, Baldwin County, Alabama  
My Commission Expires: \_\_\_\_\_

**BALDWIN COUNTY COMMISSION**

BY: \_\_\_\_\_ / \_\_\_\_\_  
JOE B. DAVIS III / DATE  
AS ITS: CHAIRMAN

ATTEST:

\_\_\_\_\_/\_\_\_\_\_  
WAYNE A. DYESS / DATE  
AS ITS: COUNTY ADMINISTRATOR

STATE OF ALABAMA  
COUNTY OF BALDWIN

I, \_\_\_\_\_, a Notary Public in and for said County in said State, hereby certify that JOE B. DAVIS III, whose name as Chairman of the BALDWIN COUNTY COMMISSION, and WAYNE A. DYESS, whose name as County Administrator of the BALDWIN COUNTY COMMISSION, the governing body of Baldwin County, Alabama, a political subdivision of the State of Alabama, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of such instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said commission on the day the same bears date.

Given under my hand and seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public, Baldwin County, Alabama  
My Commission Expires: \_\_\_\_\_