

HAZARD MITIGATION GRANT PROGRAM AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into by and between City of Sanibel, Florida, ("**City**"), and Christopher M. & Mallory Sherman (referred to as "**Owner**"), (collectively, "**Parties**") on the ____ day of November, 2025 (the "Effective Date").

WITNESSETH:

WHEREAS, the City is authorized to, among other things, accept and administer grants from state and federal authorities to enhance the quality of life in Sanibel; and

WHEREAS, the United States Congress, through an appropriation to the Federal Emergency Management Agency ("**FEMA**"), has made available to the Florida Division of Emergency Management ("**DEM**"), Hazard Mitigation Assistance Grant ("**HMGP**") funds for flood mitigation projects; and

WHEREAS, the City, in conjunction with the Owner, has submitted an application to the DEM for HMGP funds and DEM has approved the application for the property at 718 Durion Court, Sanibel, Florida 33957 ("**Property**"); and

WHEREAS, the City has approved acceptance of a grant from DEM with an approved federal share of \$159,714.50 ("**Grant**") and has authorized the City Manager to execute a Federally Funded Flood Mitigation Subgrant Agreement ("**Project Agreement**") with DEM to effectuate distribution of the Grant funds to the Owner; and

WHEREAS, the Owner represents that they will hire others who possess the requisite skills, knowledge, qualifications, and experience to provide, or cause to be performed, the services identified herein and that they will perform the duties as set out in the Project Agreement and this Agreement; and

WHEREAS, the Owner is aware of the contents of the Project Agreement between the City and DEM, and other conditions and requirements of FEMA and DEM concerning the Grant.

NOW THEREFORE, the Parties, in reliance upon the foregoing recitals and in consideration of the mutual promises and covenants contained herein, agree as follows:

1. **RECITALS.** The statements contained in the recitation of facts set forth above are true and correct and are hereby incorporated in and made a part of this Agreement.

2. **PURPOSE.** The purpose of this Agreement shall be to set forth duties of the City and the Owner regarding the Hazard Mitigation Grant Program Project ("**Project**") described in the Project Agreement, which is attached hereto as Exhibit "A" and made a part hereof by reference.

3. **CITY'S DUTIES.**

A. The City's duties under this Agreement are limited to assisting the Owner in making an application for matching fund reimbursements in accordance with the Project Agreement, and, if necessary, disbursing funds received as reimbursements to the Owner.

B. The City shall process the Owner's requests for reimbursement from the Grant in accordance with the Project Agreement. The City shall have no liability to the Owner for reimbursement claims that are rejected by

DEM for any reason, nor shall the City be liable for any failure of the Owner to receive the maximum amount reimbursable under the Project Agreement.

- C. The City shall cooperate with the Owner with the aim of achieving the goals and objectives set out in this Agreement.

4. **RIGHT TO ENTER AND INSPECT.** The City shall have the right to visit any site used by the Owner for any part of the Project funded under this Agreement, at any reasonable time, for the purpose of making inspections including a review or analysis of the financial or service records of the Owner pertaining to this Agreement.

5. **THE OWNER'S DUTIES.** The Owner shall:

- A. Purchase all goods and services necessary to carry out their responsibilities hereunder, in accordance with the Project Agreement and this Agreement; and provide the City with sufficient documentation in accordance with the rules of DEM and/or FEMA to enable the City to seek reimbursement for those costs and expenses authorized by the Project Agreement on behalf of the Owner; and to make such reports as may be required by the Project Agreement.

- B. Use Grant funds in accordance with the Project Agreement and assume and perform all the duties and responsibilities for which the City may be obligated under the Project Agreement, except as otherwise specified herein. If the Owner uses any funds provided from the Grant for any purpose other than authorized under this Agreement or the Project Agreement, the Owner shall repay such funds to DEM, or in the event the City has made such payment to DEM, then the Owner shall make such payment to the City.

- C. Provide such other funding as may be necessary to complete the Owner's duties and responsibilities under this Agreement.

- D. Be responsible for the administration of all contracts, funded by the Grant or otherwise, entered into by and between the Owner and any persons or entities for the acquisition of materials or the performance of services in connection with the Project, regardless of whether a contract qualifies for reimbursement from the Grant. The Owner shall establish and maintain records to document all costs incurred by them in connection with the Project. Upon request, the Owner shall provide a copy of all such documents to the City.

- E. The Owner shall be liable for repayment of any funds demanded by DEM notwithstanding whether the demand is made to the City or directly to the Owner.

- F. Cooperate with the City to achieve the goals and objectives set out in this Agreement and required by FDEM.

6. **TERM.** The term of this Agreement ("**Term**") shall commence upon the execution of this Agreement by the Parties and shall expire on the May 31, 2028, or at the close out of the Project Agreement.

7. **INSURANCE.** The Owner shall have a Homeowner Insurance policy in effect as of the Effective Date, through the fulfillment of all obligations under this Agreement and the underlying Grant and

Project Agreement, acceptable to the City, in its sole discretion, providing for, but not limited to, the replacement cost of the structure. Owner must also have a Federal Flood Insurance policy in effect beginning on the Effective Date and in perpetuity. Said flood insurance must continue to be carried upon sale of the property by any future owners. Proof of insurance for all policies shall be provided to and be approved by the City prior to the start of construction.

8. THE OWNER'S INDEMNIFICATION AND RELEASE.

A. The Owner shall defend, indemnify, pay on behalf of and hold the City and its officers, employees, agents, and servants, whether they be current or former (collectively, "Indemnified Parties"), from and against any and all actions, claims, liabilities, losses, costs and expenses, in law or in equity, including but not limited to attorneys' fees at trial and appellate levels, reasonable investigative and discovery costs, court costs or claims (collectively, "Claims") for:

1. Bodily injury or death of persons and for loss of or damage to property, of every kind and nature whatsoever, which in any manner directly or indirectly may arise or be alleged to have arisen, or resulted or alleged to have resulted from the negligent acts or omissions or other wrongful conduct of the Owner, their employees, contractors, and agents in connection with the Owner's performance pursuant to this Agreement;
2. Failure to perform all the duties and responsibilities for which the City may be obligated under the Project Agreement, this Agreement, Construction Agreements, as hereinafter defined, or any other contracts executed by the Owner which are related to the Project; and
3. Claims arising out of or connected with the Owner's performance under this Agreement.

B. This Paragraph 8 shall survive expiration or termination of this Agreement.

9. CONSTRUCTION AGREEMENTS.

A. Parties to Construction Agreements. All construction Agreements ("Construction Agreements") shall be entered into between the Owner and the contractor.

B. Negotiation and Terms and Conditions. The Owner shall be responsible for negotiating the terms and conditions of all Construction Agreements, provided that the Owner shall ensure that all Construction Agreements require the contractor to (i) name the Indemnified Parties as additional insureds on all insurance required to be obtained by the contractor pursuant to the Construction Agreement, and (ii) defend and indemnify the Indemnified Parties against any and all Claims related to the contractor's services provided to the Owner. A copy of all contracts executed between the Owner and third parties pursuant to this Agreement shall be provided to the City.

10. BOOKS AND RECORDS. Owner shall keep accurate books, records, and documentation related to this Agreement and the Project Agreement (e.g. contracts and correspondence

between the Owner and City and contracts and correspondence between the Owner and third parties) at the address for delivery of notices set forth in this Agreement. All such books, records, and documentation shall be kept by the Owner and shall be open to examination, audit and copying by the City during the Term and for a period of five (5) years following termination or expiration of this Agreement. Owner shall bear the costs associated with the retention of books, records and documentation. Nothing herein shall be construed to allow destruction of records that may be required to be retained longer by the statutes of the State of Florida.

11. **NO THIRD PARTY BENEFICIARIES.** This Agreement shall inure to the benefit of the Parties and is for the exclusive benefit of the Parties. This Agreement shall not be deemed to be made for the benefit of any other entity or person not so specified.

12. **COMPLIANCE WITH FEDERAL, STATE, COUNTY, AND LOCAL LAWS.** Owner shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations, the federal and state constitutions, and orders and decrees of any lawful authorities having jurisdiction over the matter at issue (collectively, "**Laws**"), including, but not limited to, the Florida public records law (i.e. Chapter 119, Florida Statutes), as applicable.

13. **APPLICABLE LAW/VENUE.** This Agreement shall be governed by and be interpreted in accordance with the laws of the State of Florida. Venue for state court actions shall be in the 20th Judicial Circuit Court in and for Lee County, Florida, as to state actions and the United States District Court for the Middle District of Florida, Fort Myers Division, as to federal actions. Each party waives any defense of improper or inconvenient venue as to either court and consents to personal jurisdiction in either court.

14. **AMENDMENTS.** This Agreement may be altered, amended, modified, or revised only by a written instrument executed by the Parties.

15. **ENTIRE AGREEMENT.** This Agreement constitutes the complete, full, and wholly independent agreement among the parties to this Agreement with regard to the matters contained herein. This Agreement also supersedes all prior representations, statements, and understandings among the parties to this Agreement with respect to the matters and things addressed herein, either written or oral.

16. **SEVERABILITY.** Should any section or part of any section of this Agreement be rendered void, invalid, or unenforceable by any court of law, for any reason, such a determination shall not render void, invalid, or unenforceable any other section or any part of any section of this contract.

17. **NOTIFICATION.**

A. All notices, requests, demands, or other communications hereunder shall be in writing and shall be deemed to have been served as of the delivery date appearing upon the return receipt if sent by certified mail, postage prepaid with return receipt requested, at the address listed below, or upon the actual date of delivery, if hand delivered, to the address below. Either party may change the below-listed address at which it receives written notices by so notifying the other party hereto in writing.

Owner:
Christopher M. & Mallory Sherman
718 Durion Court
Sanibel FL 33957

City of Sanibel:
ATTN: City Manager
800 Dunlop Road
Sanibel FL 33957
dana.souza@mysanibel.com

Division Grant Manager for this Agreement:
ATTN: Hannah Abbott
Project Manager
Bureau of Mitigation
Florida Division of Emergency Management
2555 Shumard Oak Blvd.
Tallahassee, FL 32399
Hannah.abbott@em.myflorida.com

B. Each party shall give the other party prompt notice of any claim coming to its knowledge that directly or indirectly affects the other party.

18. WAIVER. No act of omission or commission of either party, including without limitation, any failure to exercise any right, remedy, or recourse, shall be deemed to be a waiver, release, or modification of the same. Such a waiver, release, or modification is to be affected only through a written modification to this Agreement.

19. FUNDING. The sole source of City funding for this Agreement, including, but not limited to the obligations set forth in paragraph 3 of this Agreement, shall be from the Grant. The City is under no obligation to provide funds from any other source. In the event that the Grant is reduced or withheld by FEMA or DEM, then the City shall not be liable for payment of funds from any City fund other than the Grant.

20. HEADINGS. The paragraph headings are inserted herein for convenience and reference only, and in no way define, limit, or otherwise describe the scope or intent of any provisions hereof.

21. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which may be executed by less than all of the parties to this Agreement but all of which shall be construed together as a single instrument.

22. ASSIGNMENT. This Agreement may not be assigned by the Owner without the prior written consent of the City, which consent may be granted or denied in its sole discretion.

23. CONTRACTING. The Parties contemplate that the Owner may contract with third parties to carry out their duties and responsibilities under this Agreement. Such contracting shall be permitted, provided that the Owner shall at all times remain liable for performing their duties and responsibilities under this Agreement.

24. CITY CONSENT AND ACTION:

A. City Approval. For the purposes of this Agreement, any required written permission, consent, approval, or agreement ("**Approval**") by the City means the administrative Approval of the City Manager or his Designee unless otherwise set forth herein and such Approval shall be in addition to any and all permits and other licenses required by law or this Agreement.

B. City Action. For the purposes of this Agreement any right of the City to take any action permitted, allowed, or required by this Agreement, may be exercised by the City Manager or his Designee, unless otherwise set forth herein.

(SEAL)

CITY OF SANIBEL

ATTEST:

By: _____
Scotty Lynn Kelly, City Clerk

By: _____
Dana A. Souza, City Manager

OWNER(S):

Sign: _____
Print: _____

Sign: _____
Print: _____

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _day of_____, 2025 by _____, who is personally known to me or who has produced _____ as identification.

Sign: _____
Notary Public

Exhibit A- Project Agreement