



PENSACOLA-ESCAMBIA PROMOTION & DEVELOPMENT COMMISSION

July 18 @2:00 PM at the CIE, 418 W Garden Street 3rd Floor Conference Room

PEDC AGENDA

- | | |
|--|--------------------------|
| 1. Call to Order | Lewis Bear, Jr. |
| 2. Public Comment | Lewis Bear, Jr. |
| 3. Action Items | |
| a. Approval of January 15 Meeting Minutes | Lewis Bear, Jr. |
| b. Approval of June 1 Special Called Meeting Minutes | Lewis Bear, Jr. |
| c. Approval of April 2016 Financials | Bizzell, Neff & Galloway |
| 4. Discussion Items | |
| a. Technology Campus Update | Lewis Bear, Jr. |
| b. Landscaping Contract | Lewis Bear, Jr. |
| c. Scope of Work: FDOT FOIL Contract | Lewis Bear, Jr. |
| d. DEO FOIL Contract | Lewis Bear, Jr. |
| e. Other Business | Lewis Bear, Jr. |
| 5. Adjourn | Lewis Bear, Jr. |

End of the year meeting schedule:

August Meeting: Tuesday, August 16, 2016 at 2:00 PM | Greater Pensacola Chamber, Boardroom

-Back Up Date: Tuesday, August 23, 2016 at 2:00 PM

October Annual Meeting: October 11, 2016 at 12:00 PM | Venue to be announced



PENSACOLA-ESCAMBIA PROMOTION & DEVELOPMENT COMMISSION
June 01, 2016 9:00 am at the Greater Pensacola Chamber in the Boardroom

Members Present: Board Chairman Lewis Bear, Jr. Secretary-Treasurer Dave Hoxeng, Clorissti Mitchell, Larry Johnson and Grover Robinson

Staff Present: Scott Luth and Sena Maddison

Others Present: Richard Sherrill and Rebecca Ferguson

1. **Call to Order:** The meeting was called to order by Chairman Lewis Bear. He apologized to the board that there were no minutes from the previous meeting but stated that minutes for both that meeting and this would be presented at the next meeting.
2. **Public Comment:** Chairman Bear asked if there was any public comment. There was none.
3. **Discussion Items:**
 - a. **Tech Park Prospect:** Scott Luth briefed the board that he had been approached by an existing tech-based company that is interested in locating in the Tech park. The company has indicated that they will need parking for approximately 40 vehicles and would like to own and control their own parking. It was MOVED by Grover Robinson and SECONDED by Larry Johnson that Scott Luth and Chairman Bear be given authority to pursue the sale of block v 5-8 to this prospect and to negotiate a price based upon the Asmar Appraisal Company's sellout values with some of the property to be used for adjacent parking.
4. The meeting was adjourned at 9:35 am.

Respectfully Submitted By:

Dave Hoxeng, Secretary-Treasurer
Pensacola-Escambia Promotion & Development Commission



PENSACOLA-ESCAMBIA PROMOTION & DEVELOPMENT COMMISSION

January 15 am at the Greater Pensacola Chamber in the Boardroom

Members Present: Clorissti Mitchell, Steven Barry, Vice Chair Blaise Adams, Secretary-Treasurer Dave Hoxeng, Charles Bare, Freddie McCall

Staff Present: Scott Luth, Libby Brown, Danita Andrews, Sena Maddison and Katie Kelly

Others Present: Richard Sherrill and David Lister

1. **Call to Order:** This meeting was called to order by Vice Chair Blaise Adams at 10:04 am.
2. **Public Comment:** Vice Chair Blaise Adams asked if there was any public comment. There was none.
3. **Action Items:**
 - a. **Financials:** Scott presented the November 2015 financials to the board, noting that our new accountants, Bizzell, Neff & Galloway would be putting them together for us in the future. It was MOVED by Charles Bare and SECONDED by Clorissti Mitchell along with a unanimous vote to approve the November 2015 financials.
 - b. **Interlocal Agreement Budget Adjustment:** The City and County approved the 2016 Interlocal agreement for FY 16, and the City funding went up from \$120,000 / year to \$150,000 / year. It was MOVED by Secretary Treasurer Dave Hoxeng and SECONDED by Charles Bare to approve a budget adjustment to account for the extra funding. The motion was approved unanimously.
 - c. **PEDC 2015 Audit Review:** David Lister from Saltmarsh, Cleveland & Gund presented the 2015 financial statements to the PEDC Board. He noted that there was nothing in the audit to bring to the board's attention, and that the past technical finding from FY 14 had been corrected. It was MOVED by Charles Bare and SECONDED by Clorissti Mitchell to approve the 2015 Audit, and it passed unanimously.
 - d. **FTZ #249:** Discussion was held on the FTZ #249.
 - i. Scott presented the FTZ Operator Agreement to authorize GE to activate their previously designated sub-zone site. After discussion of an updated manufacturing operator fee structure, it was decided to add additional brackets to exhibit "A" in the contract (attached) that would provide uniform tiered fee structure pertaining to value of merchandise for all users, (Chart attached). It was MOVED by Steven Barry and SECONDED by Charles Bare to approve the change in fee structure and authorize the Chairman and Vice Chairman to sign the agreement with GE after attorney review. The motion passed unanimously.
 - ii. Scott presented the contract with Foreign Trade Zone Corporation, consultant to the board. It was MOVED by Charles Bare and SECONDED by Secretary-Treasurer Dave Hoxeng to authorize the Chairman and Vice Chair to sign the renewal contract. The motion was unanimously approved.



PENSACOLA-ESCAMBIA PROMOTION & DEVELOPMENT COMMISSION

January 15 am at the Greater Pensacola Chamber in the Boardroom

- e. **Economic Development Updates:** Scott Luth gave an economic update to the board on the Bluffs and the Technology Campus. To accommodate parking, it was suggested that a plat assignment was reviewed to allow more flexibility in the Technology Campus for where greenspace could be designated. It was **MOVED** by Dave Hoxeng and **SECONDED** by Steven Barry to give authority to Scott Luth to pursue a plat reassignment on behalf of the board. The motion passed unanimously.
 - f. After more discussion on the Technology Campus, It was **MOVED** by Charles Bare and **SECONDED** by Clorissti Mitchell to hold a board workshop to go into further detail about the Technology Campus' progress. The motion was approved unanimously.
4. The meeting was adjourned at 11:36 am.

Respectfully Submitted By:

Dave Hoxeng, Secretary-Treasurer
Pensacola-Escambia Promotion & Development Commission

Pensacola Escambia Promotion and Development Commission



Request for Proposals: Landscape Maintenance

Deadline for Proposals: Tuesday, August 30, 2016 by 5:00 PM

Submission Contact Names and Addresses:

Lewis Bear, Jr.
Chairman
Pensacola Escambia Promotion and Development Commission
117 W Garden Street
Pensacola, FL 32502

I. Background Information

The downtown Pensacola Technology Campus is located on the corner of East Chase Street and North 9th Avenue. The campus is a joint venture led by the Greater Pensacola Chamber in partnership with Escambia County, the City of Pensacola and PEDC. The goal of the Technology Campus is to create a location for 21st century jobs with a focus on innovation-based businesses. The project has involved land donated by the city and the county to PEDC, a \$2 million grant from the United States Economic Development Administration and infrastructure funding from Escambia County and the City of Pensacola. The Technology Campus will accommodate multiple companies and has the capacity to be home to more than 1,000 high wage jobs.

II. Desired Scope of Work

The following operations shall be performed by the Contractor during the Two Year Maintenance Period for all of the landscape and turf area installed. At a minimum, maintenance shall occur weekly from April through October, and twice a month from November through March. A Mowing Log will be provided to the PEDC on a monthly basis as required detailing the services performed.

- a. **Mowing:** It is the responsibility of the contractor to mow the contract area on a cycle sufficient to maintain the turf at the specified height for each type of turf. Hand cutting around obstructions (signs, headwalls, light poles, and like items) and litter pickup shall be incidental to the mowing performed each cycle. The last cycle of mowing shall be performed after the final cleanup of the project.
 - Mow common Bermuda grass to a height of 1.5 – 2.5 inches.
 - Mow Centipede grass to a height of 1.5 – 2.5 inches.
- b. **Fertilizer:** During the establishment period, based on plant growth monitoring and soil analysis (min twice per year).
- c. **Weeding/Edging:**
 - Weeding - All planting areas shall remain weed free during the establishment period. Manual removal of weeds is preferable to control by herbicide.
 - Edging - Mechanically edge all planting beds that are adjacent to paving and turf areas at every mowing cycle.
- d. **Herbicides/Pesticides:**

- All personnel involved in the chemical program are to receive proper training and follow the operating guidelines provided by FDOT for chemical control. Contact the local County Agricultural Extension Service for additional information regarding herbicides, pesticides and required licenses.
 - Remove mechanically or by herbicide treatment all invasive exotic species (including aquatics) found during the establishment period.
 - Provide plant material insect and disease control inspections continually during the establishment period and treat as necessary.
- e. **Pruning:** Prune all plants as necessary to maintain proper form, health and vigor during the establishment period.
- f. **Mulch:**
- At all trees outside of a planting bed (if applicable), a 6-foot diameter ring of pine straw mulch shall be maintained; and in all planting beds, pine straw mulch shall be maintained continually.
 - Replenish initial areas of pine straw mulch (1.5 inches' depth) now and entire site one month prior to contract expiration.
- g. **Irrigation:** Maintain the irrigation system and well, and provide sufficient water to ensure plant material health during the establishment period.
- h. **Litter Pick-Up:** perform litter pickup prior to each mowing cycle. Litter pick-up between mowing, including after Civic Center events, is not included in this scope and will be negotiated on an as- needed basis.
- i. **Staking (If Applicable)** Contractor shall maintain all tree staking for the duration of the establishment period and remove staking when no longer required.
- j. **1-Year Option:** Based upon the Contractor's maintenance performance during the two year contract period, the owner may exercise a 1-Year Option for continued maintenance services by the Contractor.

III. Proposal Requirements

Proposal should be sent to the PEDC board. Each proposal should include six (6) printed copies as well as a digital file to be delivered to Scott Luth at sluth@floridawesteda.com.

Each submission copy should include the following:

- Contact information for proposer
- Scope of Work
- Firm Experience

- Bios/background of project team
- Client reference information
- Plan of Work with Timeline
- Cost Estimate

IV. RFP Process Timeline

Questions during the preparation of submissions should be directed to Scott Luth on or before Tuesday, August 30 by close of business. Questions will be accepted by email only to sluth@floridawesteda.com. Responses and/or answers where applicable will be provided within 1-3 business days.

- All proposal submissions must be received by **August 30, 2016** to be eligible for consideration. Any proposals received after this time will not be accepted.
- The PEDC will announce the selected firm on, or about, **September 15, 2016**.
- The contract recipient will not initiate the contract until written Notice to Proceed has been received.

V. RFP Stipulations

Proposals will be evaluated and scored by FloridaWest staff and recommendations voted upon by the PEDC Executive Board.

- Submissions that do not provide for all requirements as listed in *Section III, "Proposal Requirements"* will automatically be rejected. Any proposals that are received after the deadline will not be considered by the steering committee.
- Preference may be given to submissions which provide the competitive analysis conducted by a firm, or subcontractor of a firm, with professional site selection experience.

The PEDC board reserves the right to request any proposer to interview with or present their submissions for the committee either in person or by teleconference to answer questions about the proposal. If travel is required, this will come at the expense of the applicant.

VI. Terms and Conditions of Contract

By submitting a proposal, the proposer agrees that all or portions of the proposals contents may become part of a contract, if accepted, and the selection committee will reject any proposal submitted by a proposer who does not accept this condition.

The Pensacola Escambia Promotion and Development Commission reserve the right to negotiate the award and conditions of the proposal prior to entering into a written agreement.

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
ECONOMIC DEVELOPMENT TRANSPORTATION
PROJECT FUND AGREEMENT
(OFF-SYSTEM SPECIFIC APPROPRIATIONS)

This Economic Development Transportation Project Fund Agreement (Off-System Specific Appropriation) ("Agreement") is entered into this _____ day of _____, between the State of Florida, Department of Transportation ("FDOT" or "Department") and **Pensacola-Escambia Promotion and Development Commission (PEDC)** ("Agency"). FDOT and the Agency are sometimes referred to in this Agreement as a "Party" and collectively as the "Parties."

RECITALS

A. The Fiscal Year 2016-17 General Appropriations Act, Chapter 2016-66, Laws of Florida, provides the Agency with an appropriation of \$ **2,000,000.00** from the amount in Specific Appropriation **1906**, Economic Development Transportation Projects **to develop a design criteria package for site connectivity alignment including real property acquisition as well as promotion and public information for the Bluffs Corridor.**

B. This Agreement provides conditions necessary for the release of the funds appropriated to the Agency by Chapter 2016-66, Laws of Florida. The transportation project is further described in **Exhibit "A"**, attached and incorporated in this Agreement ("Project").

C. The Agency is prepared to complete the Project at an estimated total cost of \$ **2,000,000.00**.

D. FDOT is prepared to provide \$ **2,000,000.00** under Financial Project Number **439451-1-54-01** toward the total cost of the Project as set forth in Section 6.0 of the Agreement and the Schedule of Funding in **Exhibit "B"**, which is attached and incorporated in this Agreement.

E. The Agency by Resolution No. _____ dated the ____ day of _____, 20____, a copy of which is attached as **Exhibit "C"** and made a part of this Agreement, has authorized its officers to execute this Agreement on its behalf.

AGREEMENT

In consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

1.0 RECITALS: The recitals above are true and correct and are made a part of this Agreement.

2.0 TERM: The term of this Agreement shall commence upon full execution by both Parties (“Effective Date”) and continue through _____, unless terminated at an earlier date as provided in this Agreement. If the Project is not completed within the time period allotted, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by FDOT prior to the expiration of the Agreement. Expiration of this Agreement will be considered termination of the Project. Only Project costs incurred on or after the Commencement Date of this Agreement (as defined in paragraph 3.0 below) and on or prior to the termination date of the Agreement are eligible.

3.0 COMMENCEMENT: Unless terminated earlier, work on the Project shall commence no later than: the _____ day of _____, 20____ or within _____ days of the issuance of the Notice to Proceed for the construction phase of the Project, whichever date is earlier (“Commencement Date”), and shall be completed on or before _____. FDOT shall have the immediate option to terminate this Agreement should the Agency fail to meet either of the above-required dates.

If construction of the transportation Project does not commence within four (4) years of the date Chapter 2016-66, Laws of Florida, became effective, this Agreement and the Project are immediately terminated.

4.0 PROJECT DESCRIPTION: The Agency shall provide quantifiable, measurable and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project, identified as Financial Management Number **439450-1-54-01**, and the quantifiable, measurable and verifiable units of deliverables are described more fully in **Exhibit “A”** which is incorporated in this Agreement.

5.0 NOTICES AND APPROVALS: All notices pertaining to this Agreement are in effect upon receipt by either Party, shall be in writing, and shall be transmitted either by personal hand delivery; United States Post Office, return receipt requested; or, overnight express mail delivery. E-mail and facsimile may be used if the notice is also transmitted by one of the preceding forms of delivery. The addresses and the Agreement Administrators set forth below for the respective parties shall be the places where notices shall be sent, unless prior written notice of change of address is given.

FDOT:

**STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
DISTRICT THREE ECONOMIC DEVELOPMENT TRANSPORTATION
PROJECT FUND COORDINATOR
DUSTIN CASTELLS
1074 HIGHWAY 90, CHIPLEY FLORIDA 32428
DUSTIN.CASTELLS@DOT.STATE.FL.US
PHONE: (850) 330-1227
FAX: (850) 330-1130**

AGENCY:

**PENSACOLA-ESCAMIBA PROMOTION
AND DEVELOPMENT COMMISSION**

ATTENTION: _____

PHONE: _____
FAX: _____

All approvals referenced in this Agreement must be obtained in writing from the Parties' respective Administrators or their designees.

6.0 RELEASE OF FUNDS: Project funds made available by FDOT shall not be released until the following have been satisfied:

(a) The Agency has agreed by resolution to accept future maintenance and other attendant costs occurring after completion of the Project for the portion of the Project on the Agency's system and such resolution is attached and incorporated in this Agreement as **Exhibit "C"**;

(b) The Agency shall certify to FDOT that the Agency's design consultant and/or construction contractor has secured the necessary permits. If the Agency fails to provide such certification to FDOT by , FDOT may, at its discretion, terminate this Agreement;

(c) The Agency shall invoice FDOT quarterly for actual costs incurred. The Agency shall review and approve all invoices, statements, or other related documents duly submitted to the Agency by the Agency's design consultant or construction contractor. Invoices shall be submitted by the Agency to FDOT in detail sufficient for a proper pre-audit and post audit thereof, based on the quantifiable, measurable, and verifiable units of deliverables as established in Paragraph 4.0 above and **Exhibit "A"**. Deliverables must be received and accepted in writing by the pre-audit and approval by the Agency;

(d) Supporting documentation must establish that the deliverables were received and accepted in writing by the Agency and that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in Paragraph 4.0 and **Exhibit "A"** has been met;

(e) FDOT will pay to the Agency, after receipt of a detailed invoice, an amount equal to the invoice received by the Agency from the Agency's consultant or contractor. The Agency must certify on the invoice that the costs from the consultant or contractor are valid, reasonable, necessary, and allowable and the costs have been incurred by the consultant or contractor prior to the date of the invoices. All invoices submitted to the Department must provide complete documentation, including a copy of the consultant's or contractor's invoice(s), to substantiate the cost on the invoice. Each quarterly invoice subsequent to the first invoice from the Agency must contain a statement from the Agency that the previous quarterly costs incurred by the consultant or contractor have been paid by the Agency to the consultant or contractor;

(f) Before using its own forces for any phase of the Project, the Agency shall provide FDOT with the opportunity to review and approve the qualifications of the Agency forces to be utilized. In the event the Agency proceeds with any phase the Project utilizing its own forces, the Agency will only be reimbursed for direct costs (this excludes general overhead);

(g) The Agency shall provide to FDOT certification and a copy of appropriate documentation substantiating that all required right-of-way necessary for the Project have been obtained; and

(h) Provide FDOT with written notification of either its intent to:

(i) Award the construction of the Project to a contractor which is the lowest and best bidder in accordance with applicable state and federal statutes, rules, and regulations. The Agency shall then submit a copy of the bid tally sheet(s) and awarded bid contract, or

(ii) Construct the Project utilizing existing Agency employees, if the Agency can complete said Project within the time frame in Section 3.0 of this Agreement.

(i) The Agency shall charge to the Project account all eligible costs of the Project except costs agreed to be borne by the Agency or its contractors and subcontractors. Costs in excess of the programmed funding or attributable to actions which have not received the required approval of FDOT shall not be considered eligible costs. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.

(j) Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes. If FDOT determines that the performance of the Agency is unsatisfactory, FDOT shall notify the Agency of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by FDOT. The Agency shall, within five days after notice from FDOT, provide FDOT with a corrective action plan describing how the Agency will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to FDOT, the Agency shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until the Agency resolves the deficiency. If the deficiency is subsequently resolved, the Agency may bill FDOT for the retained amount during the next billing period. If the Agency is unable to resolve the deficiency, the funds retained may be forfeited at the end of the Agreement's term.

(k) If, after Project completion, any claim is made by FDOT resulting from an audit or for work or services performed pursuant to this Agreement, FDOT may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within 60 days to FDOT. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by FDOT.

(l) The Agency must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.

6.1 TRANSFER OF FUNDS:

Entities providing goods and services to FDOT should be aware of the following time frames. Upon receipt of the invoice, FDOT has 20 days to inspect and approve the goods and services. FDOT has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the Agency. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment. Invoices that have to be returned to the Agency because of Agency preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the FDOT.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for entities who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes. If FDOT determines that the performance of the Agency is unsatisfactory, FDOT shall notify the Agency of the deficiency to be corrected, which correction shall be made within a time-frame to be specified

by FDOT. The Agency shall, within five days after notice from FDOT, provide FDOT with a corrective action plan describing how the Agency will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to FDOT, the Agency shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until the Agency resolves the deficiency. If the deficiency is subsequently resolved, the Agency may bill FDOT for the retained amount during the next billing period. If the Agency is unable to resolve the deficiency, the funds retained may be forfeited at the end of the Agreement's term.

6.2 USE OF FUNDS: Funds made available by FDOT pursuant to this Agreement shall be expended in a timely manner and solely for the purpose of the approved Project. No such funds shall be used for the purchase of any landscaping, mitigation planting, water and sewer lines, for any legal action against FDOT, or costs associated with preparation of the application for use of Economic Development Transportation funding. The Schedule of Funding, **Exhibit "B"**, is attached and incorporated in this Agreement.

6.3 ASSURANCES: As an inducement to the transfer of funds referred to in Section 6.1 above, the Agency certifies that, if initiated, the Project will be carried through to its completion and will not require the expenditure of any additional funds from FDOT. The Agency is liable for all cost overruns on the Project.

6.4 PROHIBITION OF LOCAL PREFERENCES IN PROCUREMENT OF CONSTRUCTION SERVICES: If the Project is procured pursuant to Chapter 255 for construction services and at the time of the competitive solicitation for the Project 50 percent or more of the cost of the Project is to be paid from state-appropriated funds, then the Agency must comply with the requirements of Section 255.0991, Florida Statutes.

7.0 DESIGN AND CONSTRUCTION STANDARDS AND REQUIRED APPROVALS:

(a) The Agency agrees to undertake the design, construction, and Consultant Construction Engineering Inspection ("CCEI") of the Project in accordance with all applicable federal, state and local statutes, rules and regulations, including Agency standards and specifications. A professional engineer,

registered in Florida, shall provide the certification that all design and construction for the Project meets the minimum construction standards established by the Agency.

(b) The Agency understands that it is responsible for the preparation of all design plans for the Project. The Agency shall hire a qualified consultant for the design phase of the Project using the Agency's normal procurement procedures to perform the design services for the Project.

(c) Execution of this Agreement by both Parties shall be deemed a Notice to Proceed to the Agency for the design phase of the Project. Any work performed prior to the execution of this Agreement is not subject to reimbursement.

(d) The Agency will provide one (1) copy of the final design plans and specifications and final bid documents to FDOT's Construction Project Manager prior to commencing construction of the Project.

(e) The Agency shall hire a qualified contractor using the Agency's normal bid procedures to perform the construction work for the Project.

(f) Prior to commencing the construction work described in this Agreement, the Agency shall request a Notice to Proceed from FDOT's Construction Project Manager, **Dustin Castells**, at **(850) 330-1227** or from an appointed designee. Any construction work performed prior to the issuance of the Notice to Proceed for construction is not subject to reimbursement.

(g) The Agency shall hire a qualified CCEI to perform construction oversight including the obligation to assure that any and all verification testing is performed in accordance with the 2010 Standard Specifications for Road and Bridge Construction, as amended from time to time. FDOT shall have the right, but not the obligation, to perform independent assurance testing during the course of construction of the Project. The CCEI firm shall not be the same firm as that of the Engineer of Record for the Project.

(h) The Agency shall require the Agency's contractor to post a payment and performance bond in accordance with Section 337.18(1), Florida Statutes.

(i) The Agency shall be responsible to ensure that the construction work under this Agreement is performed in accordance with the approved construction documents, and that it will meet all applicable Agency standards.

(j) Upon completion of the work authorized by this Agreement, the Agency shall notify FDOT in writing of the completion of construction of the Project; and for all design work that originally required certification by a Professional Engineer, this notification shall contain an Engineers Certification of Compliance, signed and sealed by a Professional Engineer, the form of which is attached hereto as **Exhibit “D”**. The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the approved plans, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation.

(k) The Agency must submit the final invoice to FDOT within one hundred eighty (180) days after the final acceptance of the Project.

(l) Upon completion of the Project, the Agency shall be responsible for the perpetual maintenance of the facilities on its system that are constructed under this Agreement. The terms of this provision shall survive the termination of this Agreement.

8.0 AVAILABILITY OF FUNDS: The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Chapter 339.135(6)(a), F.S., are incorporated:

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of 25,000 dollars and which have a term for a period of more than 1 year."

9.0 TERMINATION OF AGREEMENT: FDOT may terminate this Agreement upon no less than thirty (30) days notice in writing delivered in accordance with the Notices and Approvals provisions of

Paragraph 5.0. In the event the Agency fails to perform or honor the requirements and provisions of this Agreement, the Agency shall return funds in accordance with Section 11.0 of this Agreement within thirty (30) days of the termination of this Agreement. If the Agreement is terminated before performance is completed, the Agency shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress on the FDOT right-of-way will become the property of the FDOT and will be turned over promptly by the Agency.

9.1 TERMINATION REPORT: Upon termination prior to the expiration of this Agreement, the Agency will provide the following:

(a) Certification that the portion of the Project that has been completed is in compliance with the terms and conditions of this Agreement and meets minimum construction standards established in accordance with Section 336.045, Florida Statutes.

(b) A report which shall specify the following: (i) the total direct Project costs paid from funds made available by FDOT pursuant to this Agreement; and (ii) the balance of any unexpended Project funds.

10.0 EXPENDITURES IN VIOLATION OF AGREEMENT: Any Project funds made available by FDOT pursuant to this Agreement which are determined by FDOT to have been expended by the Agency in violation of this Agreement or any other applicable law or regulation shall be promptly refunded in full to FDOT. Acceptance by FDOT of any documentation or certifications, mandatory or otherwise permitted, that the Agency files shall not constitute a waiver of FDOT's rights as the funding agency to verify all information at a later date by audit or investigation.

11.0 LEGAL REQUIREMENTS:

(a) This Agreement is executed and entered into in the State of Florida and will be construed, performed, and enforced in all respects in strict conformity with local, state, and federal laws, rules,

and regulations. Any and all litigation arising under this Agreement shall be brought in the appropriate court in Leon County, Florida, applying Florida law.

(b) If any term or provision of the Agreement is found to be illegal and unenforceable, the remainder of the Agreement will remain in full force and effect and such term or provision will be deemed stricken.

(c) The Agency shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Agency in conjunction with this Agreement. Failure by the Agency to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by FDOT.

(d) The Agency shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work thereof.

(e) The Agency and FDOT agree that the Agency, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of FDOT as a result of this Agreement.

12.0 PUBLIC ENTITY CRIME: The Agency affirms that it is aware of the provisions of Section 287.133(2)(a), Florida Statutes. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. The Agency agrees that it shall not violate Section 287.133(2)(a), Florida Statutes, and further acknowledges and agrees that any conviction during the term of this Agreement may result in the termination of this Agreement.

12.1 NON-RESPONSIBLE CONTRACTORS: An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by FDOT to be a non-responsible

contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Agency.

13.0 UNAUTHORIZED ALIENS: FDOT will consider the employment of unauthorized aliens, by any contractor or subcontractor, as described by Section 274A(e) of the Immigration and Nationalization Act, cause for termination of this Agreement.

14.0 NON-DISCRIMINATION: The Agency will not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, ethnicity, race, religious belief, disability, national origin, or sex. The Agency shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management. The Agency shall insert similar provisions in all contracts and subcontracts for services by this Agreement.

The Agency affirms that it is aware of the provisions of Section 287.134(2)(a), Florida Statutes. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity. The Agency further agrees that it shall not violate Section 287.134(2)(a), Florida Statutes, and acknowledges and agrees that placement on the list during the term of this Agreement may result in the termination of this Agreement.

15.0 ATTORNEY FEES: Unless authorized by law and agreed to in writing by FDOT, FDOT will not be liable to pay attorney fees, interest, or cost of collection.

16.0 TRAVEL: There shall be no reimbursement for travel expenses under this Agreement.

17.0 PRESERVATION OF REMEDIES: No delay or omission to exercise any right, power, or remedy accruing to either Party upon breach or default by either Party under this Agreement, will impair any such right, power or remedy of either Party; nor will such delay or omission be construed as a waiver of any breach or default or any similar breach or default.

18.0 AUDIT AND MONITORING REQUIREMENTS:

(a) The administration of resources awarded through the Department to the Agency by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any state agency inspector general, the Auditor General, or any other state official. The Agency shall comply with all audit and audit reporting requirements as specified below.

1. In addition to reviews of audits conducted in accordance with Section 215.97, Florida Statutes, monitoring procedures to monitor the Agency's use of state financial assistance may include but not be limited to on-site visits by Department staff and/or other procedures including, reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to state financial assistance awarded through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, the Department of Financial Services (DFS) or the Auditor General.

2. The Agency, a nonstate entity as defined by Section 215.97(2)(m), Florida Statutes, as a recipient of state financial assistance awarded by the Department through this Agreement is subject to the following requirements:

i. In the event the Agency meets the audit threshold requirements established by Section 215.97, Florida Statutes, the Agency must have a State single or project-specific audit conducted for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. **Exhibit "E"**, which is attached and incorporated into this Agreement, indicates state financial assistance awarded through the Department by this Agreement needed by the Agency to further comply with the requirements of Section 215.97, Florida Statutes. In determining the state financial assistance expended in a fiscal year, the Agency shall consider all sources of state financial assistance, including state

financial assistance received from the Department by this Agreement, other state agencies and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

ii. In connection with the audit requirements, the Agency shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(e), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

iii. In the event the Agency does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, the Agency is exempt for such fiscal year from the state single audit requirements of Section 215.97, Florida Statutes. However, the Agency must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Agency's audit period for each applicable audit year. In the event the Agency does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, in a fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the Agency's resources (i.e., the cost of such an audit must be paid from the Agency's resources obtained from other than State entities).

iv. In accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, copies of financial reporting packages required by this Agreement shall be submitted to:

Florida Department of Transportation
Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, FL 32399-0405
Email: FDOTSingleAudit@dot.state.fl.us

And

State of Florida Auditor General
Local Government Audits/342
111 West Madison Street, Room 401
Tallahassee, FL 32399-1450
Email: flaudgen_localgovt@aud.state.fl.us

v. Any copies of financial reporting packages, reports or other information required to be submitted to the Department shall be submitted timely in accordance with Section 215.97, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

vi. The Agency, when submitting financial reporting packages to the Department for audits done in accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date the reporting package was delivered to the Agency in correspondence accompanying the reporting package.

vii. Upon receipt, and within six months, the Department will review the Agency's financial reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate corrective action on all deficiencies has been taken pertaining to the state financial assistance provided through the Department by this Agreement. If the Agency fails to have an audit conducted consistent with Section 215.97, Florida Statutes, the Department may take appropriate corrective action to enforce compliance.

viii. As a condition of receiving state financial assistance, the Agency shall permit the Department, or its designee, DFS or the Auditor General access to the Agency's records including financial statements, the independent auditor's working papers and project records as necessary. Records related to unresolved audit findings, appeals or litigation shall be retained until the action is complete or the dispute is resolved.

3. The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department, or its designee, DFS or the Auditor General access to such records upon request. The Agency shall ensure that the audit working papers are made available to the Department, or its designee, DFS or the Auditor General upon request for a period of five years from the date the audit report is issued unless extended in writing by the Department.

19.0 LOBBYING: Funds may not be used for the purpose of lobbying the Florida Legislature, judicial branch, or any state agency, in accordance with Section 216.347, Florida Statutes.

20.0 MINORITY VENDORS: The Agency is encouraged to use small businesses, including minority and women-owned businesses as subcontractors or sub-vendors under this Agreement. The directory of certified minority and women-owned businesses can be accessed from the website of the Department of Management Services, Office of Supplier Diversity. The Agency shall report on a quarterly basis its expenditures with minority and women-owned businesses. The report shall contain the names and addresses of the minority and women-owned businesses; the aggregate dollar figure disbursed that quarter for each business; the time period; type of goods or services; and the applicable code. If no expenditures were made to minority or women-owned businesses, the Agency shall submit a statement to this effect.

21.0 INDEMNITY AND INSURANCE:

(a) The Agency agrees to include the following indemnification in all contracts with contractors, subcontractors, consultants, and subconsultants, who perform work in connection with this Agreement:

"The contractor/subcontractor/consultant/subconsultant shall indemnify, defend, save and hold harmless the State of Florida, Department of Transportation and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor/subcontractor/ consultant/subconsultant, its officers, agents or employees."

(b) The Agency shall carry or require its contractor/subcontractor/consultant/subconsultant to carry and keep in force during the period of this Agreement a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$100,000 per person and \$300,000 each occurrence, and property damage insurance of at least \$100,000 each occurrence, for the services to be rendered in accordance with this Agreement. In addition to any other forms of insurance or bonds required under the terms of the Agreement, when it includes construction within the limits of a railroad right-of-way, the Agency must provide or cause its contractor to provide insurance coverage in accordance with Section 7-13 of FDOT's Standard Specifications for Road and Bridge Construction, as amended.

(c) The Agency shall also carry or cause its contractor/subcontractor/consultant/subconsultant to carry and keep in force Worker's Compensation insurance as required for the State of Florida under the Worker's Compensation Law.

22.0 MODIFICATION OF AGREEMENT: In the event the Agency desires to modify any of the terms and conditions of this Agreement, the Agency shall make such request for modification in writing to FDOT at any time during the term of this Agreement. However, if the request for modification relates to changes in the Project commencement and/or Project completion dates, such request must be received by FDOT prior to the expiration of the current commencement or Project completion date. If such a request is made after the expiration of the above referenced date, FDOT shall have the option to terminate this Agreement.

23.0 E-VERIFY: The Agency:

(a) shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Agency during the term of the contract; and

(b) shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

24.0 INSPECTOR GENERAL: The Parties agree to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

25.0 NON-ASSIGNMENT: The Agency shall not assign, sublicense, or otherwise transfer its rights, duties, or obligations under this Agreement without the prior written consent of FDOT, which consent will not be unreasonably withheld. Any assignment, sublicense, or transfer occurring without the required written approval will be null and void. FDOT will at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental agency in the State of Florida, upon giving prior

written notice to the Agency. In the event that FDOT approves transfer of the Agency's obligations, the Agency remains responsible for all work performed and all expenses incurred in connection with this Agreement.

26.0 ENTIRE AGREEMENT: This instrument embodies the entire Agreement of the parties. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement. This Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the parties. No amendment will be effective unless reduced to writing and signed by an authorized officer of the Agency and the authorized officer of FDOT or his/her delegate.

27.0 DUPLICATE ORIGINALS: This Agreement may be executed in duplicate originals.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) below.

FDOT

State of Florida, Department of Transportation

By: _____

Print Name: **James T. Barfield, P.E.**

Title: **District Three Secretary**

Date: _____

Legal Review:

See attached Encumbrance Form for date of
funding approval by Comptroller

AGENCY

By: _____

Print Name: _____

Title: _____

As approved by the Board on:

Attest: _____

Legal Review:

County Attorney

EXHIBIT “A”

SCOPE OF SERVICES

Financial Management Number: 439451-1-54-01

The Bluffs is a 6,800-acre master-planned industrial park located on property owned by four Stakeholders: Emerald Coast Utilities Authority, ASCEND Performance Materials, Gulf Power Company, and University of West Florida. Under the scope of this project the following tasks will be completed: Project Management and Public Information for all activities, Programming and Master Plan Conformance, Preliminary Roadway Alignments and Approved Concepts, Preliminary Railway Alignment, Preliminary Industrial Utility Alignments, Conceptual Reporting and Approval, and preparation of the Final Transportation Criteria Packages.

A breakdown of the tasks are as follows:

1. Programming and Master Plan Conformance.

The Consultant will determine the detailed alignments, development and construction options available to implement the transportation, industrial utility and other infrastructure concepts presented in the 2015 Bluffs Master Plan. The ***Programming*** task shall result in four parcels selected from the Master Plan. Planning, Engineering, Market Feasibility and Real Property analysis will be accomplished by the Consultant as required to support parcel identification and selection. The four parcels will be selected to proceed with more detailed infrastructure programming; at a minimum, the four industrial parcels will be as follows:

- a) Live Oak Bluff: Road Industrial Development Site.
- b) Longleaf Bluff: Road Industrial Development Site.
- c) Magnolia Bluff: Road, Rail and Barge Industrial Development Site.
- d) Cypress Bluff: Road and Rail Industrial Development Site.

The ***Programming*** phase of work shall refine the information presented in the Master Plan to conform to more exact project types and infrastructure loadings and requirements. In addition to the four exact site locations and areas, the Consultant shall review and update Master Plan information, as required, to establish a conceptual data set for each of the four projects; including, but not necessarily limited to:

- 1) Building Type and Area.
- 2) Target Industry Sector.
- 3) Detailed Infrastructure Requirements.
- 4) Multi-Modal Transportation Capacities and Requirements.
- 5) Existing and Future Regional Transportation Capacities.
- 6) Site Design Requirements.
- 7) Sustainability Ratings and Conformance Standards.

The results of the **Programming** phase shall be compiled into a document, *The Bluffs Criteria Programming Report*, and submitted to PEDC and the Project Stakeholders for review and approval.

2. Preliminary Roadway Alignments and Approved Concepts.

For the four specific parcels identified in Task 1; and based on the information included in the Master Plan, provide a preferred alignment alternative, capacity analysis, typical sections, and any other information necessary for Stakeholder evaluation and **Preliminary** alignment approval. For the four approved alignments, identify jurisdictional wetlands, topographic conditions, subsurface conditions, geometric requirements, roadway wetland crossing locations, roadway wetland crossing alternatives, specific regulatory compliance requirements, real property requirements, conceptual construction cost estimates, standard technical specification references, and any other items necessary to develop and present a final roadway alignment **Concept** for approval from the Stakeholders.

3. Preliminary Railway Alignments and Final Concepts.

For the specific parcels programmed for rail service and identified in Task 1; and based on the information included in the Master Plan, provide a preferred alignment alternative for **Preliminary** stakeholder evaluation and approval. All rail improvements shall be coordinated with CSX in accordance with the concepts developed as part of the Master Plan. For the approved rail alignments, identify jurisdictional wetlands, topographic conditions, subsurface conditions, geometric requirements, stormwater management requirements, crossing locations, crossing alternatives, specific regulatory compliance requirements, real property requirements, and any other items necessary to develop and present a final rail alignment **Concept** for approval from the Stakeholders.

4. Preliminary Industrial Utility Alignments and Approved Concepts.

For the specific parcels identified in Task 1; and based on the information included in the Master Plan, provide preferred utility system extension alternatives for **Preliminary** stakeholder evaluation and approval. To the maximum extent practicable, the Consultant shall conform all concepts and/or alternatives with the information included in the Master Plan. The utilities systems included in this task are as follows:

- a) *Industrial Wastewater*. Wastewater treatment capacities, projected flows, pre-treatment requirements, pumping requirements, pipeline alignments, etc.; shall be coordinated with The Emerald Coast Utilities Authority.
- b) *Process Water*. Industrial reuse water, projected demands, current allocations, acquisition requirements, pipeline sizes, pipeline alignments, etc.; shall be coordinated and in conformance with The Emerald Coast Utilities Authority.
- c) *Natural Gas*. Natural gas distribution capacities, projected demands, connection requirements, extension requirements, pipeline alignments, site service requirements, etc.; shall be coordinated with Gulf South Pipeline.
- d) *Electrical Power*. All electrical power transmission and service requirements will be coordinated through Gulf Power Company.
- e) *Potable Water*. Treated Potable Water, projected demands, current sources, connection requirements, pumping requirements, pipeline sizes, pipeline alignments,

etc.; shall be coordinated and in conformance with The Emerald Coast Utilities Authority.

f) *Maritime Industrial Material Transfer* (Magnolia Bluff Only). All pipelines, transfer stations, geometric alignments, capacities and other critical items associated with connection to the existing liquid cargo barge terminal shall be coordinated with ASCEND Performance Materials.

g) *Industrial Process Steam Supply* (Magnolia and Cypress Bluffs Only). All pipelines, geometric alignments, capacities and other critical items associated with connection to the existing industrial steam generation facility shall be coordinated with ASCEND Performance Materials.

5. Conceptual Reporting and Approval.

The **Concepts** developed in Tasks 2, 3 and 4 shall be compiled into a *Bluffs Conceptual Plan* and submitted to the PEDC and Project Stakeholders for review and approval. The *Bluffs Conceptual Plan* will recommend two parcels for transportation design criteria development.

6. Final Transportation Criteria Packages.

For the two parcels identified for further development in Task 5, and based on the approved *Bluffs Conceptual Plan*, the Consultant shall prepare two design criteria packages for roadway transportation access. The final design criteria will be developed to a level that allows for the PEDC to advertise and award fast-track design/build construction contracts in the future. At a minimum, the two **Criteria Packages** will include the following items:

- a) General Criteria.
- b) Technical Criteria.
- c) Outline Technical Specifications.
- d) Design Analysis, including Regulatory Requirements.
- e) Plans developed to 30% Design Complete Submittal Stage..
- f) Real Property Summary.
- g) Estimated Opinion of Probable Construction Cost.

The two **Criteria Packages** will be submitted and coordinated with Escambia County, FL in accordance with the established Development Review process. The Consultant will satisfy comments issued by the reviewing agency, as necessary to ensure that the identified rights-of-way associated with the roadways can be dedicated to the County after development.

7. Project Management, Public information and Communications.

For all tasks and phases of work, the Consultant shall provide adequate **Project Management** support to PEDC, its staff and project representatives. This includes, but is not necessarily limited to:

- a) Project Meetings and Conferences.
- b) Public Information Meetings.
- c) Project Communications and Promotions.
- d) Stakeholder Communications.
- e) Marketing Materials Assistance and Support.
- f) Real Property Acquisition Support.

EXHIBIT “B”
SCHEDULE OF FUNDING
Financial Management Number:

FUNDS AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:						
State Program Number	Funding Source	State Fiscal Year	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
439451-1-54-01	STTF	2017	55.032	Economic Development Transportation Projects – Road Fund	\$2,000,000.00	088865
Total Award					\$1,674,000.00	

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/catalog.aspx>]. The services/purposes for which the funds are to be used are included in the Agreement scope of services/work. Any match required by the recipient is clearly indicated in the Agreement.

**EXHIBIT “C”
AGENCY RESOLUTION**

EXHIBIT “D”

NOTICE OF COMPLETION AND ENGINEER’S CERTIFICATION OF COMPLIANCE

NOTICE OF COMPLETION

ECONOMIC DEVELOPMENT TRANSPORTATION PROJECT FUND AGREEMENT

Between

THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
and **PENSACOLA-ESCAMBIA PROMOTION AND DEVELOPMENT COMISSION**

PROJECT DESCRIPTION: **The Bluffs Corridor Phase I**

FINANCIAL MANAGEMENT ID# **439451-1-54-01**

In accordance with the Terms and Conditions of the Economic Development Transportation Project Fund Agreement, the undersigned provides notification that the work authorized by this Agreement is complete as of _____, 20_____.

By: _____

Name: _____

Title: _____

ENGINEER’S CERTIFICATION OF COMPLIANCE

In accordance with the Terms and Conditions of the Economic Development Transportation Project Fund Agreement, the undersigned certifies that all work which originally required certification by a Professional Engineer has been completed in compliance with the Project construction plans and specifications. If any deviations have been made from the approved plans, a list of all deviations, along with an explanation that justifies the reason to accept each deviation, will be attached to this Certification. Also, with submittal of this certification, the Agency shall furnish FDOT a set of “as-built” plans certified by the Engineer of Record/CEI.

By: _____, P.E.

SEAL:

Name: _____

Date: _____

EXHIBIT “E”

**STATE FINANCIAL ASSISTANCE
(FLORIDA SINGLE AUDIT ACT)**

STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

Awarding Agency: Florida Department of Transportation
State Project Title: ECONOMIC DEVELOPMENT TRANSPORTATION PROJECTS – ROAD FUND
CSFA Number: 55.032
***Award Amount:** \$2,000,000.00

*The state award amount may change with supplemental agreements

Specific project information for CSFA Number 55.032 is provided at:
<https://apps.fldfs.com/fsaa/searchCatalog.aspx>

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT:

State Project Compliance Requirements for CSFA Number 55.032 are provided at:
<https://apps.fldfs.com/fsaa/searchCompliance.aspx>

The State Projects Compliance Supplement is provided at: <https://apps.fldfs.com/fsaa/compliance.aspx>

**GRANT AGREEMENT
STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY**

THIS GRANT AGREEMENT ("Agreement") is made and entered into by and between the State of Florida, Department of Economic Opportunity ("DEO"), and ***Pensacola-Escambia Promotion and Development Commission*** ("Grantee"). DEO and Grantee are sometimes referred to herein individually as a "Party" and collectively as "the Parties."

I. GRANTEE AGREES:

A. Performance Requirements:

Grantee shall perform the services specified herein in accordance with the terms and conditions of this Agreement and all of its attachments and/or exhibits, which are incorporated by reference herein.

B. Type of Agreement:

This Agreement is a **cost reimbursement** agreement.

C. Agreement Period:

The term of this Agreement begins on July 1, 2016, and ends on June 30, 2017. DEO is not obligated to pay for costs incurred by Grantee related to this Agreement prior to its beginning date or after its ending date. Grantee acknowledges that while no extension of this Agreement is contemplated, if an extension is necessary due to events beyond the control of Grantee, any consideration of an extension will be subject to the availability of funds and further conditioned upon Grantee's satisfactory performance of all duties and obligations hereunder, as determined by DEO.

D. Agreement Payment:

This Agreement shall not exceed ***Three Hundred Thousand Dollars (\$300,000)*** which shall be paid by DEO in consideration for Grantee's provision of services as set forth by the terms and conditions of this Agreement. The State of Florida and DEO's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. DEO shall be the final authority as to the availability of funds for this Agreement, and as to what constitutes an "annual appropriation" of funds to complete this Agreement. If such funds are not appropriated or available for the Agreement purpose, such event will not constitute a default on DEO or the State. DEO agrees to notify Grantee in writing at the earliest possible time if funds are not appropriated or available. The cost for services rendered under any other Agreement or to be paid from any other source is not eligible for reimbursement under this Agreement.

E. Requirements of paragraphs (a) – (i) of subsection 287.058(1), Florida Statutes (F.S.):

1. Grantee shall submit bills for fees or other compensation for services or expenses in sufficient detail for a proper pre-audit and post-audit thereof.
2. If travel expenses are authorized, Grantee shall submit bills for such travel expenses and shall be reimbursed only in accordance with section 112.061, F.S.
3. Grantee shall allow public access to all documents, papers, letters or other materials made or received by Grantee in conjunction with this Agreement, unless the records are exempt from section 24(a) of Article I of the State Constitution and section 119.07(1), F.S. It is expressly understood that DEO may unilaterally cancel this Agreement for Grantee's refusal to comply with this provision.
4. Grantee shall perform all tasks contained in Attachment 1, Scope of Work.
5. Receipt by Grantee of DEO's written acceptance of the units of deliverables specified herein is a condition precedent to payment under this Agreement and is contingent upon Grantee's compliance with the specified performance measure (i.e., each deliverable must satisfy at least the minimum acceptable level of service specified in the Scope of Work and DEO shall apply the applicable criteria stated in the Scope of Work to determine satisfactory completion of each deliverable).
6. Grantee shall comply with the criteria and final date by which such criteria must be met for completion of this Agreement.
7. Renewal: This Agreement may not be renewed.
8. If Grantee fails to perform in accordance with the Agreement, DEO shall apply the financial consequences specified herein.
9. Unless otherwise agreed in writing, intellectual property rights to preexisting property will remain with Grantee; whereas, intellectual property rights to all property created or otherwise developed by Grantee specifically for DEO will be owned by the State of Florida through DEO. Proceeds derived from the sale, licensing, marketing, or other authorization related to any such DEO-controlled intellectual property right shall be handled in the manner specified by applicable state statute.

F. Governing Laws of the State of Florida:

1. Grantee agrees that this Agreement is executed and entered into in the State of Florida, and shall be construed, performed, and enforced in all respects in accordance with the laws, rules, and regulations of the State of Florida. Each Party shall perform its obligations herein in accordance with the terms and conditions of the Agreement. Without limiting the provisions of Section II.D., Dispute Resolution, the exclusive venue of any legal or equitable action that arises out of or relates to the Agreement shall be the appropriate state court in Leon County, Florida; in any such action, the Parties waive any right to jury trial. For

avoidance of doubt, should any term of this Agreement conflict with any applicable law, rule, or regulation, the law, rule, or regulation shall control over the provisions of this Agreement.

2. If applicable, Grantee agrees that it is in compliance with the rules for e-procurement as directed by Rule 60A-1.030, F.A.C. and that it will maintain eligibility for this Agreement through the MyFloridaMarketplace.com system.
3. DEO shall ensure compliance with section 11.062, F.S., and section 216.347, F.S. Grantee shall not, in connection with this or any other agreement with the State, directly or indirectly: (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty; or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of DEO's Inspector General, or other authorized State official, Grantee shall provide any type of information the Inspector General deems relevant to Grantee's integrity or responsibility. Such information may include, but shall not be limited to, Grantee's business or financial records, documents, or files of any type or form that refer to or relate to this Agreement. Grantee shall retain such records in accordance with the record retention requirements of Part V of Attachment 2, Audit Requirements.
4. Grantee agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of Grantee's compliance with the terms of this or any other agreement between Grantee and the State which results in the suspension or debarment of Grantee. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. Grantee shall not be responsible for any costs of investigations that do not result in Grantee's suspension or debarment. Contractor understands and will comply with the requirements of subsection 20.055(5), F.S., including but not necessarily limited to, the duty of Contractor and any of Contractor's subcontractors to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to section 20.055, F.S.
5. **Public Entity Crime:** Pursuant to section 287.133(2)(a), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on an agreement to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on an agreement with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor or consultant under an agreement with any public entity and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, F.S., for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

- 6. Advertising:** Subject to chapter 119, F.S., Grantee shall not publicly disseminate any information concerning this Agreement without prior written approval from DEO, including, but not limited to mentioning this Agreement in a press release or other promotional material, identifying DEO or the State as a reference, or otherwise linking Grantee's name and either a description of the Agreement or the name of DEO or the State in any material published, either in print or electronically, to any entity that is not a Party to this Agreement, except potential or actual authorized distributors, dealers, resellers, or service representatives.
- 7. Sponsorship:** As required by section 286.25, F.S., if Grantee is a nongovernmental organization which sponsors a program financed wholly or in part by state funds, including any funds obtained through this Agreement, it shall, in publicizing, advertising, or describing the sponsorship of the program, state: "Sponsored by (Grantee's name) and the State of Florida, Department of Economic Opportunity." If the sponsorship reference is in written material, the words "State of Florida, Department of Economic Opportunity" shall appear in the same size letters or type as the name of the organization.
- 8. Mandatory Disclosure Requirements:**
- a. Conflict of Interest:** This Agreement is subject to chapter 112, F.S. Grantee shall disclose the name of any officer, director, employee, or other agent who is also an employee of the State. Grantee shall also disclose the name of any State employee who owns, directly or indirectly, more than a five percent (5%) interest in Grantee or its affiliates.
 - b. Convicted Vendors:** Grantee shall disclose to DEO if it, or any of its affiliates, as defined in section 287.133(1)(a) of the Florida Statutes, is on the convicted vendor list. A person or affiliate placed on the convicted vendor list following a conviction for a public entity crime is prohibited from doing any of the activities listed in Section I.F.5 above for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.
 - c. Vendors on Scrutinized Companies Lists:** If this Agreement is in the amount of \$1 million or more, in executing this Agreement, Grantee certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, F.S., or engaged in business operations in Cuba or Syria.
 - 1) Pursuant to section 287.135(5), F.S., DEO may immediately terminate this Agreement for cause if Grantee is found to have submitted a false certification or if Grantee is placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria, during the term of the Agreement.
 - 2) If DEO determines that Grantee has submitted a false certification, DEO will provide written notice to Grantee. Unless Grantee demonstrates in writing, within ninety (90) days of receipt of the notice, that DEO's determination of false certification was

made in error, DEO shall bring a civil action against Grantee. If DEO's determination is upheld, a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed on Grantee, and Grantee will be ineligible to bid on any Agreement with an agency or local governmental entity for three (3) years after the date of DEO's determination of false certification by the Grantee.

- 3) In the event that federal law ceases to authorize the states to adopt and enforce the contracting prohibition identified herein, this provision shall be null and void.

d. Discriminatory Vendors: Grantee shall disclose to DEO if it or any of its affiliates, as defined by section 287.134(1)(a.), F.S. appears on the discriminatory vendor list. An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134, F.S. may not:

- 1) submit a bid, proposal, or reply on a contract or agreement to provide any goods or services to a public entity;
- 2) submit a bid, proposal, or reply on a contract or agreement with a public entity for the construction or repair of a public building or public work;
- 3) submit bids, proposals, or replies on leases of real property to a public entity;
- 4) be awarded or perform work as a contractor, subcontractor, Grantee, supplier, sub-Grantee, or consultant under a contract or agreement with any public entity; or
- 5) transact business with any public entity.

9. Abuse, Neglect, and Exploitation Incident Reporting:

In compliance with sections 39.201 and 415.1034, F.S., an employee of Grantee who knows or has reasonable cause to suspect that a child, aged person, or disabled adult is or has been abused, neglected, or exploited shall immediately report such knowledge or suspicion to the Florida Abuse Hotline by calling 1-800-96ABUSE, or via the web reporting option at <http://www.dcf.state.fl.us/abuse/report/>, or via fax at 1-800-914-0004.

10. Information Release:

- a.** Grantee shall keep and maintain public records required by DEO to perform Grantee's responsibilities hereunder. Grantee shall, upon request from DEO's custodian of public records, provide DEO with a copy of the requested records or allow the records to be inspected or copied within a reasonable time per the cost structure provided in chapter 119, F.S., and in accordance with all other requirements of chapter 119, F.S., or as otherwise provided by law. Upon expiration or termination of this Agreement, Grantee shall transfer, at no cost, to DEO all public records in possession of Grantee or keep and maintain public records required by DEO to perform the service. If the Grantee keeps and maintains public records upon completion of the Agreement, the Grantee shall meet all applicable requirements for retaining public records. All records stored

electronically must be provided to DEO, upon request from the DEO's custodian of records, in a format that is compatible with the information technology systems of DEO.

- b.** If DEO does not possess a record requested through a public records request, DEO shall notify the Grantee of the request as soon as practicable, and Grantee must provide the records to DEO or allow the records to be inspected or copied within a reasonable time. If Grantee does not comply with DEO's request for records, DEO shall enforce the provisions set forth in this Agreement. A Grantee who fails to provide public records to DEO within a reasonable time may be subject to penalties under section 119.10, F.S.
- c.** DEO does not endorse any Grantee, commodity, or service. No public disclosure or news release pertaining to this Agreement shall be made without the prior written approval of DEO. Grantee is prohibited from using Agreement information, sales values/volumes and/or DEO customers in sales brochures or other promotions, including press releases, unless prior written approval is obtained from DEO.
- d.** Grantee acknowledges that DEO is subject to the provisions of chapter 119, F.S., relating to public records and that reports, invoices, and other documents Grantee submits to DEO under this Agreement may constitute public records under Florida Statutes. Grantee shall cooperate with DEO regarding DEO's efforts to comply with the requirements of chapter 119, F.S.
- e.** If Grantee submits records to DEO that are confidential and exempt from public disclosure as trade secrets or proprietary confidential business information, such records should be identified as such by Grantee prior to submittal to DEO. Failure to identify the legal basis for each exemption from the requirements of chapter 119, F.S., prior to submittal of the record to DEO serves as Grantee's waiver of a claim of exemption. Grantee shall 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 Grantee does not transfer the records to DEO upon termination of the Agreement.
- f.** Grantee shall allow public access to all records made or received by Grantee in conjunction with this Agreement, unless the records are exempt from section 24(a) of Article I of the State Constitution and section 119.07(1), F.S. For records made or received by Grantee in conjunction with this Agreement, Grantee shall respond to requests to inspect or copy such records in accordance with chapter 119, F.S.
- g.** In addition to Grantee's responsibility to directly respond to each request it receives for records made or received by Grantee in conjunction with this Agreement and to provide the applicable public records in response to such request, Grantee shall notify DEO of the receipt and content of such request by sending an e-mail to PRRequest@deo.myflorida.com within one (1) business day from receipt of such request.
- h.** Grantee shall notify DEO verbally within twenty-four (24) chronological hours and in writing within seventy-two (72) chronological hours if any data in Grantee's possession

related to this Agreement is subpoenaed or improperly used, copied, or removed (except in the ordinary course of business) by anyone except an authorized representative of DEO. Grantee shall cooperate with DEO in taking all steps as DEO deems advisable to prevent misuse, regain possession, and/or otherwise protect the State's rights and the data subject's privacy.

- i. **IF THE GRANTEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE GRANTEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS by telephone at 850-245-7140, via e-mail at PRRequest@deo.myflorida.com, or by mail at Department of Economic Opportunity, Public Records Coordinator, 107 East Madison Street, Caldwell Building, Tallahassee, Florida 32399-4128.**

11. Funding Requirements of Section 215.971(1), F.S.:

- a. Grantee and its subcontractors may only expend funding under this Agreement for allowable costs resulting from obligations incurred during the Agreement period. To be eligible for reimbursement, costs must be in compliance with laws, rules and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures (http://www.myfloridacfo.com/aadir/reference_guide/).
- b. Grantee shall refund to DEO any balance of unobligated funds which has been advanced or paid to Grantee.
- c. Grantee shall refund to DEO all funds paid in excess of the amount to which Grantee or its subcontractors are entitled under the terms and conditions of the Agreement.

G. Grantee Payments:

1. Grantee will provide DEO's Agreement Manager invoices in accordance with the requirements of the State of Florida Reference Guide for State Expenditures (with detail sufficient for a proper pre-audit and post-audit thereof. Invoices must also comply with the following:
 - a. Invoices must be legible and must clearly reflect the goods/services that were provided in accordance with the terms of the Agreement for the invoice period. Payment does not become due under the Agreement until the invoiced deliverable(s) and any required report(s) are approved and accepted by DEO.
 - b. Invoices must contain the Grantee's name, address, federal employer identification number or other applicable Grantee identification number, the Agreement number, the invoice number, and the invoice period. DEO or the State may require any additional information from Grantee that DEO or the State deems necessary to process an invoice.

- c. Invoices must be submitted in accordance with the time requirements specified in the Scope of Work.
2. At DEO's or the State's option, Grantee may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Grantee supply electronic invoices in lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to DEO's Agreement Manager through the Ariba Supplier Network (ASN) in one of the following mechanisms – EDI 810, cXML, or web-based invoice entry within the ASN.
3. Payment shall be made in accordance with section 215.422, F.S., Rule 69I-24, F.A.C., and section 287.0585, F.S., which govern time limits for payment of invoices. Section 215.422, F.S., provides that agencies have five (5) working days to inspect and approve goods and services unless the Scope of Work specify otherwise. DEO has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved. The Scope of Work may specify conditions for retainage. Invoices returned to a Grantee due to preparation errors will result in a delay of payment. Invoice payment requirements do not start until a properly completed invoice is provided to DEO. DEO is responsible for all payments under the Agreement.
4. Section 55.03(1), F.S., identifies the process applicable to the determination of the rate of interest payable on judgments and decrees, and pursuant to section 215.422(3)(b), F.S., this same process applies to the determination of the rate of interest applicable to late payments to vendors for goods and services purchased by the State and for contracts which do not specify a rate of interest. The applicable rate of interest is published at:

<http://www.myfloridacfo.com/aadir/interest.htm>

H. Final Invoice:

Grantee shall submit the final invoice for payment to DEO no later than sixty (60) days after the Agreement ends or is terminated. If Grantee fails to do so, DEO, in its sole discretion, may refuse to honor any requests submitted after this time period and may consider Grantee to have forfeited any and all rights to payment under this Agreement.

I. Return or Recoupment of Funds:

1. Grantee shall return to DEO any overpayments due to unearned funds or funds disallowed pursuant to the terms of this Agreement that were disbursed to Grantee by DEO. In the event that Grantee or its independent auditor discovers that overpayment has been made, Grantee shall repay said overpayment within forty (40) calendar days without prior notification from DEO. In the event that DEO first discovers an overpayment has been made, DEO will notify Grantee by letter. Should repayment not be made in a timely manner, DEO shall be entitled to charge interest at the lawful rate of interest on the outstanding balance beginning forty (40) calendar days after the date of notification or discovery. Refunds should be sent to DEO's Agreement Manager, and made payable to the "Department of Economic Opportunity."

2. If authorized and approved, Grantee may be provided an advance as part of this Agreement.
3. Notwithstanding the damages limitations of Section II.F., if Grantee's non-compliance with any provision of the Agreement results in additional cost or monetary loss to DEO or the State of Florida, DEO can recoup that cost or loss from monies owed to Grantee under this Agreement or any other Agreement between Grantee and any State entity. In the event that the discovery of this cost or loss arises when no monies are available under this Agreement or any other Agreement between Grantee and any State entity, Grantee will repay such cost or loss in full to DEO within thirty (30) days of the date of notice of the amount owed, unless DEO agrees, in writing, to an alternative timeframe.

J. Vendor Ombudsman:

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Chief Financial Officer's Hotline, (800) 342-2762.

K. Audits and Records:

1. Representatives of DEO, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability or representatives of the federal government and their duly authorized representatives shall have access to any of Grantee's books, documents, papers, and records, including electronic storage media, as they may relate to this Agreement, for the purposes of conducting audits or examinations or making excerpts or transcriptions.
2. Grantee shall maintain books, records, and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by DEO under this Agreement.
3. Grantee shall comply with all applicable requirements of section 215.97, F.S., and Attachment 2, Audit Requirements; and, if an audit is required thereunder, Grantee shall disclose all related party transactions to the auditor.
4. Grantee shall retain all Grantee records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement in accordance with the record retention requirements of Part V of Attachment 2, Audit Requirements. Grantee shall cooperate with DEO to facilitate the duplication and transfer of such records or documents upon request of DEO.
5. Grantee shall include the aforementioned audit and record keeping requirements in all approved subrecipient subcontracts and assignments.
6. Within sixty (60) days of the close of Grantee's fiscal year, on an annual basis, Grantee shall electronically submit a completed Audit Compliance Certification (a version of this certification is attached hereto as Attachment 3) to audit@deo.myflorida.com. Grantee's timely submittal of one completed Audit Compliance Certification for each applicable fiscal

year will fulfill this requirement within all agreements (e.g., contracts, grants, memorandums of understanding, memorandums of agreement, economic incentive award agreements, etc.) between DEO and Grantee.

7. Grantee shall (i) maintain all funds provided under this Agreement in a separate bank account, or (ii) Grantee's accounting system shall have sufficient internal controls to separately track the funds from this Agreement. There shall be no commingling of funds provided under this Agreement, with any other funds, projects, or programs. DEO may, in its sole discretion, disallow costs that result from purchases made with commingled funds.

L. Employment Eligibility Verification:

1. Executive Order 11-116, signed May 27, 2011, by the Governor of Florida, requires DEO contracts in excess of nominal value to expressly require Grantee to:
 - a. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Grantee during the Agreement term; and,
 - b. Include in all subcontracts under this Agreement, the requirement that subcontractors performing work or providing services pursuant to this Agreement utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of the subcontract.
2. E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States after the effective date of the required Memorandum of Understanding (MOU); the responsibilities and elections of federal contractors, however, may vary, as stated in Article II.D.1.c. of the MOU. There is no charge to employers to use E-Verify. The Department of Homeland Security's E-Verify system can be found at:

http://www.dhs.gov/files/programs/gc_1185221678150.shtm
3. If Grantee does not have an E-Verify MOU in effect, Grantee must enroll in the E-Verify system prior to hiring any new employee after the effective date of this Agreement.

M. Duty of Continuing Disclosure of Legal Proceedings:

1. Prior to execution of this Agreement, Grantee must disclose all prior or on-going civil or criminal litigation, investigations, arbitration or administrative proceedings (Proceedings) involving Grantee (and each subcontractor) in a written statement to DEO's Agreement Manager. Thereafter, Grantee has a continuing duty to promptly disclose all Proceedings upon occurrence.
2. This duty of disclosure applies to Grantee's or subcontractor's officers and directors when any Proceeding relates to the officer or director's business or financial activities. Details of

settlements that are prevented from disclosure by the terms of the settlement may be annotated as such.

3. Grantee shall promptly notify DEO's Agreement Manager of any Proceeding relating to or affecting the Grantee's or subcontractor's business. If the existence of such Proceeding causes the State concern that the Grantee's ability or willingness to perform the Agreement is jeopardized, Grantee shall be required to provide DEO's Agreement Manager all reasonable assurances requested by DEO to demonstrate that:
 - a. Grantee will be able to perform the Agreement in accordance with its terms and conditions; and
 - b. Grantee and/or its employees, agents, or subcontractor(s) have not and will not engage in conduct in performing services for DEO which is similar in nature to the conduct alleged in such Proceeding.

N. Assignments and Subcontracts:

1. Grantee agrees to neither assign the responsibility for this Agreement to another party nor subcontract for any of the work contemplated under this Agreement, or amend any such assignment or subcontract, without prior written approval of DEO. Any sublicense, assignment, or transfer occurring without the prior approval of DEO, shall be null and void.
2. Grantee agrees to be responsible for all work performed and all expenses incurred in fulfilling the obligations of this Agreement. If DEO permits Grantee to subcontract all or part of the work contemplated under this Agreement, including entering into subcontracts with vendors for services, it is understood by Grantee that all such subcontract arrangements shall be evidenced by a written document containing all provisions necessary to ensure subcontractor's compliance with applicable state and federal law. Grantee further agrees that DEO shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract. Grantee, at its expense, will defend DEO against such claims.
3. Grantee agrees that all Grantee employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All Grantee employees, subcontractors, or agents performing work under the Agreement must comply with all DEO security and administrative requirements identified herein. DEO may conduct, and Grantee shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by Grantee. DEO may refuse access to, or require replacement of, any of Grantee's employees, subcontractors, or agents for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with DEO's security or administrative requirements identified herein. Such refusal shall not relieve Grantee of its obligation to perform all work in compliance with the Agreement. DEO may reject and bar from any facility for cause any of Grantee's employees, subcontractors, or agents.

4. Grantee agrees that the State of Florida shall at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental agency in the State of Florida, upon giving prior written notice to Grantee. In the event the State of Florida approves transfer of Grantee's obligations, Grantee remains responsible for all work performed and all expenses incurred in connection with the Agreement. In addition, this Agreement shall bind the successors, assigns, and legal representatives of Grantee and of any legal entity that succeeds to the obligations of the State of Florida.
 5. Grantee agrees to make payments to the subcontractor within seven (7) working days after receipt of full or partial payments from DEO in accordance with section 287.0585, F.S., unless otherwise stated in the Agreement between Grantee and subcontractor. Grantee's failure to pay its subcontractors within seven (7) working days will result in a penalty charged against Grantee and paid to the subcontractor in the amount of one-half of one (1) percent of the amount due per day from the expiration of the period allowed herein for payment. Such penalty shall be in addition to actual payments owed and shall not exceed fifteen (15) percent of the outstanding balance due.
 6. Grantee shall provide a monthly Minority and Service-Disabled Veteran Business Enterprise Report for each invoice period summarizing the participation of certified and non-certified minority and service-disabled veteran subcontractors/material suppliers for that period, and project to date. The report shall include the names, addresses and dollar amount of each certified and non-certified Minority Business Enterprise and Service-Disabled Veteran Enterprise participant and a copy must be forwarded to DEO's Agreement Manager. The Office of Supplier Diversity at (850) 487-0915 will assist in furnishing names of qualified minorities. DEO's Minority Coordinator at (850) 245-7260 will assist with questions and answers.
 7. DEO shall retain the right to reject any of Grantee's or subcontractor's employees whose qualifications or performance, in DEO's judgment, are insufficient.
- O. MyFloridaMarketPlace Transaction Fee:** disbursements of State financial assistance to a recipient are exempt from this Transaction Fee pursuant to Rule 60A-1.032(1)(i), F.A.C.
- P. Nonexpendable Property:**
1. For the requirements of this Section of the Agreement, "nonexpendable property" is the same as "property" as defined in section 273.02, F.S., (equipment, fixtures, and other tangible personal property of a non-consumable and nonexpendable nature, with a value or cost of \$1,000 or more, and a normal expected life of one year or more; hardback-covered bound books that are circulated to students or the general public, with a value or cost of \$25 or more; and hardback-covered bound books, with a value or cost of \$250 or more).
 2. All nonexpendable property, purchased under this Agreement, shall be listed on the property records of Grantee. Grantee shall inventory annually and maintain accounting records for all nonexpendable property purchased and submit an inventory report to DEO with the final expenditure report. The records shall include, at a minimum, the following information: property tag identification number, description of the item(s), physical

location, name, make or manufacturer, year, and/or model, manufacturer's serial number(s), date of acquisition, and the current condition of the item.

3. At no time shall Grantee dispose of nonexpendable property purchased under this Agreement for these services without the written permission of and in accordance with instructions from DEO.
4. Immediately upon discovery, Grantee shall notify DEO, in writing, of any property loss with the date and reason(s) for the loss.
5. Grantee shall be responsible for the correct use of all nonexpendable property furnished under this Agreement.
6. A formal Agreement amendment is required prior to the purchase of any item of nonexpendable property not specifically listed in the approved Agreement budget.
7. Title (ownership) to all nonexpendable property acquired with funds from this Agreement shall be vested in DEO and said property shall be transferred to DEO upon completion or termination of the Agreement unless otherwise authorized in writing by DEO.

Q. Requirements Applicable to the Purchase of or Improvements to Real Property:

Pursuant to section 287.05805, F.S., if funding provided under this Agreement is used for the purchase of or improvements to real property, such funds are contingent upon Grantee granting to DEO a security interest in the property in the amount of the funding provided by this Agreement for the purchase of or improvements to the real property for five (5) years from the date of purchase or the completion of the improvements or as further required by law.

R. Information Resource Acquisition:

Grantee shall obtain prior written approval from the appropriate DEO approving authority before purchasing any Information Technology Resource (ITR) or conducting any activity that will impact DEO's electronic information technology equipment or software, as both terms are defined in DEO Policy Number 5.01, in any way. ITR includes computer hardware, software, networks, devices, connections, applications, and data.

S. Insurance:

During the Agreement, including the initial Agreement term, renewal(s), and extensions, Grantee, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits as may be reasonably associated with the Agreement. Providing and maintaining adequate insurance coverage is a material obligation of Grantee, and failure to maintain such coverage may void the Agreement. The limits of coverage under each policy maintained by Grantee shall not be interpreted as limiting Grantee's liability and obligations under the Agreement. All insurance policies shall be through insurers licensed and authorized to write policies in Florida.

Upon execution of this Agreement, Grantee shall provide DEO written verification of the existence and amount for each type of applicable insurance coverage. Within thirty (30) days of the effective date of the Agreement, Grantee shall furnish DEO proof of applicable insurance coverage by standard ACORD form certificates of insurance. In the event that any applicable coverage is cancelled by the insurer for any reason, Grantee shall immediately notify DEO of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within fifteen (15) business days after the cancellation of coverage. The insurance certificate must name DEO as an additional insured and identify DEO's Contract Number. Copies of new insurance certificates must be provided to DEO's Contract Manager with each insurance renewal.

DEO shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of Grantee providing such insurance. The following types of insurance are required.

1. Grantee's Commercial General Liability Insurance:

Unless Grantee is a state agency or subdivision as defined by section 768.28(2), F.S., Grantee shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during this Agreement. A self-insurance program established and operating under the laws of the State of Florida may provide such coverage.

2. Workers' Compensation and Employer's Liability Insurance:

Grantee, at all times during the Agreement, at its sole expense, shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Agreement, which, as a minimum, shall be: workers' compensation and employer's liability insurance in accordance with chapter 440, F.S., with minimum employer's liability limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policy shall cover all employees engaged in any Agreement work.

3. Other Insurance:

During the Agreement term, Grantee shall maintain any other insurance as required in Attachment 1, Scope of Work.

T. Confidentiality and Safeguarding Information:

1. Each Party may have access to confidential information made available by the other. The provisions of the Florida Public Records Act, Chapter 119, F.S., and other applicable state and federal laws will govern disclosure of any confidential information received by the State of Florida.
2. Grantee must implement procedures to ensure the appropriate protection and confidentiality of all data, files, and records involved with this Agreement.

3. Except as necessary to fulfill the terms of this Agreement and with the permission of DEO, Grantee shall not divulge to third parties any confidential information obtained by Grantee or its agents, distributors, resellers, subcontractors, officers, or employees in the course of performing Agreement work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or DEO.
4. Grantee agrees not to use or disclose any information concerning a recipient of services under this Agreement for any purpose not in conformity with state and federal law or regulations except upon written consent of the recipient, or his responsible parent or guardian when authorized by law, if applicable.
5. If Grantee has access to either DEO's network or any DEO applications, or both, in order to fulfill Grantee's obligations under this Agreement, Grantee agrees to abide by all applicable DEO Information Technology Security procedures and policies. Grantee (including its employees, sub-contractors, agents, or any other individuals to whom Grantee exposes confidential information obtained under this Agreement), shall not store, or allow to be stored, any confidential information on any portable storage media (*e.g.*, laptops, thumb drives, hard drives, *etc.*) or peripheral device with the capacity to hold information. Failure to strictly comply with this provision shall constitute a breach of Agreement.
6. Grantee shall notify DEO in writing of any disclosure of unsecured confidential information of DEO by Grantee, its employees, agents, or representatives which is not in compliance with the terms of this Agreement (of which it becomes aware). Grantee also shall report to DEO any Security Incidents of which it becomes aware, including those incidents reported to Grantee by its sub-contractors or agents. For purposes of this Agreement, "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of DEO information in Grantee's possession or electronic interference with DEO operations; however, random attempts at access shall not be considered a security incident. Grantee shall make a report to DEO not more than seven (7) business days after Grantee learns of such use or disclosure. Grantee's report shall identify, to the extent known: (i) the nature of the unauthorized use or disclosure, (ii) the confidential information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Grantee has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Grantee has taken or shall take to prevent future similar unauthorized use or disclosure. Grantee shall provide such other information, including a written report, as reasonably requested by DEO's Information Security Manager.
7. In the event of a breach of security concerning confidential personal information involved with this Agreement, Grantee shall comply with section 501.171, F.S., as applicable. When notification to affected persons is required under this section of the statute, Grantee shall provide that notification, but only after receipt of DEO's approval of the contents of the notice. Defined statutorily, and for purposes of this Agreement, "breach of security" or "breach" means the unauthorized access of data in electronic form containing personal data. Good faith acquisition of personal information by an employee or agent of the Grantee is not a breach, provided the information is not used for a purpose unrelated to the Grantee's obligations under this Agreement or is not subject to further unauthorized use.

U. Warranty of Ability to Perform:

Grantee warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish Grantee's ability to satisfy its Agreement obligations. Grantee warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133, F.S., or on any similar list maintained by any other state or the federal government. Grantee shall immediately notify DEO in writing if its ability to perform is compromised in any manner during the term of the Agreement.

V. Patents, Copyrights, and Royalties:

1. Pursuant to section 286.021, F.S., if any discovery or invention arises or is developed in the course or as a result of work or services performed with funds from this Agreement, Grantee shall refer the discovery or invention to DEO who will refer it to the Department of State to determine whether patent protection will be sought in the name of the State of Florida. Any and all patent rights accruing under or in connection with the performance of the Agreement are hereby reserved to the State of Florida. The rights to any invention resulting from this Agreement that is for the performance of experimental, developmental, or research work are governed by 37 CFR Part 401 and any of its implementing regulations as applicable.
2. Where activities supported by this Agreement produce original writings, sound recordings, pictorial reproductions, drawings or other graphic representations and works of any similar nature, DEO has the right to use, duplicate, and disclose such materials in whole or in part, in any manner, for any purpose whatsoever and to allow others acting on behalf of DEO to do so. In the event that any books, manuals, films, websites, web elements, electronic information, or other copyrightable materials are produced Grantee shall notify DEO. Any and all copyrights accruing under or in connection with the performance funded by this Agreement are hereby reserved to the State of Florida.
3. In accordance with the provisions of section 1004.23, F.S., a State University is authorized in its own name to perform all things necessary to secure letters of patent, copyrights, and trademarks on any works it produces. Any action taken by the university in securing or exploiting such trademarks, copyrights, or patents shall, within thirty (30) days, be reported in writing by the president of the university to the Department of State in accordance with section 1004.23(6), F.S.

W. Independent Contractor Status:

In Grantee's performance of its duties and responsibilities under this Agreement, it is mutually understood and agreed that Grantee is at all times acting and performing as an independent Contractor. DEO shall neither have nor exercise any control or direction over the methods by which Grantee shall perform its work and functions other than as provided herein. Nothing in this Agreement is intended to or shall be deemed to constitute a partnership or joint venture between the Parties.

1. Except where Grantee is a state agency, Grantee, its officers, agents, employees, subcontractors, or assignees, in performance of this Agreement shall act in the capacity of an independent Contractor and not as an officer, employee, or agent of the State of Florida. Nor shall Grantee represent to others that, as Grantee, it has the authority to bind DEO unless specifically authorized to do so.
2. Except where Grantee is a state agency, neither Grantee, nor its officers, agents, employees, subcontractors, or assignees are entitled to state retirement or state leave benefits, or to any other compensation of state employment as a result of performing the duties and obligations of this Agreement.
3. Grantee agrees to take such actions as may be necessary to ensure that each subcontractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the State of Florida.
4. Unless justified by Grantee, and agreed to by DEO in Attachment 1, Scope of Work, DEO will not furnish services of support (*e.g.*, office space, office supplies, telephone service, secretarial, or clerical support) to Grantee or its subcontractor or assignee.
5. DEO shall not be responsible for withholding taxes with respect to Grantee's compensation hereunder. Grantee shall have no claim against DEO for vacation pay, sick leave, retirement benefits, social security, workers' compensation, health or disability benefits, reemployment assistance benefits, or employee benefits of any kind. Grantee shall ensure that its employees, subcontractors, and other agents, receive benefits and necessary insurance (health, workers' compensation, reemployment assistance benefits) from an employer other than the State of Florida.
6. Grantee, at all times during the Agreement, must comply with the reporting and Reemployment Assistance contribution payment requirements of chapter 443, F.S.

X. Electronic Funds Transfer:

Grantee agrees to enroll in Electronic Funds Transfer (EFT), offered by the State's Chief Financial Officer within thirty (30) days of the date the last Party has signed this Agreement. Copies of the Authorization form and a sample blank enrollment letter can be found on the vendor instruction page at:

http://www.fldfs.com/aadir/direct_deposit_web/Vendors.htm

Questions should be directed to the EFT Section at (850) 413-5517. Once enrolled, invoice payments will be made by EFT.

II. GRANTEE AND DEO AGREE:

A. Renegotiation or Modification:

The Parties agree to renegotiate this Agreement if federal and/or state revisions of any applicable laws or regulations make changes to this Agreement necessary. In addition to changes necessitated by law, DEO may at any time, with written notice to Grantee, make changes within the general scope of this Agreement. Such changes may include modification of

the requirements, changes to processing procedures, or other changes as decided by DEO. Any investigation necessary to determine the impact of the change shall be the responsibility of Grantee. Modifications of provisions of this Agreement shall only be valid when they have been reduced to writing and duly signed and dated by all Parties.

B. Time is of the Essence:

Time is of the essence regarding the performance obligations set forth in this Agreement. Any additional deadlines for performance for Grantee's obligation to timely provide deliverables under this Agreement including but not limited to timely submittal of reports, are contained in Attachment 1, Scope of Work.

C. Termination:

1. Termination Due to the Lack of Funds:

In the event funds to finance this Agreement become unavailable or if federal or state funds upon which this Agreement is dependent are withdrawn or redirected, DEO may terminate this Agreement upon no less than twenty-four (24) hour notice in writing to Grantee. DEO shall be the final authority as to the availability of funds and will not reallocate funds earmarked for this Agreement to another program thus causing "lack of funds." In the event of termination of this Agreement under this provision, Grantee will be compensated for any work satisfactorily completed prior to notification of termination.

2. Termination for Cause:

DEO may terminate the Agreement if Grantee fails to: (1) deliver the services within the time specified in the Agreement or any extension; (2) maintain adequate progress, thus endangering performance of the Agreement; (3) honor any term of the Agreement; or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. Grantee shall continue to perform any work not terminated. The rights and remedies of DEO in this clause are in addition to any other rights and remedies provided by law or under the Agreement. Grantee shall not be entitled to recover any cancellation charges or lost profits.

3. Termination for Convenience:

DEO, by written notice to Grantee, may terminate this Agreement in whole or in part when DEO determines in its sole discretion that it is in the State's interest to do so. Grantee shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Agreement, if any. Grantee shall not be entitled to recover any cancellation charges or lost profits.

D. Dispute Resolution:

Unless otherwise stated in Attachment 1, Scope of Work, disputes concerning the performance of the Agreement shall be decided by DEO, who shall reduce the decision to writing and serve a copy on Grantee. The decision shall be final and conclusive unless within twenty-one (21) days

from the date of receipt, Grantee files with DEO a petition for administrative hearing. DEO's final order on the petition shall be final, subject to any right of Grantee to judicial review pursuant to chapter 120.68, F.S. Exhaustion of administrative remedies is an absolute condition precedent to Grantee's ability to pursue any other form of dispute resolution; provided however, that the Parties may employ the alternative dispute resolution procedures outlined in chapter 120, F.S.

E. Indemnification (NOTE: If Grantee is a state agency or subdivision, as defined in section 768.28(2), F.S., pursuant to section 768.28(19), F.S., neither Party indemnifies nor insures or assumes any liability for the other Party for the other Party's negligence):

1. Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and DEO, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors, provided, however, that Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or DEO.
2. Further, Grantee shall fully indemnify, defend, and hold harmless the State and DEO from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to DEO's misuse or modification of Grantee's products or DEO's operation or use of Grantee's products in a manner not contemplated by the Agreement or the purchase order. If any product is the subject of an infringement suit, or in Grantee's opinion is likely to become the subject of such a suit, Grantee may at its sole expense procure for DEO the right to continue using the product or to modify it to become non-infringing. If Grantee is not reasonably able to modify or otherwise secure DEO the right to continue using the product, Grantee shall remove the product and refund DEO the amounts paid in excess of a reasonable rental for past use. DEO shall not be liable for any royalties.
3. Grantee's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or DEO giving Grantee (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense, and (3) assistance in defending the action at Grantee's sole expense. Grantee shall not be liable for any cost, expense, or compromise incurred or made by the State or DEO in any legal action without Grantee's prior written consent, which shall not be unreasonably withheld.

F. Limitation of Liability:

For all claims against Grantee under this Agreement, and regardless of the basis on which the claim is made, Grantee's liability under this Agreement for direct damages shall be limited to the greater of \$100,000 or the dollar amount of this Agreement. This limitation shall not apply to claims arising under the Indemnity paragraphs contained in this Agreement.

Unless otherwise specifically enumerated in the Agreement or in the purchase order, no Party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the Agreement or purchase order requires Grantee to back-up data or records), even if the Party has been advised that such damages are possible. No Party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and DEO may, in addition to other remedies available to them at law or equity and upon notice to Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of Grantee or its affiliates to the State against any payments due Grantee under any Agreement with the State.

G. Force Majeure and Notice of Delay from Force Majeure:

Neither Party shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party's control, or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting delay or disruption in the Party's performance obligation under this Agreement. If the delay is excusable under this paragraph, the delay will not result in any additional charge or cost under the Agreement to either Party. In the case of any delay Grantee believes is excusable under this paragraph, Grantee shall notify DEO in writing of the delay or potential delay and describe the cause of the delay either: (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if Grantee could reasonably foresee that a delay could occur as a result; or (2) within five (5) calendar days after the date Grantee first had reason to believe that a delay could result, if the delay is not reasonably foreseeable. **THE FOREGOING SHALL CONSTITUTE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. DEO, in its sole discretion, will determine if the delay is excusable under this paragraph and will notify Grantee of its decision in writing. No claim for damages, other than for an extension of time, shall be asserted against DEO. Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from DEO for direct, indirect, consequential, impact, or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist, Grantee shall perform at no increased cost, unless DEO determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to DEO or the State, in which case, DEO may do any or all of the following: (1) accept allocated performance or deliveries from Grantee, provided that Grantee grants preferential treatment to DEO with respect to products or services subjected to allocation; (2) purchase from other sources (without recourse to and by Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity; or (3) terminate the Agreement in whole or in part.

H. Severability:

If any provision, in whole or in part, of this Agreement is held to be void or unenforceable by a court of competent jurisdiction, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable, and all other provisions remain in full force and effect.

I. Authority of Grantee's Signatory:

Upon execution, Grantee shall return the executed copies of this Agreement in accordance with the instructions provided by DEO along with documentation ensuring that the below signatory has authority to bind Grantee to this Agreement as of the date of execution. Documentation may be in the form of a legal opinion from the Grantee's attorney, or other reliable documentation demonstrating such authority, and is hereby incorporated by reference. DEO may, at its discretion, request additional documentation related to the below signatory's authority to bind Grantee to this Agreement.

J. Execution in Counterparts:

This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

K. Contact Information for Grantee and DEO Contacts:

Grantee's Payee:

Pensacola-Escambia Promotion and Development Commission
117 West Garden Street
Pensacola, Florida 32502
Telephone: (850) 898-2201
Email: sluth@floridawesteda.com

Grantee's Agreement Manager:

Scott Luth
117 West Garden Street
Pensacola, Florida 32502
Telephone: (850) 898-2201
Email: sluth@floridawesteda.com

DEO's Agreement Manager:

Beth Frost, FCCM
107 East Madison Street, MSC-160
Tallahassee, Florida 32399
Telephone: (850) 717-8471
Fax: (850) 717-8522
Email: Beth.frost@deo.myflorida.com

In the event that any of the information provided in Section II.K. above changes, including the designation of a new Agreement Manager, after the execution of this Agreement, the Party making such change will notify all other Parties in writing of such change. Such changes shall not require a formal amendment to the Agreement.

L. Notices:

The contact information provided in accordance with Section II.K. above shall be used by the Parties for all communications under this Agreement. Where the term “written notice” is used to specify a notice requirement herein, said notice shall be deemed to have been given (i) when personally delivered; (ii) when transmitted via facsimile with confirmation of receipt or email with confirmation of receipt if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid); (iii) the day following the day (except if not a business day then the next business day) on which the same has been delivered prepaid to a recognized overnight delivery service; or (iv) the third business day following the day on which the same is sent by certified or registered mail, postage prepaid, with return receipt.

M. Attachments and Exhibits: Attached to and made part of this Agreement are the following Attachments and/or Exhibits, each of which is incorporated into, and is an integral part of, this Agreement:

- **Attachment 1:** Scope of Work
- **Attachment 2 and Exhibit 1 to Attachment 2:** Audit Requirements
- **Attachment 3:** Audit Compliance Certification

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N. Execution:

I have read the above Agreement and the attachments and exhibits thereto and understand each section and paragraph.

IN WITNESS THEREOF, and in consideration of the mutual covenants set forth above and in the attachments hereto, the Parties have caused to be executed this Agreement by their undersigned officials duly authorized.

DEPARTMENT OF ECONOMIC OPPORTUNITY

**PENSACOLA ESCAMBIA PROMOTION AND
DEVELOPMENT COMMISSION**

By _____
Signature

Dean Izzo
Title Chief of Staff

Date _____

By _____
Signature

Lewis Bear, Jr.
Title Chairman

Date _____

Approved as to form and legal sufficiency, subject only
to full and proper execution by the Parties.

**OFFICE OF GENERAL COUNSEL
DEPARTMENT OF ECONOMIC OPPORTUNITY**

By: _____

Approved Date: _____

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Attachment 1

SCOPE OF WORK

1. **Project Description:** The 2016-2017 General Appropriations Act, line item 2216, appropriated three hundred thousand dollars (\$300,000) to Grantee to develop marketing materials and conduct outreach for The Bluffs to ensure that large industry and manufacturing decision makers consider the site as a possible location for new business investment or expansion. The Bluffs, Northwest Florida's Industrial Campus, is a newly master-planned, 6,000 plus acre area suited for industrial and manufacturing development. The Bluffs offers tenants a combination of large sites for heavy manufacturing supported by sound infrastructure. Both rail service and shallow draft barge service are available, and the campus is supported by robust public water and sewer, electrical power, natural gas, and telecommunications services. Working in tandem with Emerald Coast Utilities Authority, Gulf Power, Ascend Performance Materials, and the University of West Florida, Grantee is able to offer prospective new companies a prime location for industrial development. Situated in Escambia County just north of the City of Pensacola, the campus is bordered to the east by the Escambia River and the University of West Florida to the south, with access via existing entrances from the west.
2. **Grantee Responsibilities:** Grantee shall develop marketing materials and promotional activities to introduce The Bluffs, and conduct outreach, to decision makers in the industrial and manufacturing sectors, both nationally and internationally, to encourage them to consider The Bluffs for possible new business investment or expansion. Grantee shall:
 - a. Plan a marketing campaign:
 - i. Formalize recommendations for an ongoing marketing/advertising/public relations/promotional campaign to communicate the brand messaging nationally and internationally to identified target audiences; and
 - ii. Oversee all strategy implementation, design, and production.
 - b. Prepare photographs and other graphics to use in marketing materials (for use with tasks l, m, n, o and q below);
 - c. Expand and enhance the existing Economic Development website to provide updated and additional information and features for the target audiences;
 - d. Create workforce marketing materials, in print and digital format, to be distributed at marketing events and distributed through regular mail and electronic mail;
 - e. Create a comprehensive Bluffs site brochure, in print and digital format, to distributed at marketing events and distributed through regular mail and electronic mail;
 - f. Develop and launch a fully integrated iPad sales application for use in conducting marketing presentations at remote locations where the internet and/or other technology is not available;
 - g. Create a PowerPoint presentation for use in promoting The Bluffs to potential clients;
 - h. Develop video production/site fly-over for the enhanced website and direct mail promotion;
 - i. Develop a sample case study of the type of assistance an average industrial client might receive if the company chooses to locate at the site (print and digital format, for distribution at marketing events, through regular mail and electronic mail);
 - j. Identify and contact local business leaders for testimonials and assistance in promoting the development and business benefits of the northwest Florida region;

- k. Identify and obtain prospect lists, identify national and international site consultants, business executives and other appropriate decision-makers in target industry clusters, and data sources and software to assist in lead development and tracking;
- l. Conduct a twelve-month public relations/marketing communications campaign including, but not limited to, trade shows, consultant visits, and conferences.
 - i. Engage regional, statewide, national, and international media to create an interest in The Bluffs and the region's economic development activities by telling Northwest Florida's story and sharing facts about Grantee and its partners' efforts;
 - ii. Efficiently and thoroughly respond to media inquiries, providing requested information and additional facts that accurately reflect goals for the development; and
 - iii. Proactively highlight Grantee and its partners' initiatives and efforts in job creation, foreign direct investment, and promotion of Northwest Florida as a prime industrial location.
 1. Expenditures for this task shall be in accordance with the Reference Guide for State Expenditures and will include, but are not limited to:
 - a. Travel;
 - b. Facilities rental;
 - c. Registration; and
 - d. Event sponsorship.
- m. Design and implement a consultant direct marketing campaign (digital postcard and 3D premium item) targeting the top site consultants;
- n. Direct mail promotion targeting top 500 business prospects;
- o. Conduct a digital/social media direct marketing campaign;
- p. Create site signage and other local branding; and
- q. Provide communications, recommendations, and produce, at a minimum, a press release or feature quarterly (\$2,500 per press release/feature article).

3. DEO's Responsibilities: DEO shall monitor progress, review reports, conduct site visits as determined necessary by DEO, and process payments to Grantee.

4. Deliverables: Grantee agrees to provide the following services as specified:

Deliverable 1 – Develop marketing materials and promotional activities to introduce The Bluffs and conduct outreach to external audiences			
Tasks	Minimum Level of Service	Payment Amount	Financial Consequences
1. Plan a marketing campaign for The Bluffs in accordance with subsection 2.a above.	Complete a marketing campaign plan. As evidence of completion, Grantee shall submit a copy of the marketing plan and recommendations to DEO.	not to exceed \$48,000	Grantee shall not be reimbursed for costs incurred under this Deliverable unless the Deliverable is completed and accepted by DEO at the time of invoice.
2. Prepare photography and other graphics in accordance with	Complete photography and graphics. As evidence of completion,	not to exceed \$40,000	Grantee shall not be reimbursed for costs incurred under this

subsection 2.b above.	Grantee shall submit a copy of the photographs and graphics to DEO.		Deliverable unless the Deliverable is completed and accepted by DEO at the time of invoice.
3. Create an economic development website in accordance with subsection 2.c above.	Complete development of an economic development website. As evidence of completion, Grantee shall submit a working link to the website to DEO.	not to exceed \$18,000	Grantee shall not be reimbursed for costs incurred under this Deliverable unless the Deliverable is completed and accepted by DEO at the time of invoice.
4. Create workforce marketing materials in accordance with subsection 2.d above.	Complete workforce marketing materials. As evidence of completion, Grantee shall submit a copy of the marketing materials to DEO.	not to exceed \$5,000	Grantee shall not be reimbursed for costs incurred under this Deliverable unless the Deliverable is completed and accepted by DEO at the time of invoice.
5. Create a comprehensive Bluffs site brochure in accordance with subsection 2.e above.	Complete a site brochure. As evidence of completion, Grantee shall submit a copy of the brochure to DEO.	not to exceed \$7,000	Grantee shall not be reimbursed for costs incurred under this Deliverable unless the Deliverable is completed and accepted by DEO at the time of invoice.
6. Develop an iPad sales application in accordance with subsection 2.f above.	Complete an iPad sales application. As evidence of completion, Grantee shall submit the instructions for access and successful download of the application to DEO.	not to exceed \$13,500	Grantee shall not be reimbursed for costs incurred under this Deliverable unless the Deliverable is completed and accepted by DEO at the time of invoice.
7. Create a PowerPoint presentation in accordance with subsection 2.g above.	Complete a PowerPoint presentation. As evidence of completion, Grantee shall submit a copy of the PowerPoint presentation to DEO.	not to exceed \$2,000	Grantee shall not be reimbursed for costs incurred under this Deliverable unless the Deliverable is completed and accepted by DEO at the time of invoice.
8. Produce a promotional video in accordance with subsection 2.h above.	Complete a promotional video. As evidence of completion, Grantee	not to exceed \$14,000	Grantee shall not be reimbursed for costs incurred under this

	shall submit a copy of the promotional video to DEO.		Deliverable unless the Deliverable is completed and accepted by DEO at the time of invoice.
9. Develop a case study in accordance with subsection 2.i above.	Complete a case study. As evidence of completion, Grantee shall submit a copy of the case study to DEO.	not to exceed \$2,400	Grantee shall not be reimbursed for costs incurred under this Deliverable unless the Deliverable is completed and accepted by DEO at the time of invoice.
10. Identify and contact local business leaders for testimonials and assistance in accordance with subsection 2.j above.	Complete identification and contact local business leaders. As evidence of completion, Grantee shall submit a list of contacts made and a copy of the business leaders' testimonials to DEO.	not to exceed \$2,400	Grantee shall not be reimbursed for costs incurred under this Deliverable unless the Deliverable is completed and accepted by DEO at the time of invoice.
11. Identify prospective clients using lists, consultants, and other reference sources in accordance with subsection 2.k above.	Complete identification of prospective clients. As evidence of completion, Grantee shall submit a list of clients identified and a list of reference sources to DEO.	not to exceed \$16,500	Grantee shall not be reimbursed for costs incurred under this Deliverable unless the Deliverable is completed and accepted by DEO at the time of invoice.
12. Conduct twelve (12) public relations/marketing events in accordance with subsection 2.l above.	Complete a minimum of six (6) public relations/marketing events. As evidence of completion, Grantee shall submit a list of completed marketing activities, list of media contacts, list of media inquiries and responses, and copies of fact sheets and advertisements for marketing activities to DEO.	not to exceed \$46,000	Grantee shall not be reimbursed for costs incurred under this Deliverable unless the Deliverable is completed and accepted by DEO at the time of invoice.
13. Design and implement consultant direct marketing campaign in accordance with	Complete a design and implement a consultant direct marketing campaign. As evidence	not to exceed \$8,000	Grantee shall not be reimbursed for costs incurred under this Deliverable unless the

subsection 2.m above.	of completion, Grantee shall submit a copy of the digital postcard and 3D premium item and a list of all consultant marketing activities to DEO.		Deliverable is completed and accepted by DEO at the time of invoice.
14. Complete direct mail promotion in accordance with subsection 2.n above.	Complete direct mail promotion. As evidence of completion, Grantee shall submit a copy of promotional materials and a list of businesses receiving mailouts to DEO.	not to exceed \$17,700	Grantee shall not be reimbursed for costs incurred under this Deliverable unless the Deliverable is completed and accepted by DEO at the time of invoice.
15. Conduct a digital/social media direct marketing campaign in accordance with subsection 2.o above.	Complete the digital/social media marketing campaign. As evidence of completion, Grantee shall submit the names of the social media sites and appropriate URL for accessing those sites to DEO.	not to exceed \$31,500	Grantee shall not be reimbursed for costs incurred under this Deliverable unless the Deliverable is completed and accepted by DEO at the time of invoice.
16. Create site signage and other local branding in accordance with subsection 2.p above.	Complete signage and branding. As evidence of completion, Grantee shall submit a copy of proposed signage and other branding items to DEO.	not to exceed \$18,000	Grantee shall not be reimbursed for costs incurred under this Deliverable unless the Deliverable is completed and accepted by DEO at the time of invoice.
17. Provide communications, recommendations, and produce, at a minimum, a press release or feature quarterly in accordance with subsection 2.q above. Grantee's reimbursement shall not exceed \$2,500 per press release or feature article, and in total shall not exceed \$10,000.	Complete recommendations, communications, and production of press releases/feature articles. As evidence of completion, Grantee shall submit a copy of communications, recommendations, and copies of all press releases and feature articles published to DEO.	not to exceed \$10,000	Grantee shall not be reimbursed for costs incurred under this Deliverable unless the Deliverable is completed and accepted by DEO at the time of invoice.
Deliverable No. 1 Not to Exceed - \$300,000.00			

Cost Shifting: The task amounts specified within this section are established based on the Parties' estimation of sufficient delivery of services fulfilling grant purposes under this Agreement in order to designate payment points during the Agreement Period; however, this is not intended to restrict DEO's ability to approve and reimburse allowable costs, incurred by Grantee in providing the deliverables herein. Prior written approval from DEO's Agreement Manager is required for changes to the above task amounts that do not exceed ten (10) percent (10%) of each task's total funding amount. Changes that exceed ten (10) percent (10%) of each task's total funding amount will require a formal written amendment, as described in Section II.A., of the Agreement. Regardless, in no event shall DEO reimburse costs of more than the total amount of this Agreement.

5. Reporting

- a. Quarterly: Grantee shall report on a quarterly basis all progress relating to the tasks identified in Section 4. Quarterly reports are due to DEO no later than ten (10) days after the end of each quarter and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are September 30, December 31, March 31, and June 30.

The quarterly report shall include a summary of project progress indicating percentage of completion of each task identified in Section 4 and the Minority and Service-Disabled Veteran Business Enterprise Report required in Paragraph I.N.6. of this Agreement. The summary shall also include any issues or events occurring which affect the ability of Grantee to meet the terms of this Agreement.

- b. Close-out Report: No later than sixty (60) days after this Agreement ends or is terminated, Grantee shall provide copies of all paid invoices to document completed work.

6. Invoice Submittal and Payment Schedule:

DEO agrees to disburse funds under this Agreement in accordance with the following schedule in the amount identified per deliverable in Section 4 above. The deliverable amount specified does not establish the value of the deliverable. In accordance with Section I.F.11, Funding Requirements of Section 215.971, F.S., of this Agreement, Grantee's entitlement to retain funds paid by DEO is dependent upon the amount of allowable costs incurred and expended by Grantee in carrying out the Project.

Grantee shall provide one (1) invoice per task for all services rendered during the applicable period of time.

The following documents shall be submitted with the itemized invoice:

- a. A cover letter signed by Grantee's Agreement Manager certifying that the costs being claimed in the invoice package:
 - i. Are specifically for the project represented to the State in the budget appropriation;
 - ii. Are for one (1) or more of the components as stated in Section 4, Deliverables, of this Scope of Work;
 - iii. Have been paid; and

- iv. Were incurred during the Agreement period.
- b. Certification from the subcontractor that the work has been completed and is in accordance with industry standards;
- c. A copy of all supporting documentation for subcontractor payments;
- d. A copy of the front and back of canceled check(s) specific to the project; and
- e. A copy of the bank statement that includes the canceled check(s).

The State may require any other information from Grantee that the State deems necessary to verify that the services have been rendered under the Agreement.

All documentation necessary to support payment requests must be submitted with Grantee's invoice for DEO's review.

7. Return on Investment:

Grantee was required to provide, on or before July 31, 2016, an initial report to the Executive Office of the Governor Office of Policy and Budget (EOG/OPB) identifying actual returns on investment by fiscal year for state funding previously received (if applicable), as well as projected positive returns the state will receive by providing Grantee funding through this Agreement.

- a. Beginning at the end of the first full quarter following execution of this Agreement, Grantee shall provide quarterly update reports directly to EOG/OPB documenting the positive return on investment to the state that results from the Grantee's project and its use of monies provided under this Agreement.
- b. Quarterly update reports shall be provided to EOG/OPB within 30 days after the end of each quarter thereafter until Grantee is instructed by EOG/OPB that no further reports are needed.
- c. All reports shall be submitted to Jessica.Doyle@laspbs.state.fl.us, and a copy shall also be submitted to DEO's Agreement Manager.

8. Financial Consequences for Failure to Timely and Satisfactorily Perform:

Failure to complete all deliverables in accordance with the requirements of this Agreement, and in particular, as specified above in Section 4, Deliverables, will result in assessment by DEO of the specified financial consequences. If applicable, should the Parties agree to a corrective action plan, the plan shall specify the applicable financial consequences to be applied after the effective date of the corrective action plan.

This provision for financial consequences shall in no manner affect DEO's right to terminate the Agreement as provided elsewhere in DEO's Core Agreement.

9. Notification of Instances of Fraud:

All instances known or suspected by Grantee of Grantee operational fraud or criminal activities shall be reported to DEO's Agreement Manager in writing within twenty-four (24) chronological hours.

10. Grantee's Responsibilities upon Termination:

If DEO issues a Notice of Termination to Grantee, except as otherwise specified by DEO in that notice, the Grantee shall:

- a. Stop work under this Agreement on the date and to the extent specified in the notice.
- b. Complete performance of such part of the work as shall not have been terminated by DEO.
- c. Take such action as may be necessary, or as DEO may specify, to protect and preserve any property which is in the possession of Grantee and in which DEO has or may acquire an interest.
- d. Upon the effective date of termination of this Agreement, Grantee shall transfer, assign, and make available to the DEO all property and materials belonging to DEO. No extra compensation will be paid to Grantee for its services in connection with such transfer or assignment.

11. Non-Discrimination: Grantee shall not discriminate unlawfully against any individual employed in the performance of this Agreement because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in this work, national origin, ancestry, or age. Grantee shall provide a harassment-free workplace, with any allegation of harassment to be given priority attention and action.

12. Disposition of Project Property:

- a. Pursuant to Section I.P.7. of this Agreement, upon termination of the Agreement period, Grantee is authorized to retain ownership of any nonexpendable property purchased under this Agreement; however, Grantee hereby grants to DEO a right of first refusal in all such property prior to disposition of any such property during its depreciable life, in accordance with the depreciation schedule in use by Grantee, Grantee shall provide written notice of any such planned disposition and await DEO's response prior to disposing of the property. "Disposition" as used herein, shall include, but is not limited to, Grantee no longer using the nonexpendable property for the uses authorized herein; the sale, exchange, transfer, trade-in, or disposal of any such nonexpendable property. DEO, in its sole discretion, may require Grantee to refund to DEO the fair market value of the nonexpendable property at the time of disposition rather than taking possession of the nonexpendable property.
- b. Grantee shall provide advance written notification to DEO, if during the five (5) year period following the termination of the Agreement period, Grantee proposes to take any action that will impact its ownership of the Project property or modify the use of the Project property from the purposes authorized herein. If either of these situations arise, DEO shall have the right, with its sole discretion, to demand that Grantee reimburse DEO for part or all of the funding provided to Grantee under this Agreement.
- c. Upon termination of the Agreement period, Grantee shall be authorized to retain ownership of the improvements to real property set forth in this Agreement in accordance with the following:
 - i. Grantee is authorized to retain ownership of the improvements to real property so long as:
 1. Grantee is not sold, merged or acquired;
 2. The real property subject to the improvements is owned by Grantee; and

3. The real property subject to the improvements is used for the purposes provided in this Agreement.
4. If within five (5) years of the termination of this Agreement, Grantee is unable to satisfy the requirements stated in (i) above, Grantee shall notify DEO in writing of the circumstances that will result in the deficiency upon learning of it, but no later than thirty (30) days prior to the deficiency occurring. In such event, DEO shall have the right, within its sole discretion, to demand reimbursement of part or all of the funding provided to Grantee under this Agreement.

- End of Attachment 1 (Scope of Work) -

Attachment 2

AUDIT REQUIREMENTS

The administration of resources awarded by DEO to the recipient may be subject to audits and/or monitoring by DEO as described in this section.

MONITORING

In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEO staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by DEO. In the event DEO determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by DEO staff to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised.

1. In the event that the recipient expends \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. EXHIBIT 1 to this agreement indicates Federal resources awarded through DEO by this agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from DEO. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, will meet the requirements of this part.
2. In connection with the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.
3. If the recipient expends less than \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the recipient expends less than \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e.,

the cost of such an audit must be paid from the recipient resources obtained from other than Federal entities).

4. Title 2 CFR Part 200, entitled Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, also known as the Super Circular, supersedes and consolidates the requirements of OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102 and A-133 and is effective for Federal awards or increments of awards issued on or after December 26, 2014. Please refer to 2 CFR Part 200 for revised definitions, reporting requirements and auditing thresholds referenced in this attachment and agreement accordingly.

PART II: STATE FUNDED

This part is applicable if the recipient is a non-state entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such recipient (for fiscal years ending September 30, 2004 or thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this agreement indicates state financial assistance awarded through DEO by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from DEO, other state agencies, and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$500,000 in state financial assistance in its fiscal year (for fiscal years ending September 30, 2004 or thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. Additional information regarding the Florida Single Audit Act can be found at:
<http://www.myflorida.com/audgen/pages/flsaa.htm>

PART III: OTHER AUDIT REQUIREMENTS

N/A

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by Part I of this agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the recipient directly to each of the following:

- A. DEO at each of the following addresses:

Electronic copies (preferred): Audit@deo.myflorida.com

or

Paper (hard copy):

Department Economic Opportunity
MSC # 130, Caldwell Building
107 East Madison Street
Tallahassee, FL 32399-4126

- B. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

- C. Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.

2. Pursuant to Section .320 (f), OMB Circular A-133, as revised, the recipient shall submit a copy of the reporting package described in Section .320 (c), OMB Circular A-133, as revised, and any management letter issued by the auditor, to DEO at each of the following addresses:

Electronic copies (preferred): Audit@deo.myflorida.com

or

Paper (hard copy):

Department Economic Opportunity
MSC # 130, Caldwell Building
107 East Madison Street
Tallahassee, FL. 32399-4126

3. Copies of financial reporting packages required by PART II of this agreement shall be submitted by or on behalf of the recipient directly to each of the following:

A. DEO at each of the following addresses:

Electronic copies (preferred): Audit@deo.myflorida.com

or

Paper (hard copy):

Department Economic Opportunity
MSC # 130, Caldwell Building
107 East Madison Street
Tallahassee, FL 32399-4126

B. The Auditor General's Office at the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room 401
111 West Madison Street
Tallahassee, FL 32399-1450

Email Address: flaudgen_localgovt@aud.state.fl.us

4. Copies of reports or the management letter required by Part III of this agreement shall be submitted by or on behalf of the recipient directly to:

A. DEO at each of the following addresses:

N/A

5. Any reports, management letter, or other information required to be submitted to DEO pursuant to this agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
6. Recipients, when submitting financial reporting packages to DEO for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (non-profit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION

1. The recipient shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of five (5) years from the date the audit report is issued, or five (5) state

fiscal years after all reporting requirements are satisfied and final payments have been received, whichever period is longer, and shall allow DEO, or its designee, CFO, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to DEO, or its designee, CFO, or Auditor General upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by DEO. In addition, if any litigation, claim, negotiation, audit, or other action involving the records has been started prior to the expiration of the controlling period as identified above, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the controlling period as identified above, whichever is longer.

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EXHIBIT 1 to Attachment 2

FEDERAL RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

N/A

COMPLIANCE REQUIREMENTS APPLICABLE TO THE FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

N/A

STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

MATCHING RESOURCES FOR FEDERAL PROGRAMS:

N/A

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

State Project:

State Awarding Agency:	Florida Department of Economic Opportunity
Catalog of State Financial Assistance No.:	40.012
Catalog of State Financial Assistance Title:	Local Economic Development Initiatives
Total State Award Amount:	\$300,000

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

1. Activities are limited to those specified in Attachment 1, Scope of Work, of this Agreement.

NOTE: Title 2 CFR § 200.331, as revised, and Section 215.97(5), Florida Statutes, require that the information about Federal Programs and State Projects included in Exhibit 1 be provided to the recipient.

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Attachment 3

AUDIT COMPLIANCE CERTIFICATION

Grantee Name: _____

FEIN: _____ Grantee's Fiscal Year: _____

Contact Person Name and Phone Number: _____

Contact Person Email Address: _____

1. Did Grantee expend state financial assistance, during its fiscal year, that it received under any agreement (e.g., agreement, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between Grantee and the Department of Economic Opportunity (DEO)? ____ Yes ____ No

If the above answer is yes, also answer the following before proceeding to item 2:

Did Grantee expend \$500,000 or more of state financial assistance (from DEO and all other sources of state financial assistance combined) during its fiscal year? ____ Yes ____ No

If yes, Grantee certifies that it will timely comply with all applicable state single or project-specific audit requirements of section 215.97, Florida Statutes, and the applicable rules of the Department of Financial Services and the Auditor General.

2. Did Grantee expend federal awards, during its fiscal year that it received under any agreement (e.g., agreement, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between Grantee and DEO? ____ Yes ____ No

If the above answer is yes, also answer the following before proceeding to execution of this certification:

Did Grantee expend \$750,000 or more in federal awards (from DEO and all other sources of federal awards combined) during its fiscal year? ____ Yes ____ No

If yes, Grantee certifies that it will timely comply with all applicable single or program-specific audit requirements of 2 CFR 200, Subpart F, as revised.

By signing below, I certify, on behalf of Grantee, that the above representations for items 1 and 2 are true and correct.

Signature of Authorized Representative

Date

Printed Name of Authorized Representative

Title of Authorized Representative