



Florida Department of Transportation

RICK SCOTT
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

JIM BOXOLD
SECRETARY

December 1, 2016

Mr. Scott Luth
Pensacola-Escambia Promotion and Development Commission
117 West Garden Street
Pensacola, Florida 32502

Subject: Notice to Proceed – Economic Development Transportation Fund Agreement (ETDF)
The Bluff Corridor Phase I
Financial Project ID: 439451-1-34-01
Contract Number: G0H61

Dear Mr. Luth:

Please find attached a fully executed agreement for the above referenced project. This letter shall serve as the official Notice to Proceed (NTP) for the project.

Please remember the following before incurring any charges related to the project:

- ✓ All consultants must be selected in accordance with the Consultant's Competitive Negotiation Act (CCNA) to receive reimbursement. A certification letter must be provided to the Department for any consultants procured.
- ✓ A copy of any reports and plans will be provide to the Department as requested. Once plans have been completed, an electronic copy of the signed and sealed plans must be provided for the Department's records.
- ✓ All changes to the "Scope of Work" must be approved by the Department before proceeding with the work. Any changes will be considered ineligible for reimbursement without the appropriate approvals. In addition, all costs incurred in excess of the executed agreement amount and those costs incurred past the expiration date of the agreement will be the responsibility of the Agency.

The project shall be carried out in accordance with the executed agreement and applicable Florida Law. Should you have questions or need additional information, I can be reached toll free at 1-888-638-0250, extension 1227 or via e-mail at dustin.castells@dot.state.fl.us.

Sincerely,

Dustin Castells
District 3 Local Program Administrator

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 1 day of December 2016, 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 439451-1-34-01 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. N/A dated the 27 day of October, 2016, 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 **October 31, 2018** 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 1 day of February , 20 17 (“Commencement Date”), and shall be completed on or before **October 31, 2018**. FDOT shall have the immediate option to terminate this Agreement should the Agency fail to meet either of the above-required dates.

If work on the 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 **439451-1-34-01**, 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: SCOTT LUTH
117 W GARDEN STREET
PENSACOLA, FL 32502
PHONE: 850-898-2201
FAX: 850-438-6369

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 Parties agreed that Section 339.2821(4)(h), Florida Statutes, which requires the inclusion of an Agency resolution in this Agreement accepting future maintenance and other attendant costs occurring after completion of the Project for the portion of the Project on the Agency's system is not applicable to the Project;

(b) The Agency shall invoice FDOT monthly 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 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;

(c) 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;

(d) 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 monthly 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;

(e) 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);

(f) The Agency shall provide to FDOT written notification of either its intent to:

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

(g) 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.

(h) 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.

(i) 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.

(j) 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 SERVICES: If the Project is procured pursuant to Chapter 255 for 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 STANDARDS AND REQUIRED APPROVALS:

(a) The Agency agrees to undertake the design 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, the form of which is attached hereto as **Exhibit "D"**, that all design for the Project meets the minimum 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)

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.

(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: Jared Perdue, PE

Title: Director of Transportation Deve

Date: 12/1/16

Legal Review:



See attached Encumbrance Form for date of funding approval by Comptroller

AGENCY

PENSACOLA-ESCAMIBA PROMOTION AND DEVELOPMENT COMMISSION (PEDC)

By: 

Print Name: LEWIS BEAR JR

Title: Chairman

As approved by the Board on:

10-27-2016

Attest: 

Legal Review:

Richard W. Shenill
PEDC Attorney 10/28/16

EXHIBIT "A"

SCOPE OF SERVICES

Financial Management Number: 439451-1-34-01

PROJECT SUMMARY:

The Pensacola-Escambia Promotion and Development Commission (PEDC) regularly receives requests from potential industries for development sites in Escambia County. To provide competitive responses, the PEDC will retain professional services to evaluate, recommend and prepare conceptual plans for transportation / access to advanced manufacturing sites at The Bluffs. 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.

The following submittal products and stages are required:

SUBMITTAL STAGE	TASK (Refer to itemized List)
I. Programming	Task 1
II. Preliminary	Task 2
III. Concept	Tasks 3, 4
Development	Task 5
IV. Concept Plan	Task 6
V. Criteria Package	
VI. Project Management	Tasks 1, 2, 3, 4, 5, 6, 7

Professional Services following Escambia County standards shall include, but not be limited to, the following specific tasks:

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. Planning, Engineering, Market Feasibility and Real Property analysis will be accomplished by the Consultant as required to support parcel identification and selection. Two parcels have been selected to proceed with more detailed infrastructure programming; as follows:

- a) Longleaf Bluff: Road and Rail Industrial Development Site.

b) Cypress Bluff: Road and Rail Industrial Development Site.

1. Programming and Master Plan Conformance.

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. For roadway project elements, programming will be consistent with Escambia County roadway planning criteria. In addition to the two 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 two sites; including

- 1) Building Type and Area.
- 2) Target Industry Sector.
- 3) Detailed Infrastructure Requirements.
- 4) Multi-Modal Transportation Capacities and Requirements.
- 5) Site Design Requirements.

Deliverable

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.

- It will include an overall site plan and the two parcels.
- It will include recommendations for the site and roadway design, including setbacks, alignment, proposed major wetland crossings, and overall campus design recommendations.

2. Preliminary Roadway Alignments and Approved Concepts.

Description of Task

For the two specific parcels identified in Task 1; and based on the information included in the Master Plan, provide a preferred roadway alignment alternative, capacity analysis, typical sections, and any other planning level information necessary for evaluation and **preliminary** alignment approval by the Stakeholders.

Deliverable

For the two alignments, identify the jurisdictional wetlands, topographic conditions, geometric requirements, roadway wetland crossing locations, roadway wetland crossing alternatives (if any), specific regulatory compliance requirements, real property requirements, conceptual construction cost estimates, 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.

Description of Task

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. Any administrative and/or design deficiencies associated with CSX requirements shall be noted.

Deliverable

For the rail alignments, identify jurisdictional wetlands, topographic 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.

Description of Task

For the two parcels identified in Task 1; and based on the information included in the Master Plan, provide a preferred utility system extension alternative for **preliminary** stakeholder evaluation and approval. To the maximum extent practicable, the Consultant shall provide utilities for the initial two parcels, but also make provisions to serve the entire Master Plan area.

Deliverables

1. *Industrial Wastewater.* Provide planning-level analysis for Wastewater Treatment capacities, estimated flows, pre-treatment requirements, pumping requirements, pipeline alignments, etc.; shall be coordinated with The Emerald Coast Utilities Authority.
2. *Process Water.* Provide planning-level analysis for Reclaimed Water, projected demands, current allocations, acquisition requirements, pipeline sizes, pipeline alignments, etc.; shall be coordinated and in conformance with The Emerald Coast Utilities Authority.
3. *Natural Gas.* Provide planning-level analysis for Natural Gas distribution capacities, projected demands, connection requirements, extension requirements, pipeline alignments, site service requirements, etc.; shall be coordinated with Gulf South Pipeline.
4. *Electrical Power.* Provide planning-level analysis for all Electrical Power transmission and service requirements will be coordinated through Gulf Power Company.
5. *Potable Water.* Provide planning-level analysis for 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.
6. *Industrial Process Steam Supply (Cypress Bluff only).* Provide planning-level analysis for access 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.

Description of Task

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 Criteria Package preparation; as follows:

Deliverable

Alignment 1: One roadway concept will be developed to a Design Development level, with horizontal and vertical control, suitable for use in soliciting design-build contractors to take the project through construction.

Alignment 2: The second roadway concept will include only horizontal alignment and detail to support a construction cost estimate. It will not be suitable to solicit a design-build proposal.

6. Final Transportation Criteria Packages

Description of Task

For the parcel identified for further development as Alignment 1 in Task 5, and based on the approved *Bluffs Conceptual Plan*, the Consultant shall prepare a design criteria package for roadway transportation access. The final design criteria will be developed to a level that allows for the PEDC to advertise and award a fast-track design/build construction contract. At a minimum, the *Criteria Package* will include the following items:

Deliverable

- a) General Criteria.
- b) Technical Criteria.
- c) Outline Technical Specifications.
- d) Design Analysis, including a listing and status of Regulatory Requirements.
- e) Plans developed to Design Development Submittal Stage.
- f) Legal descriptions for proposed right-of-way and stormwater ponds
- g) Real Property Summary.
- h) Estimated Opinion of Probable Construction Cost.

The *Criteria Package* 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, Communications and Contingency.

For all tasks and phases of work, the Consultant shall provide *Project Management* support to PEDC staff and Consultants. 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.
- g) Risk Management Consultation

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
439451-1-34-01	STTF	2017	55.032	Economic Development Transportation Projects – Road Fund	\$2,000,000.00	088865
Total Award					\$2,000,000.00	

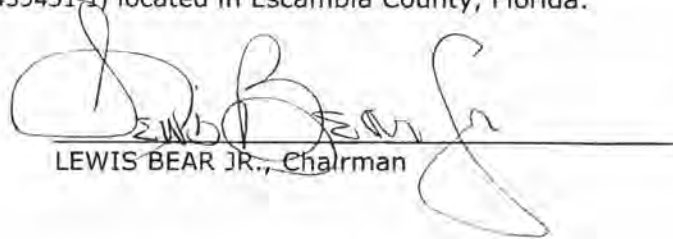
For each program identified above, the recipient shall comply with the program requirements described in the Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/catalog.aspx>]. The services/purposes for which the funds are to be used are included in the Agreement scope of services/work.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

EXHIBIT "C"
AGENCY RESOLUTION

**RESOLUTION OF PENSACOLA-ESCAMBIA
PROMOTION AND DEVELOPMENT COMMISSION**

At a duly noticed meeting of the directors of the Pensacola-Escambia Promotion and Development Commission on October 27, 2016, at which a quorum was present, following a motion and second, the following action was approved by unanimous consent:

RESOLVED that the Pensacola-Escambia Promotion and Development Commission shall enter into the contract attached with State of Florida, Department of Transportation, for the Economic Development Transportation Fund Agreement (Off-System Specific Appropriations): Bluffs Corridor Project (439451-1) located in Escambia County, Florida.



LEWIS BEAR JR., Chairman

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# **439451-1-34-01**

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.

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>

TO: PG364DC@dot.state.fl.us
 SUBJECT: FUNDS APPROVAL/REVIEWED FOR CONTRACT G0H61
 STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
 FUNDS APPROVAL

Contract #G0H61 Contract Type: GD Method of Procurement: G
 Vendor Name:
 Vendor ID: VF591172550001
 Beginning date of this Agmt: 11/17/16
 Ending date of this Agmt: 10/31/18
 Contract Total/Budgetary Ceiling: ct = \$2,000,000.00

Description:
 Develop Design Criteria Package for Bluffs Corridor Project;
 Agreement with PEDC

ORG-CODE	*EO	*OBJECT	*AMOUNT	*FIN PROJECT	*FCT	*CFDA
(FISCAL YEAR)		*BUDGET ENTITY		*CATEGORY/CAT	YEAR	
AMENDMENT ID	*SEQ.	*USER ASSIGNED ID	*ENC LINE(6S)	STATUS		

Action: ORIGINAL	Funds have been: APPROVED					
55 033040345 *AC	*751003	*	2000000.00	*43945113401	*215	*
2017	*55150200			*088865/17		
0001	*00	*		*0001/04		

TOTAL AMOUNT: *\$ 2,000,000.00 *

FUNDS APPROVED/REVIEWED FOR ROBIN M. NAITOVE, CPA, COMPTROLLER
 DATE: 11/18/2016