



August 22<sup>nd</sup>, 2023 at 10:00 AM  
CO:LAB Pensacola  
First Floor Conference Room

## PEDC AGENDA

1. Call to Order
2. Public Notice (7.24.23)
3. Role Call
4. Public Comment
5. Action Items
  - a. Approval of July 25<sup>th</sup>, 2023 Meeting Minutes
  - b. Approval of July 2023 Financials
  - c. Presentation of FY 23-24 Proposed Budget – Approve at September Annual Meeting
  - d. Hancock Whitney Resolution: Remove Lewis Bear Jr. Add Brian Hilson.
  - e. Executive Board Nominations
    - i. Chairman
    - ii. Vice Chairman
    - iii. Secretary/Treasurer
  - f. Approval of Project Manager Adendum for Bluffs Phase 5
  - g. Approval of BDI Contract for Phase 4 (Bidding, Construction of Roundabout) and Phase 5, Part A (Permitting and Design of Phase 5)
  - h. Approval of Project Laser Term Sheet - Updated
6. Discussion Items (No Board Action Anticipated)
  - a. Military Support
  - b. Bluffs
  - c. OLF8
  - d. Town of Century
  - e. Economic Development Update
  - f. Legislative/Triumph Updates
7. Other Business
  - a. September Board Meeting moved to September 19<sup>th</sup> due to travel conflicts for both PEDC and FloridaWest
8. Adjourn

Dave Hoxeng  
Melissa Stoker

Rick Byars/Brian Hilson  
Danita Andrews  
Brian Hilson/Danita Andrews  
Danita Andrews/Ben Boutwell  
Brian Hilson/Danita Andrews  
David Bear

### Fiscal Year Meeting Schedule

9.26.23: Annual Meeting



July 25<sup>th</sup>, 2023 at 10:00 AM  
CO:LAB Pensacola  
First Floor Conference Room

PEDC  
MINUTES

1. Call to Order: Chairman Dave Hoxeng called the meeting to order at 10:04 am.
2. Public Notice (7/10/23)
3. Roll Call:

Melissa Stoker

- a. Board Members Present
    - i. Dave Hoxeng
    - ii. Commissioner Jeff Bergosh
    - iii. Councilman Charles Bare
    - iv. Mayor Ben Boutwell
    - v. Donnie McMahon
    - vi. Commissioner Steven Barry
  - b. Board Members Present Virtually
    - i. David Peaden
  - c. Board Members Absent
    - i. Councilwoman Allison Patton
  - d. Staff Present
    - i. Melissa Stoker
    - ii. Danita Andrews
    - iii. Ryan Moulder
    - iv. Casey Campbell
    - v. Patrick Rooney
  - e. Visitors Present
    - i. Jessica Scholl
    - ii. Rick Byars
    - iii. Brian Wyer
    - iv. Brian Hilson (Virtually)
4. Public Comment: Brian Wyer provided an update on GCMC events coming up.
  5. Action Items
    - a. Approval of May 23<sup>rd</sup>, 2023 Meeting Minutes  
Charles Bare moved to approve.  
Jeff Bergosh seconded.  
Passed unanimously.
    - b. Approval of June 2023 Financials: Board and staff discussed status.  
Jeff Bergosh moved to approve.  
Ben Boutwell seconded.  
Approved unanimously.
    - c. Approval of LOI (BDI Continuation of Phase Work: Construction)  
Donnie McMahon moved to approve.  
Jeff Bergosh seconded.  
Approved unanimously.
    - d. Approval of Owners Rep

Donnie McMahon moved to approve.

Jeff Bergosh seconded.

Passed unanimously.

- e. Approval of Project Laser Special Counsel Representation (Triumph): Board had conversation around the need for this.

Steven Barry moved to approve.

Ben Boutwell seconded.

Approved unanimously.

- f. Approval of Project Laser Term Sheet: Danita Andrews provided an update on this. The board, legal counsel, and staff discussed details related to clawbacks.

Steven Barry moved to approve.

Jeff Bergosh seconded.

Passed unanimously.

6. Discussion Items (No Board Action Anticipated)

- a. CEO Onboarding Update: Rick Byars introduced himself and then Brian Hilson as the incoming FloridaWest CEO. Brian Hilson introduced himself.
- b. Military Support: Dave Hoxeng and Rick Byars provided an update on this. The board had discussion with Rick around this topic.
- c. Bluffs: Danita Andrews provided an update on this. The board and staff had conversation on this topic. Danita Andrews has been asked to include Commissioner Steven Barry on meetings and progress.
- i. Easement Update
- d. OLF8: Jeff Bergosh provided an update on this. The DR Horton counter-offer is expected today.
- e. Town of Century: Ben Boutwell and Danita Andrews provided an update on the Town of Century.
- f. Economic Development Update: Danita Andrews provided a general ED update to the board.
- g. Legislative/Triumph Update: David Bear was unavailable for this morning's meeting.

7. Other Business

- a. City of Pensacola Appointment of Dr. Lusharon Wiley renewed for 2-year term (expires 6/30/25)
- b. Escambia County Appointment of David Peaden (Continue to serve until reappointed/replaced)

8. Adjourn: Chairman David Bear adjourned the meeting at 11:18 am.

**Fiscal Year Meeting Schedule**

8.22.23: Committee/Officer Nominations

9.26.23: Annual Meeting

**Pensacola Escambia County Promotion & Development Comm**  
**Profit & Loss Budget Performance**  
October 2022 - July 2023

	Total			
	Actual	Budget	over Budget	% of Budget
<b>Income</b>				
4000 City of Pensacola Income	\$ 175,000.00	\$ 175,000.00	\$ -	100.00%
4100 Escambia County Income	\$ 600,000.00	\$ 600,000.00	\$ -	100.00%
4400 Foreign Trade Zone Income	\$ -	\$ 1,500.00	\$ (1,500.00)	0.00%
4500 Tech Park Income	\$ 15,760.00	\$ 17,000.00	\$ (1,240.00)	92.71%
4520 FOIL Income	\$ 71,381.40	\$ 500,000.00	\$ (428,618.60)	14.28%
4600 Pegasus Income	\$ 320,531.17	\$ 387,000.00	\$ (66,468.83)	82.82%
4800 Interest Income	\$ 17,596.08	\$ 19,000.00	\$ (1,403.92)	92.61%
4950 Miscellaneous	\$ 5,064.85	\$ 2,750.00	\$ 2,314.85	184.18%
<b>Total Income</b>	<b>\$ 1,205,333.50</b>	<b>\$ 1,702,250.00</b>	<b>\$ (496,916.50)</b>	<b>70.81%</b>
<b>Expenses</b>				
5004 Economic Development	\$ 675,000.00	\$ 675,000.00	\$ -	100.00%
5010 Foreign Trade Zone	\$ -	\$ 1,250.00	\$ (1,250.00)	0.00%
5100 Audit Fees	\$ 10,616.00	\$ 12,000.00	\$ (1,384.00)	88.47%
5310 Insurance - D&O Liability	\$ 7,630.62	\$ 1,000.00	\$ 6,630.62	763.06%
5320 Legal Expenses	\$ 5,988.50	\$ 7,500.00	\$ (1,511.50)	79.85%
5330 Bank Service Charges	\$ -	\$ 100.00	\$ (100.00)	0.00%
5340 Special District Fees	\$ 175.00	\$ 200.00	\$ (25.00)	87.50%
5400 Technology Park Expenses	\$ 16,647.89	\$ 50,000.00	\$ (33,352.11)	33.30%
5420 FOIL Expenses	\$ 90,183.00	\$ 500,000.00	\$ (409,817.00)	18.04%
5500 New Project Expense	\$ 6,869.00	\$ 80,000.00	\$ (73,131.00)	8.59%
5600 Miscellaneous Expense	\$ -	\$ 200.00	\$ (200.00)	0.00%
5750 Pegasus Expense	\$ 90,641.15	\$ 375,000.00	\$ (284,358.85)	24.17%
<b>Total Expenses</b>	<b>\$ 903,751.16</b>	<b>\$ 1,702,250.00</b>	<b>\$ (798,498.84)</b>	<b>53.09%</b>
<b>Net Income</b>	<b>\$ 301,582.34</b>	<b>\$ -</b>	<b>\$ 301,582.34</b>	<b>0.00%</b>

**PEDC**  
**Balance Sheet**  
As of July 31, 2023

	<u>Total</u>
<b>ASSETS</b>	
Current Assets	
Bank Accounts	
1012 Checking - Hancock Bank	501,848.50
1111 HW Money Market	517,596.08
Total Bank Accounts	<u>\$ 1,019,444.58</u>
Accounts Receivable	
1200 Accounts Receivable	2,850.00
Total Accounts Receivable	<u>\$ 2,850.00</u>
Total Current Assets	<u>\$ 1,022,294.58</u>
Fixed Assets	
1500 Land	\$ 8,625,000.00
1600 Land Improvements - Tech Park	3,243,106.03
1700 Building - Pegasus	8,100,000.00
1799 Allowance for Fair Value Adj	-5,718,106.03
Total Fixed Assets	<u>\$ 14,250,000.00</u>
Other Assets	
1400 Rent Receivable	2,338,641.58
Total Other Assets	<u>\$ 2,338,641.58</u>
<b>TOTAL ASSETS</b>	<u>\$ 17,610,936.16</u>
<b>LIABILITIES AND EQUITY</b>	
Liabilities	
Current Liabilities	
Accounts Payable	
Other Current Liabilities	
2122 Tech Park Payable - County LOC	2,332,284.00
Total Other Current Liabilities	<u>\$ 2,332,284.00</u>
Total Current Liabilities	<u>\$ 2,332,284.00</u>
Long-Term Liabilities	
2800 Deferred Revenues	2,528,794.00
2810 Deferred Grant Income - Pegasus	2,280,110.10
2900 Due to Pegasus	5,599,902.58
Total Long-Term Liabilities	<u>\$ 10,408,806.68</u>
Total Liabilities	<u>\$ 12,741,090.68</u>
Equity	
32000 Unrestricted Net Assets	4,454,755.96
3202 Economic Development Projects	61,198.00
3203 Commerce Park Impr/Mktg	52,309.20
Net Income	301,582.34
Total Equity	<u>\$ 4,869,845.50</u>
<b>TOTAL LIABILITIES AND EQUITY</b>	<u>\$ 17,610,936.18</u>

**PEDC**  
**Budget vs. Actuals: FY\_2022\_2023 - FY23 P&L**  
October 2022 - September 2023

	Actual	Total Budget	over Budget	2024 Budget
<b>Income</b>				
4000 City of Pensacola Income	175,000.00	175,000.00	0.00	\$ 175,000.00
4100 Escambia County Income	600,000.00	600,000.00	0.00	\$ 725,000.00
4400 Foreign Trade Zone Income		1,500.00	-1,500.00	\$ 1,500.00
4500 Tech Park Income	18,610.00	17,000.00	1,610.00	\$ 17,000.00
4520 FOIL Income	71,381.40	500,000.00	-428,618.60	\$ 500,000.00
4600 Pegasus Income	386,259.65	387,000.00	-740.35	\$ 387,000.00
4700 EDA Grant Income		0.00	0.00	\$ -
4750 Misc Grant Income		0.00	0.00	\$ -
4800 Interest Income	15,372.49	19,000.00	-3,627.51	\$ 19,000.00
4950 Miscellaneous	5,124.85	2,750.00	2,374.85	\$ 2,550.00
<b>Total Income</b>	<b>\$ 1,271,748.39</b>	<b>\$ 1,702,250.00</b>	<b>-\$ 430,501.61</b>	<b>\$ 1,827,050.00</b>
<b>Gross Profit</b>	<b>\$ 1,271,748.39</b>	<b>\$ 1,702,250.00</b>	<b>-\$ 430,501.61</b>	
<b>Expenses</b>				
5004 Economic Development	675,000.00	675,000.00	0.00	\$ 675,000.00
5010 Foreign Trade Zone		1,250.00	-1,250.00	\$ 1,250.00
5100 Audit Fees	10,616.00	12,000.00	-1,384.00	\$ 12,000.00
5310 Insurance - D&O Liability	7,630.62	1,000.00	6,630.62	\$ 800.00
5320 Legal Expenses	5,988.50	7,500.00	-1,511.50	\$ 7,500.00
5330 Bank Service Charges		100.00	-100.00	\$ 100.00
5340 Special District Fees	175.00	200.00	-25.00	\$ 200.00
5400 Technology Park Expenses	16,478.93	50,000.00	-33,521.07	\$ 50,000.00
5420 FOIL Expenses	90,183.00	500,000.00	-409,817.00	\$ 500,000.00
5500 New Project Expense	6,869.00	80,000.00	-73,131.00	\$ 80,000.00
5600 Miscellaneous Expense		200.00	-200.00	\$ 200.00
5700 DEO Grant Expense		0.00	0.00	\$ -
5750 Pegasus Expense	110,427.40	375,000.00	-264,572.60	\$ 375,000.00
<b>NWFL Defense Partners</b>				\$ 125,000.00
<b>Total Expenses</b>	<b>\$ 923,368.45</b>	<b>\$ 1,702,250.00</b>	<b>-\$ 778,881.55</b>	<b>\$ 1,827,050.00</b>
<b>Net Operating Income</b>	<b>\$ 348,379.94</b>	<b>\$ 0.00</b>	<b>\$ 348,379.94</b>	<b>\$ -</b>
<b>Net Income</b>	<b>\$ 348,379.94</b>	<b>\$ 0.00</b>	<b>\$ 348,379.94</b>	

Monday, Jul 31, 2023 10:22:14 AM GMT-7 - Accrual Basis

## **ADDENDUM TO CONSULTING SERVICES AGREEMENT for “The Bluffs”**

This Addendum to the Consulting Services Agreement dated December 14, 2021 (the “**Agreement**”) is made and entered into on \_\_\_\_\_, 2023 by and between PEDC and Cindy Anderson, PE

This Agreement amends and modifies that certain Consulting Services contained in the original Agreement dated December 14, 2021, is expanded to include the following:

Continue to assist the PEDC in the administration and execution of various elements, specifically associated with grant administration associated with Part B: Design and Permitting of an Industrial Roadway extending south of the intersection of Old Chemstrand and New Chemstrand Road to the Florida Power and Light property line as detailed in the FDOT Addendum to contract G2128 dated January 25, 2023 (Phase 5) and the Bidding, Construction and Construction Administration of the Industrial Roundabout (Phase 4).

The Project Manager shall keep a description of work accomplished. The Project Manager will not charge PEDC any expense for travel within Northwest Florida. PEDC shall pay Project Manager on an hourly basis at the rate of **\$90** per hour. Unless the PEDC and the Project Manager shall agree, in writing, in advanced, that the services and efforts shall exceed the expectations set out herein, the amount made to Project Manager shall not exceed \$20,000.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date first written above.

### **PEDC**

By: \_\_\_\_\_  
Dave Hoxeng, Chairman

Pensacola-Escambia  
Promotion and Development  
Commission

Address: Attn. Scott Luth  
PO Box 1192, Pensacola, FL  
32591  
Email:  
sluth@floridawesteda.com

### **Project Manager**

By: \_\_\_\_\_  
Cindy Ward Anderson, PE  
Project Manager

Address: 1602 Hwy 2, Westville,  
FL 32464

Email:  
CindyWardAnderson@gmail.com

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

## **AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES**

Prepared by



Issued and Published Jointly by





This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

Copyright © 2014:

National Society of Professional Engineers  
1420 King Street, Alexandria, VA 22314-2794  
(703) 684-2882  
[www.nspe.org](http://www.nspe.org)

American Council of Engineering Companies  
1015 15th Street N.W., Washington, DC 20005  
(202) 347-7474  
[www.acec.org](http://www.acec.org)

American Society of Civil Engineers  
1801 Alexander Bell Drive, Reston, VA 20191-4400  
(800) 548-2723  
[www.asce.org](http://www.asce.org)

The copyright for this EJCDC document is owned jointly by the three sponsoring organizations listed above. The National Society of Professional Engineers is the Copyright Administrator for the EJCDC documents; please direct all inquiries regarding EJCDC copyrights to NSPE.

**NOTE:** EJCDC publications may be purchased at [www.ejcdc.org](http://www.ejcdc.org), or from any of the sponsoring organizations above.

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 – SERVICES OF ENGINEER .....	1
1.01 Scope .....	1
ARTICLE 2 – OWNER’S RESPONSIBILITIES.....	1
2.01 General .....	1
ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES.....	2
3.01 Commencement.....	2
3.02 Time for Completion .....	2
ARTICLE 4 – INVOICES AND PAYMENTS .....	2
4.01 Invoices.....	2
4.02 Payments .....	2
ARTICLE 5 – OPINIONS OF COST .....	3
5.01 Opinions of Probable Construction Cost .....	3
5.02 Designing to Construction Cost Limit .....	3
5.03 Opinions of Total Project Costs.....	3
ARTICLE 6 – GENERAL CONSIDERATIONS.....	4
6.01 Standards of Performance .....	4
6.02 Design Without Construction Phase Services .....	6
6.03 Use of Documents .....	6
6.04 Electronic Transmittals.....	6
6.05 Insurance .....	7
6.06 Suspension and Termination .....	8
6.07 Controlling Law.....	9
6.08 Successors, Assigns, and Beneficiaries .....	9
6.09 Dispute Resolution .....	10
6.10 Environmental Condition of Site.....	10
6.11 Indemnification and Mutual Waiver .....	11
6.12 Records Retention.....	12
6.13 Miscellaneous Provisions.....	12
ARTICLE 7 – DEFINITIONS.....	12
7.01 Defined Terms .....	12
ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS .....	16
8.01 Exhibits Included: .....	16
8.02 Total Agreement: .....	17
8.03 Designated Representatives: .....	17
8.04 Engineer’s Certifications: .....	17

**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ (“Effective Date”) between  
The Pensacola-Escambia Promotion and Development Commission (PEDC) (“Owner”) and  
Baskerville-Donovan, Inc. (BDI) (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:  
**The Bluffs – Phase 5: Bluffs Boulevard Southern Roadway Extension and Owner’s Representative**  
\_\_\_\_\_  
 (“Project”).

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:  
**PEDC will retain professional services to program and prepare construction documents for design and permitting of Bluffs Boulevard, and Owner’s Representative for construction of the roundabout designed and permitted in Phase 4 of the Bluffs Master Plan program.**

Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items unless such reliance would be unreasonable or errors or omissions in such items are reasonably apparent to Engineer.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
1. any development that affects the scope or time of performance of Engineer’s services;

2. the presence at the Site of any Constituent of Concern; or
3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

### **ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

#### **3.01 Commencement**

- A. Engineer is authorized to begin rendering services as of the Effective Date.

#### **3.02 Time for Completion**

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be a reasonable time.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

### **ARTICLE 4 – INVOICES AND PAYMENTS**

#### **4.01 Invoices**

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 40 days of receipt.

#### **4.02 Payments**

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 40 days after receipt of Engineer's invoice, then:

1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said fortieth day; and
  2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts properly due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01. Failure to pay a disputed portion of a bill shall not be considered failure to pay under Paragraph 4.02.B.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

## **ARTICLE 5 – OPINIONS OF COST**

### **5.01 *Opinions of Probable Construction Cost***

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

### **5.02 *Designing to Construction Cost Limit***

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

### **5.03 *Opinions of Total Project Costs***

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

## ARTICLE 6 – GENERAL CONSIDERATIONS

### 6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services, unless such deficiencies would be apparent to an engineer practicing as described in Paragraph 6.01.A. Engineer shall promptly notify Owner of any deficiencies identified by Engineer. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
  - 1. Engineer and Owner shall comply with applicable Laws, Rules and Regulations.
  - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  - 3. This Agreement is based on Laws, Rules and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
    - a. changes after the Effective Date to Laws, Rules and Regulations;
    - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
    - c. changes after the Effective Date to Owner-provided written policies or procedures.

- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement as modified between Owner and any Contractors.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work unless Engineer knew of such failure and failed to notify the Owner. Engineer shall not be responsible for the acts or omissions of any Constructor unless Engineer knew of such failure and failed to notify the Owner.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents. However, Engineer shall promptly report to Owner any deficiencies in performance or in the Contractor's Work that Engineer observes.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

## 6.02 *Design Without Construction Phase Services*

- A. INTENTIONALLY DELETED BECAUSE THIS CONTRACT DOES NOT INCLUDE A CONSTRUCTION PHASE.

## 6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations, and one electronic version in the formats reasonably specified by Owner.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner An irrevocable limited license to use the Documents on the Project, extensions of the Project, regular operational uses and maintenance, and for related uses of the Owner, subject to receipt by Engineer of full payment properly due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

## 6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.



- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

#### 6.05 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer for both ongoing and completed operations.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such

additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

#### 6.06 *Suspension and Termination*

##### A. *Suspension:*

1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

##### B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,
  - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
  - b. by Engineer:
    - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional, and does not rescind such demand after being so informed by Engineer; or
    - 2) upon seven days' written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
    - 3) Engineer shall have no liability to Owner on account of such termination.
  - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

#### 6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

#### 6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

#### 6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

#### 6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days' notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are

or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### 6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall defend, indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions arising out of or relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorney's fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

## 6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of ten years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

## 6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

# ARTICLE 7 – DEFINITIONS

## 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
  - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
  - 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
  - 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.

4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of

Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.



25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other

Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*:

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

## ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

### 8.01 *Exhibits Included*:

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. **(Not Applicable)**
- E. Exhibit E, Notice of Acceptability of Work. **(Not Applicable)**
- F. Exhibit F, Construction Cost Limit. **(Not Applicable)**
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions. **(Not Applicable)**
- K. Exhibit K, Amendment to Owner-Engineer Agreement. **(Not Applicable)**

- L. Bluffs Boulevard Southern Extension Concept
- M. Certificate of Completion

#### 8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

#### 8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

#### 8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: Pensacola-Escambia Promotion and  
Development Commission

Engineer: Baskerville-Donovan, Inc.

By: \_\_\_\_\_  
Print name: **Dave Hoxeng**  
Title: **Chairman**  
Date Signed: \_\_\_\_\_

By: \_\_\_\_\_  
Print name: **T. Keith Hill, P.E.**  
Title: **President / CEO**  
Date Signed: \_\_\_\_\_

Engineer License or Firm's Certificate No. (if required):  
Engineering Business EB-0000 340

State of: **Florida**

Address for Owner's receipt of notices:  
**117 W. Garden Street**  
**Pensacola, FL 32502**

Address for Engineer's receipt of notices:  
**449 West Main Street**  
**Pensacola, FL 32502**

Designated Representative (Paragraph 8.03.A):  
**Brian Hilson**  
Title: **Chief Executive Officer**  
Phone Number: **850-438-4081**  
E-Mail Address: [bhilson@floridawesteda.com](mailto:bhilson@floridawesteda.com)

Designated Representative (Paragraph 8.03.A):  
**Michael Langston, PE**  
Title: **Vice President / Civil Market Director**  
Phone Number: **850-438-9661**  
E-Mail Address: [mlangston@baskervilledonovan.com](mailto:mlangston@baskervilledonovan.com)

This is **EXHIBIT A**, consisting of \_\_\_\_ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_.

## **Exhibit A**

### **Engineer's Services**

---

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

#### **BACKGROUND/PROJECT DESCRIPTION**

**PROJECT DESCRIPTION:** The Pensacola-Escambia Promotion and Development Commission (PEDC) regularly receives requests from potential industries for development sites in Escambia County. To provide competitive responses, PEDC has developed a program for new industrial site inventories along the lower Escambia River Basin in Escambia County, Florida. As part of this effort PEDC will retain professional services to program and prepare construction documents for transportation / access to advanced manufacturing sites at The Bluffs.

#### **See Exhibit B for Conceptual Drawing.**

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, Florida Power & Light and the University of West Florida. The phases of work programed thus far include transportation corridors south of Becks Lake Road and utility connections to support industrial development for the Bluffs. Phase 1 included design/build criteria development for an industrial road from Becks Lake Road southeasterly to Spanish Mill Creek. Phase 2 included design/build criteria development for the extension of the industrial road southeasterly across Spanish Mill Creek, terminating at Old Chemstrand Road. Phase 3 included design and permitting for an industrial road at Becks Lake Road. Phase 4 included transportation upgrades for a roundabout intersection at the intersection of Chemstrand Road, Old Chemstrand Road, ECUA and Ascend Entrances.

This phase (Phase 5) will be the design, permitting, and development of a set of bid ready construction documents for an Industrial Roadway (Bluffs Boulevard) extending south from the intersection of Old Chemstrand and New Chemstrand Road Roundabout to the Florida Power and Light Property Line (or where extension is feasible). This work will be broken down into two parts (A and B).

#### **PART A – Scope of Services: Design, permitting, and development of a set bid ready construction documents for an Industrial Roadway extending south of the Intersection of Old Chemstrand and New Chemstrand Road to the Florida Power and Light Property Line.**

The work associated with Part A includes the engineering design and permitting necessary to develop construction documents of the extension of an industrial roadway south of the intersection of New Chemstrand Road and Old Chemstrand Road in Escambia County, FL. The work will begin at the end of the pavement for the South Extension turn-out. (See **Exhibit B**). The work will terminate at the cul-de-sac located north of the Florida Power and Light property line. (See **Exhibit A**). The preliminary calculated length of the proposed alignment is 9,213 feet, or 1.74 miles. At the northerly extreme of the project, an industrial roundabout is currently under engineering design and permitting; no activity associated with this roundabout design and permitting work is part of this agreement.

---

#### **Exhibit A – Engineer's Services**

**EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.**

**Copyright © 2014 National Society of Professional Engineers, American Council of Engineering Companies, and American Society of Civil Engineers. All rights reserved.**

Part A activities will include Industrial Roadway design to provide access and utilities to developable lands south of the proposed Chemstrand roundabout. The associated activities will include concept designs, public involvement, topographical surveys, roadway design, stormwater management, signage design, geotechnical services, environmental services, right of way assessments and right of way acquisition, utility coordination, stakeholder coordination, agency coordination, permitting, and other services necessary to complete the design for the roadway extension. All designs will conform to the FDOT Manual of Uniform Minimum Standards for Design, Construction, and Maintenance for Streets and Highways, (aka "Florida Greenbook") for Industrial Roadway Design, and the most current version of the Escambia County Design Standards Manual.

The product for Part A will be ready-to-advertise set of construction documents for the South Extension, as described herein with the programed days to complete.

### **Task 1: Roadway Vertical and Horizontal Alignments**

**90 Days**

Planning, surveying, and engineering will be accomplished, as required, to support alignment and connection of an industrial roadway extension from the intersection of New Chemstrand Road and Old Chemstrand Road (Chemstrand roundabout) southerly to the Florida Power and Light property line. Right of way surveys will be performed to establish the existing right of way, as needed, to establish the project limits. This shall include the real property necessary to provide a continuous 100' right of way along the entire 1.74-mile length of alignment. Legal descriptions of the real property needed to establish the right of way will be prepared.

Topographic surveys will be performed along the proposed right of way, as required, to identify the existing centerline profiles, adjacent grades, cross slopes, vegetation limits, drainage conveyance systems, connecting driveways, roadways and access points, and existing buried and overhead utilities. Topographic surveys will be completed, as required, to support the designs required herein and to conform to the required technical codes and standards.

The right of way and topographic surveys will be utilized to develop horizontal and vertical alignments that comply with the FDOT Manual of Uniform Minimum Standards for Design, Construction, and Maintenance for Streets and Highways, (aka "Florida Greenbook") for industrial roadway design, and the most current version of the Escambia County Design Standards Manual.

In addition to the horizontal and vertical alignments, the proposed right of way geometry shall include considerations for the following utility systems in accordance with The Bluffs Master Plan:

- Industrial Wastewater
- Process Water
- Natural Gas
- Electric Power
- Potable Water
- Sanitary Sewer
- Telecommunications

The horizontal and vertical alignments along with a summary of real property needs and legal descriptions shall be compiled into a document titled “The Bluffs South Extension – Right of Way” and submitted to PEDC for review and approval. This item of work will include enough information for the project stakeholders, Escambia County, and any impacted private property owners to issue board or corporate actions authorizing PEDC to proceed with design.

## **Task 2: Conceptual Roadway Design**

**90 days**

A roadway design concept shall be prepared in accordance with the most current version of the Escambia County Design Standards Manual and (to the maximum extent possible) incorporate the roadway concept (typical section) prepared in Phase 1 and Phase 2 of The Bluffs Project. (Refer to Project Background, above). The design concept will consider real property acquisition as well as the survey data collection in Task 1 to establish the conceptual roadway design.

At a minimum, the concept will include the following items:

- Vertical and Horizontal Alignments from Task 1
- Proposed typical sections, noting any deviations from previously developed sections for The Bluffs
- Stormwater management areas
- Regulatory impacts and requirements
- Real Property requirements
- Conceptual Level Construction Cost Estimate

The Conceptual Roadway design will be submitted to PEDC, FDOT, project stakeholders, and Escambia County for review and comment. The Consultant shall respond to and/or incorporate review comments into the roadway design, where feasible, to ensure that the identified right of way associated with the realignments can be accepted and dedicated to Escambia County after construction.

## **Task 3: 60% Design Stage Submittal**

**120 days**

For the approved concept in Task 2, and based on the Conceptual Roadway design, a 60% Design package shall be prepared. The 60% Design package will be submitted to Escambia County, FDOT, and PEDC for review, comment, and approval. All comments issued by the reviewing agencies shall be resolved and/or incorporated, as necessary, to ensure that the layouts and identified rights of way associated with the roadway can be dedicated to the County after development.

At a minimum, the 60% Submittal will include the following items:

- Index of technical Specifications
- Design Analysis, including Regulatory Requirements (60%)
- Design Plans developed to 60% Complete Submittal Stage
- Preliminary estimated Opinion of Probable Construction Cost

**Task 4: 90% Design Stage Submittal****120 days**

From the approved package in Task 3, a 90% Design package shall be prepared. The 90% package will be submitted to Escambia County, FDOT, and PEDC for review, comment, and approval. All comments issued by the reviewing agencies shall be resolved and/or incorporated, as necessary, to ensure standards conformance and that the identified rights of way associated with the roadways can be dedicated to the County after development.

At a minimum, the 90% Submittal will include the following items:

- Complete Technical Specifications
- Design Analysis, including Regulatory Requirements. (90%)
- Design Plans developed to 90% Design Complete Submittal Stage
- 90% Estimated Opinion of Probable Construction Cost

**Task 5: Final (100%) Submittal****120 days**

From the approved 90% design package in Task 4, a “Ready-to-Advertise” design package shall be prepared. The Final package will be submitted to Escambia County, FDOT, and PEDC for review, comment, and approval. All comments issued by the reviewing agencies shall be resolved and/or incorporated, as necessary, to ensure technical conformance to Escambia County Roadway Design Standards; and to ensure that the identified rights of way associated with the roadways can be dedicated to the County after development.

A set of bid documents shall be prepared to support the separate advertisement and award for construction of the northerly portion of the South Extension. (See **Exhibit A**).

At a minimum, the **Final Submittal** will include the following items:

- 100% Complete Bid Documents
- 100% Complete Technical Specifications
- Complete Design Analysis, including Regulatory Analysis and Requirements
- Final Design Plans developed to a Final Submittal Stage
- All approved permits needed for development
- Final Estimated Opinion of Probable Construction Cost

**Task 6: Project Management, Public Information and Communications (Concurrent with Tasks 1-5)**

For all tasks and phases of work, the Consultant shall provide adequate Project Management support to PEDC staff and other 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. Stakeholder Approvals
- f. Real Property Acquisition Support
- g. Conformance to Master Plan
- h. Foundational Document Revisions, if required
- i. Project Administration

**Part B. Owner's Representative, Chemstrand Roundabout/Southern Extension Construction Phase - 540 days concurrent with construction activities**

As indicated in the Background and Project Description above, Phase 4 includes a new roundabout at the intersection of Chemstrand Road, Old Chemstrand Road, ECUA, and Ascend Entrances. It is anticipated that the construction of the roundabout will be underway during the performance of the design and permitting work for the South Extension included in Part A of this agreement. During the construction of the Chemstrand roundabout, the Engineer will also serve as the Owner's Representative for the construction of the roundabout and will serve as the general administrative entity for the construction phase of the roundabout. The Engineer will be responsible for coordinating with PEDC staff and recommending action as required; and reporting progress and the status of any construction phase project issues to the PEDC Board of Directors. No costs are included in this agreement for Owner's Representative for construction of the Southern Extension. Part B includes the following items:

- a. Assistance with solicitation and selection of qualified CEI (Construction Engineering and Inspection) consultant.
- b. Owner's Representative for management of the selected CEI consultant.
- c. General administrative and communications oversight of the construction phase.
- d. Contractor compliance with the Chemstrand Road construction documents.
- e. Monthly generation and approval of project cost and schedule updates.
- f. Any required permitting reviews or certifications and regulatory agency coordination.
- g. Project stakeholder coordination assistance, as required.
- h. Responses to contractor RFI's, review for any proposed or required design modifications, and any required shop drawing reviews.
- i. Monthly reviews and approvals of CEI consultant reports.
- j. Review and approval / responses to any contractor field change order requests – in accordance with the requirements set forth in the construction documents.
- k. Regular coordination with PEDC staff and monthly progress reporting to the PEDC Board of Directors.

---

**Exhibit A – Engineer's Services**

**EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.**

**Copyright © 2014 National Society of Professional Engineers, American Council of Engineering Companies, and American Society of Civil Engineers. All rights reserved.**

- I. Approval of final punch list items and project close-out.
- 

DRAFT

This is **EXHIBIT B**, consisting of \_\_\_\_ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_.

## **Exhibit B**

### **Owner's Responsibilities**

---

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary, through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
  - 1. Property descriptions.
  - 2. Zoning, deed, and other land use restrictions.
  - 3. Utility and topographic mapping and surveys.

4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
  6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
  7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
  2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
  3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- H. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- I. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- J. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for

---

**Exhibit B – Owner's Responsibilities**

**EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.**

**Copyright © 2014 National Society of Professional Engineers, American Council of Engineering Companies,  
and American Society of Civil Engineers. All rights reserved.**

coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

- K. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- L. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- M. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- N. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- O. Place and pay for advertisement for Bids in appropriate publications.
- P. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- Q. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- R. Authorize Engineer to provide Additional Services when requested.
- S. Purchase Mitigation Bank Credits to offset wetland impacts caused by the new roadway construction.

This is **EXHIBIT C**, consisting of \_\_\_\_ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_.

## Exhibit C

### Payments to Engineer for Services and Reimbursable Expenses COMPENSATION PACKET BC-1: Basic Services – Lump Sum

---

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

#### ARTICLE 2 – OWNER’S RESPONSIBILITIES

##### C2.01 *Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment*

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, as follows:

1. **A Lump Sum amount of \$1,596,017** based on the following distribution of compensation:

Part A, Task 1:	Roadway Vertical/Horizontal Concept	\$ 177,200
Part A, Task 2:	Conceptual Roadway Design (30%)	\$ 312,777
Part A, Task 3:	60% Design Stage Submittal	\$ 326,865
Part A, Task 4:	90% Design Stage Submittal	\$ 299,670
Part A, Task 5:	Final 100% Stage Submittal	\$ 100,205
Part A, Task 6:	Project Management	\$ 148,380
Part B	Owner’s Representative	\$ 230,920

2. Engineer may, with the written consent of Owner, alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.
3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.
4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (see Appendix 1 for rates or charges): **None**.
5. The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.

B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding **540 days**. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

This is **EXHIBIT G**, consisting of \_\_\_\_ pages,  
referred to in and part of the **Agreement  
between Owner and Engineer for Professional  
Services** dated \_\_\_\_\_.

## Exhibit G

### Insurance

---

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

#### G6.05 Insurance

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
  - 1) Bodily injury, each accident: \$ 1,000,000
  - 2) Bodily injury by disease, each employee: \$ 1,000,000
  - 3) Bodily injury/disease, aggregate: \$ 1,000,000
- c. General Liability --
  - 1) Each Occurrence (Bodily Injury and Property Damage): \$ 1,000,000
  - 2) General Aggregate: \$ 2,000,000
- d. Excess or Umbrella Liability --
  - 1) Per Occurrence: \$ 5,000,000
  - 2) General Aggregate: \$ 5,000,000
- e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):  
\$ 1,000,000
- f. Professional Liability --
  - 1) Each Claim Made \$ 2,000,000
  - 2) Annual Aggregate \$ 2,000,000 / \$5,000,000
- g. Other (specify): None

2. By Owner:

---

#### Exhibit G – Insurance.

a. Workers' Compensation:

Statutory

3. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.
4. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A

DRAFT



This is **EXHIBIT H**, consisting of \_\_\_\_ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_.

## Exhibit H

### Dispute Resolution

---

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

#### H6.08 *Dispute Resolution*

- A. *Mediation:* Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days, under the statutes and rules governing mediation in Florida. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT I**, consisting of \_\_\_\_ pages,  
referred to in and part of the **Agreement  
between Owner and Engineer for Professional  
Services** dated \_\_\_\_\_.

## **Exhibit I**

### **Limitations of Liability**

---

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

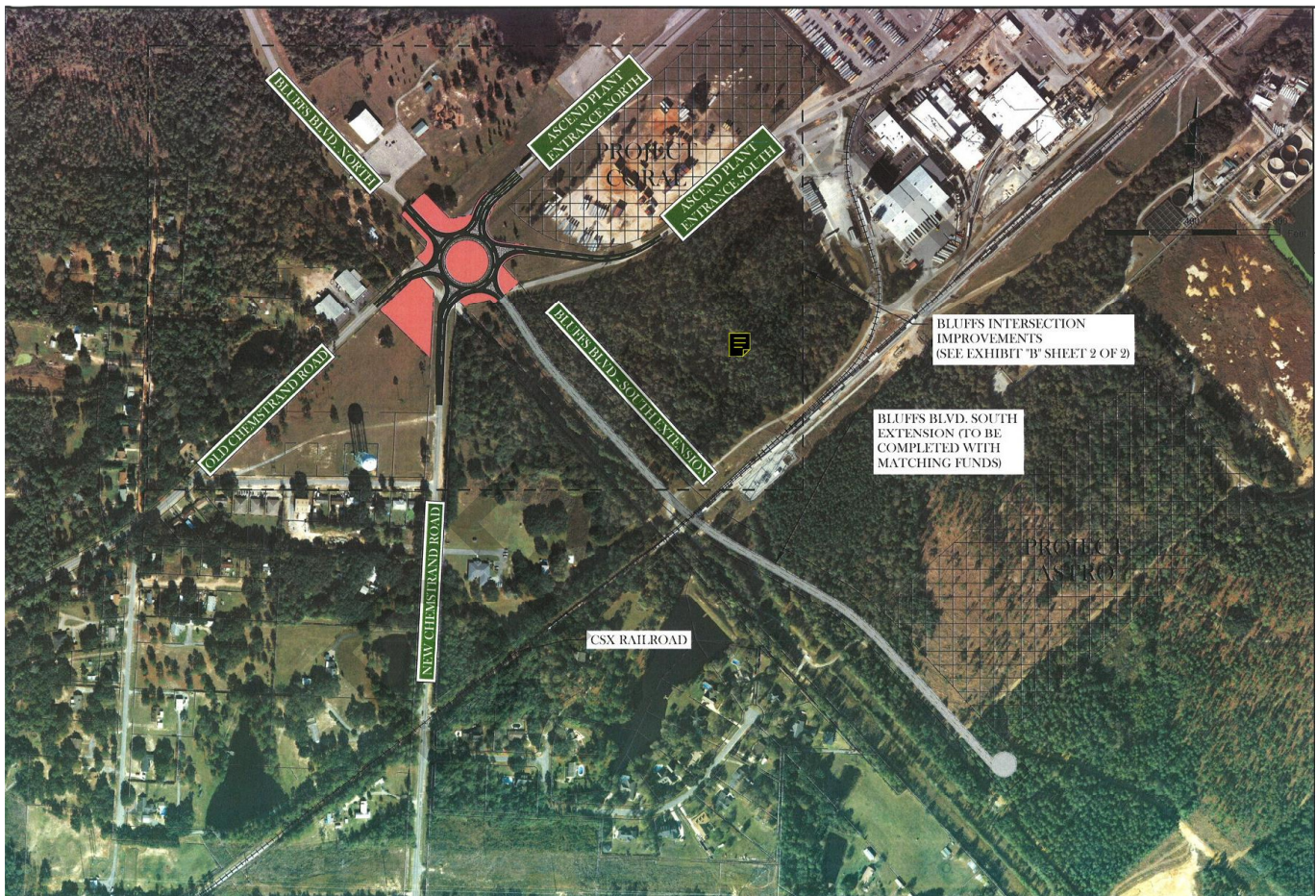
1. *Limitation of Engineer's Liability:* None.

DRAFT

This is **EXHIBIT L**, consisting of \_\_\_\_ pages,  
referred to in and part of the **Agreement**  
**between Owner and Engineer for Professional**  
**Services** dated \_\_\_\_\_.

## Exhibit L

### Bluffs Boulevard Southern Extension Concept



This is **EXHIBIT M**, consisting of \_\_\_\_ pages,  
referred to in and part of the **Agreement  
between Owner and Engineer for Professional  
Services** dated \_\_\_\_\_.

## Exhibit M

Alt Form 525-010-00eC

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**STATE-FUNDED GRANT AGREEMENT**

525-011-0C  
PROGRAM  
MANAGEMENT  
05/21  
Page 1 of 1

### EXHIBIT C

#### ENGINEER'S CERTIFICATION OF COMPLIANCE

**Engineer's Certification of Compliance.** The Recipient shall complete and submit the following Notice of Completion and, if applicable, Engineer's Certification of Compliance to the Department upon completion of the construction phase of the Project.

#### NOTICE OF COMPLETION

STATE-FUNDED GRANT AGREEMENT  
Between  
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION  
and Pensacola-Escambia Promotion and Development Commission

PROJECT DESCRIPTION: THE BLUFFS ENTRANCE/TRANSPORTATION UPGRADES

FPID#: 439451-5-54-01

In accordance with the Terms and Conditions of the State-Funded Grant 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 State-Funded Grant 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 Recipient shall furnish the Department a set of "as-built" plans certified by the Engineer of Record/CEI.

SEAL:

By: \_\_\_\_\_ P.E.  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_





# BUSINESS DEVELOPMENT

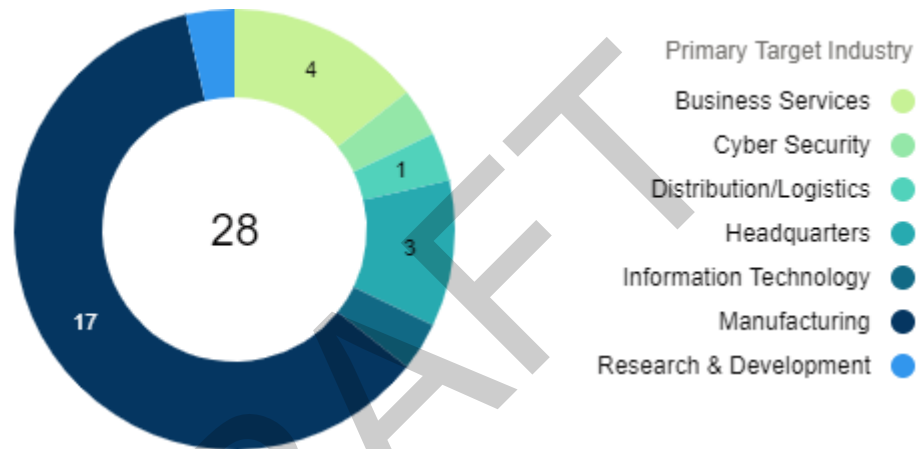
Year to Date

August 10, 2023

Active Projects	28
Active Project Site Visits	15
Existing Industry Visits	41
Response Proposals	12

PROJECTS **1,445** JOBS **11** NEW RELOCATIONS

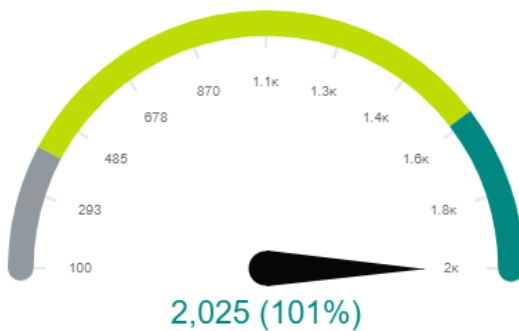
CAPEX \$2,110,813,000 **17** LOCAL EXPANSIONS



## 4<sup>TH</sup> QUARTER EXISTING INDUSTRY VISITS

					#Employees	Sector
OCTOBER	4	APRIL	4	7/06/2023	BlueWind Technologies	100 Manufacturing
NOVEMBER	3	MAY	6	7/13/2023	International Paper	600 Manufacturing
DECEMBER	0	JUNE	9	8/1/2023	Pensacola Christian College	1,000+ Non-Target Industry
JANUARY	3	JULY	5	8/4/2023	SnackCrate, Inc.	140 Headquarters
FEBRUARY	5			8/8/2023	Paradigm Parachute & Defense	54 Manufacturing
MARCH	2					

## ANNOUNCEMENTS



**25** PROJECTS / **10** NEW RELOCATIONS  
**15** LOCAL EXPANSIONS

New Jobs 2025	Retained Jobs 271	Average Wage \$53,271	Annual Payroll \$122,202,880	Capital Investment \$325,426,385
New Jobs 7383	Retained Jobs 879	Average Wage \$52,395	Annual Payroll \$432,785,118	Capital Investment \$802,884,585

5-YEAR JOBS GOAL = 2000 (by 2023)  
2014 -2023 = 41 PROJECTS ANNOUNCED

## FloridaWest - Business Expansion and Relocation Announcements

Company	Sector	New Jobs	Retained Jobs	Average Wage	Annual Payroll	Capital Investment
Economic Development Announcements (2014-2018)	17 Projects	5358	608	\$53,948	\$321,854,514	\$477,458,200
<b>Lost Key Media</b>	Business Services	3		\$42,000	\$126,000	NA
May, 2019						
<b>American Tire Distributors</b>	Distribution	30	20	\$32,000	\$1,600,000	\$4,000,000
June, 2019						
<b>ST Engineering Aerospace</b>	Aviation	1325		\$45,394	\$60,147,050	\$245,000,000
July, 2019						
<b>Social Icon</b>	Business Services	3		\$36,000	\$108,000	NA
August, 2019						
<b>Qualia Is</b>	Business Services	2		\$50,000	\$100,000	NA
March, 2020						
<b>EBI Management Group, Inc.</b>	Business Services	14		\$65,000	\$910,000	\$350,000
March, 2020						
<b>Girl Catch Fire</b>	Business Services	1		\$50,000	\$50,000	NA
April, 2020						
<b>CoFlyt</b>	IT	5		\$45,000	\$225,000	NA
May, 2020						
<b>Right on Target Marketing</b>	Business Services	2		\$40,000	\$80,000	NA
May, 2020						
<b>Speaker Training</b>	Business Services	1		\$50,000	\$50,000	NA
May, 2020						
<b>Allius Marketing</b>	Business Services	1		\$55,000	\$55,000	NA
May, 2020						
<b>Blue Wind Technologies</b>	Manufacturing	120		\$41,937	\$5,032,440	\$3,500,000
May, 2020						
<b>Ascend Performance Materials</b>	Manufacturing	10	30	\$67,000	\$2,680,000	\$20,000,000
June, 2020						
<b>Cordele Intermodal</b>	Business Services	5	20	\$42,000	\$1,050,000	\$3,500,000
June, 2020						
<b>Spectra</b>	Manufacturing	100		\$45,500	\$4,550,000	\$2,000,000
September, 2020						
<b>CIRCULOGENE</b>	BioMedical	70		\$100,000	\$7,000,000	\$3,325,000
March, 2021						
<b>Hemp Surgical</b>	Manufacturing	35		\$38,000	\$1,467,795	\$7,000,000
December, 2021						
<b>Paradigm Parachute &amp; Defense</b>	Manufacturing	28	21	\$46,500	\$2,278,500	\$2,653,345
March, 2022						
<b>Pegasus Laboratories</b>	Manufacturing	63	100	\$61,204	\$9,976,252	\$17,665,000
March, 2022						
<b>ActiGraph, LLC</b>	Headquarters	43	80	\$65,000	\$7,995,000	\$7,833,040
April, 2022						
<b>Advanced Technology Recycle (ATR)</b>	Headquarters	74		\$55,332	\$4,094,568	\$3,500,000
June, 2022						
<b>Vivid Bridge Studios</b>	Business Services	6		\$58,200	\$349,200	
January, 2023						
<b>Anglin Reichmann Armstrong</b>	Headquarters	10		\$58,000	\$580,000	\$3,600,000
March, 2023						
<b>Algaplast Corp.</b>	Manufacturing	25		\$46,570	\$1,164,250	\$1,500,000
May, 2023						
<b>CO:LAB Pensacola (20 Companies)</b>	Business Services	49		\$49,400	\$2,420,600	N/A
July, 2023						
<b>5-year Goals To Date</b>	<b>25 Projects</b>	<b>2025</b>	<b>271</b>	<b>\$51,499</b>	<b>\$118,242,686</b>	<b>\$325,426,385</b>
<b>FY 2014-2023 Totals</b>	<b>41 Projects</b>	<b>7383</b>	<b>879</b>	<b>\$52,395</b>	<b>\$432,889,908</b>	<b>\$802,884,585</b>

## Marketing & Communications Review – July 2023 over June 2023

### Website Metrics – Google Analytics

**Summary:** We could improve results by returning to running a digital marketing campaign for each enterprise.

#### FloridaWest.com

- users ↓ 3% - ↓ 31 – total of 1132 unique users
- page views ↓ 13% - ↓ 512 – total of 3480 page views
- sessions ↓ 67% - ↓ 174 – total of 1532 sessions
- top cities: Pensacola, Chicago, Atlanta, Ashburn, New Orleans

#### CyberCoastFlorida.com

- users ↓ 20% - ↓ 16 – total of 92 users
- page views ↓ 22% - ↓ 10 – total of 142 page views
- sessions ↓ 25% - ↓ 28 – total of 114 sessions
- top cities: Pensacola, Boardman, OR, Ashburn, Columbus, Orlando

#### CO-LAB.com

- users ↓ 7% - ↓ 13 – total of 179 users
- page views ↓ 3% - ↓ 13 – total of 447 page views
- sessions ↓ 8% - ↓ 19 – total of 230 sessions
- top cities: Ashburn, Pensacola, Atlanta, Chicago, Miami

### Social Media Metrics

**Summary:** Recommend returning to an ongoing marketing effort to promote our social pages.

#### FloridaWest

- Facebook
  - Reach: 525 ↓ 18% over previous period
  - Page views: 115 ↑ 12% over previous period
  - Page new likes: 1
  - Total likes: 915
- Instagram
  - Reach: 269 ↓ 60% over previous period
  - Profile visits: 40 ↓ 33% over previous period
  - New followers: 11
  - Total followers: 556
- X - 28-day snapshot
  - Tweet impressions: 1033 ↑ 35% over previous period
  - Profile visits: 248 ↑ 61% over previous period
  - Total Followers: 830

- LinkedIn
  - Reactions: 379 ↑ by 34% over previous period
  - New followers: 24
  - Page views: 108 ↓ by 15% over previous period
  - Total followers: 1093

## CyberCoast

- Facebook
  - Reach: 1117 ↑ by 1700% over previous period
  - Page views: 20 ↓ by 17% over previous period
  - Page new likes: 0
  - Total likes: 145
- Instagram
  - Reach: 292 ↓ 18% over previous period
  - Profile Visits: 14 ↓ 50% over previous period
  - New followers: 0
  - Total followers: 319
- X - 28-day snapshot
  - Tweet impressions: 104 ↓ 40% over previous period
  - Profile visits: 3
  - Followers: 37
- LinkedIn
  - Reactions: 23 ↑ 1050% over previous period
  - New followers: 5
  - Total followers: 136
  - Page views: 16 ↑ 167% over previous period

## CO:LAB

- Facebook
  - Reach: 526 ↓ 61% over previous period
  - Page views: 48 ↓ 77% over previous period
  - Page new likes: 2
  - Total likes: 946
- Instagram
  - Reach: 464 ↓ 39% over previous period
  - Profile visits: 31 ↓ 44% over previous period
  - New followers: 8
  - Total followers: 1068
- X - 28-day snapshot
  - Tweet impressions: 90 ↓ 33% over previous period
  - Profile visits: 10 ↓ 86% over previous period
  - Followers: 174
- LinkedIn - 90-day snapshot
  - Reactions: 50 ↓ 46% over previous period
  - New followers: 10
  - Total followers: 473



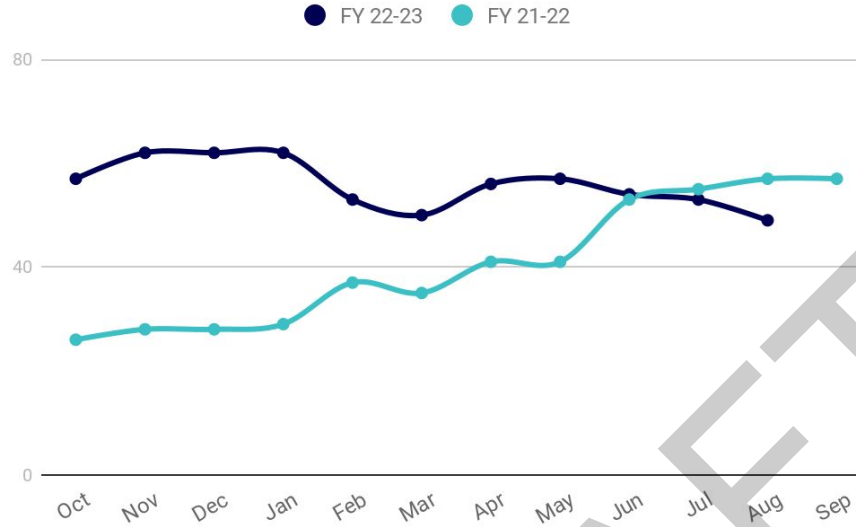
- Page views: 22 ↓ 63% over previous period

## Events & More

- New CEO communications included with a press release, web article and social media.
  - Picked up by
    - WEAR
    - PNJ
    - InWeekly
    - WCOA
    - NorthEscambia.com
- FloridaWest and CO:LAB to be a sponsor at Entrecon – Jeff and Patrick working to orchestrate.

DRAFT

### Occupancy (Goal: 80%)

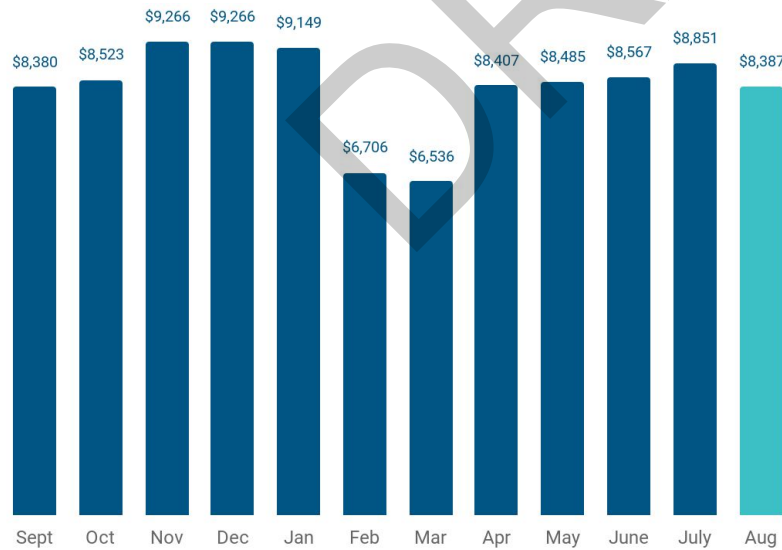


**4,996** SQ. FT.  
OF 10,206 TOTAL

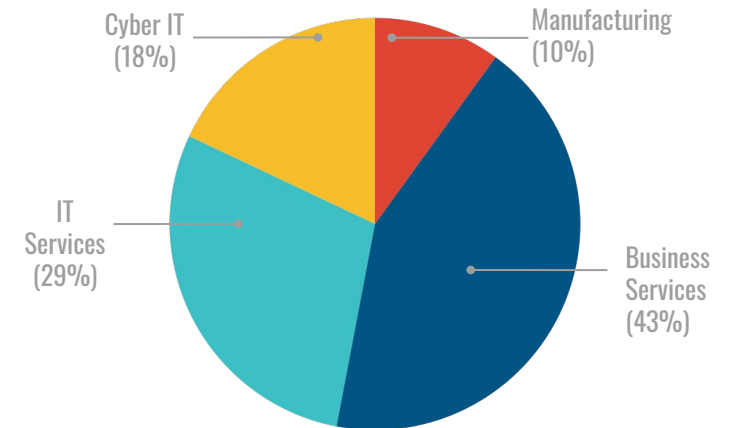
**20**  
COMPANIES

**49** EMPLOYEES

### Revenue



### Employees by Industry



### Companies

Snap Soccer

Prospect Junkie  
ARGO Cyber Systems  
Capacity Path  
Envision CMS

National Energy USA  
Heart Crossed Films  
Brewwww  
Taste of Pensacola  
MediaTech Direct  
Maps & Legends Marketing  
Morbi  
All Mine Lah

Determinant Materials  
She Speaks and Inspires  
Lifestyle Medicine Wellness & Recovery  
Accenture  
Mappica  
Gulf Coast 3D Metrology  
Doorknob Consulting

### Alumni

Master Butler Service Corp, *Jul '23*  
Rx:Stay, *June '23*  
128 Creative Collective, *Mar '23*  
Vivid Bridge Studios, *Feb '23*  
Data Revolution, *Sep '20*  
Guided Particle Systems, *Sep '20*  
Warfighter Fitness, *Sep '20*  
N Star Investments, *Sep '20*  
Tag Tech, *Sep '20*  
Angler Up, *Sep '20*  
Assoc. Resource Solutions, *Sep '20*  
Coast Software, *Jul '20*  
Girl Catch Fire, *Jun '20*  
Altius Marketing, *May '20*

**Year 5**

**Year 3**

**Year 2**

**Year 1**

### Community

**NEW RESIDENT ENTREPRENEUR** **Doorknob Consulting** is a company that creates/designs/provides innovative essential soft skills career training courses and related materials to inspire and improve peoples' lives and assist with guidance along pathways into careers.

Courses are currently taught in-person in 8-hour and 12-hour courses in 4 business sectors: Information Technology, Freight Transportation, Hospitality, and a basic Essential Soft Skills course for all other industries.

These programs have been originated by owner Teri Haggerty, from her many years of experience with individual and community rejuvenation.

Accountingfly, *Feb '17*  
Paint University, *Feb '17*  
FFCFC, *Feb '17*  
Jewel Graphics, *Apr '17*  
Broker Frameworks, *Feb '17*  
Koala Pickup, *Feb '17*  
Re Vera Services, LLC, *Sep '16*  
Clearstream, *Sep '16*  
Pay Cell Systems, *Jun '16*  
Robotics Unlimited, Inc., *Dec '15*  
EPR, *Apr '14*  
The Analyst Group, *Jul '12*

Coflyt, *May '20*  
Social Icon, *May '20*  
Speaker Training, *May '20*  
Right on Target Marketing, *May '20*  
Pensacola Media Group, *May '20*  
EBI Management Group, *Mar '20*  
Qualia Is, *Mar '20*  
Samantha Weaver, *Sep '19*  
The Strength Group, *Sep '19*  
Lost Key Media, *May '19*  
Hatchmark Studio, *Aug '18*  
Your Techno Geeks, *May '18*  
IRIS, *Apr '18*  
Hexad Analytics, *Apr '17*