

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2015-133**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A GRANT AGREEMENT BETWEEN THE CITY AND THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY TO COMPLETE CERTAIN PLANNING TASKS; AUTHORIZING THE MAYOR TO SIGN SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the Florida Department of Economic Opportunity (DEO) desires to provide a Grant Agreement to the City of Marathon (the "City") in order to assist the City in the development certain planning data and analysis, and further, the development and adoption of revisions to the City's Comprehensive Plan and Land Development Regulations; and

**WHEREAS**, it is the City's desire to accept the Grant Agreement, in furtherance of its interests develop certain additional data and analysis, and with that data, update its Comprehensive Plan and Land Development Regulations.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:**

**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** The City Council hereby authorizes the approval of a Grant Agreement between the City of Marathon and the Department of Economic Opportunity attached hereto as Exhibit "A."

**Section 3.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 10<sup>th</sup> DAY OF NOVEMBER, 2015.**

**THE CITY OF MARATHON, FLORIDA**



**Mark Senmartin, Mayor**

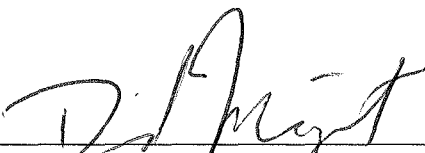
AYES: Bartus, Coldiron, Kelly, Zieg, Senmartin  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

  
\_\_\_\_\_  
Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

  
\_\_\_\_\_  
David Migut, City Attorney

2015 NOV 17 AM 11:00

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

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

**I. GRANTEE AGREES:**

**A. Performance Requirements:**

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

**B. Type of Agreement:**

This Agreement is a fixed price agreement.

**C. Agreement Period:**

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

**D. Agreement Payment:**

This Agreement shall not exceed **\$42,500.00 (forty-two thousand five hundred dollars)** which shall be paid by DEO in consideration for Grantee's provision of services as set forth by the terms and conditions of this Agreement. The State of Florida and DEO's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. DEO shall be the final authority as to the availability of funds for this Agreement, and as to what constitutes an "annual appropriation" of funds to complete this Agreement. If such funds are not appropriated or available for the Agreement purpose, such event will not constitute a default on DEO or the State. DEO agrees to notify Grantee in writing at the earliest possible time if funds are not appropriated or available. The cost for services rendered under any other Agreement or to be paid from any other source is not eligible for reimbursement under this Agreement.

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

1. Grantee shall submit bills for fees or other compensation for services or expenses in sufficient detail for a proper pre-audit and post-audit thereof.

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

**F. Governing Laws of the State of Florida:**

1. Grantee agrees that this Agreement is executed and entered into in the State of Florida, and shall be construed, performed, and enforced in all respects in accordance with the laws, rules, and regulations of the State of Florida. Each Party shall perform its obligations herein in accordance with the terms and conditions of the Agreement. Without limiting the provisions of Section II.D., Dispute Resolution, the exclusive venue of any legal or equitable action that arises out of or relates to the Agreement shall be the appropriate state court in Leon County, Florida; in any such action, the Parties waive any right to jury trial.
2. If applicable, Grantee agrees that it is in compliance with the rules for e-procurement as directed by Rule 60A-1.030, F.A.C., and that it will maintain eligibility for this Agreement through the MyFloridaMarketplace.com system.

3. DEO shall ensure compliance with section 11.062, F.S., and section 216.347, F.S. Grantee shall not, in connection with this or any other agreement with the State, directly or indirectly: (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty; or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of DEO's Inspector General, or other authorized State official, Grantee shall provide any type of information the Inspector General deems relevant to Grantee's integrity or responsibility. Such information may include, but shall not be limited to, Grantee's business or financial records, documents, or files of any type or form that refer to or relate to this Agreement. Grantee shall retain such records in accordance with the record retention requirements of Part V of Attachment 2, Audit Requirements.
4. Grantee agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of Grantee's compliance with the terms of this or any other agreement between Grantee and the State which results in the suspension or debarment of Grantee. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. Grantee shall not be responsible for any costs of investigations that do not result in Grantee's suspension or debarment.
5. **Public Entity Crime:** Pursuant to section 287.133(2)(a), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on an agreement to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on an agreement with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor or consultant under an agreement with any public entity and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, F.S., for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.
6. **Advertising:** Subject to chapter 119, F.S., Grantee shall not publicly disseminate any information concerning this Agreement without prior written approval from DEO, including, but not limited to mentioning this Agreement in a press release or other promotional material, identifying DEO or the State as a reference, or otherwise linking Grantee's name and either a description of the Agreement or the name of DEO or the State in any material published, either in print or electronically, to any entity that is not a Party to this Agreement, except potential or actual authorized distributors, dealers, resellers, or service representatives.
7. **Sponsorship:** As required by section 286.25, F.S., if Grantee is a nongovernmental organization which sponsors a program financed wholly or in part by state funds, including any funds obtained through this Agreement, it shall, in publicizing, advertising, or describing the sponsorship of the program, state: "Sponsored by (Grantee's name) and the State of

Florida, Department of Economic Opportunity.” If the sponsorship reference is in written material, the words “State of Florida, Department of Economic Opportunity” shall appear in the same size letters or type as the name of the organization.

**8. Mandatory Disclosure Requirements:**

- a. **Conflict of Interest:** This Agreement is subject to chapter 112, F.S. Grantee shall disclose the name of any officer, director, employee, or other agent who is also an employee of the State. Grantee shall also disclose the name of any State employee who owns, directly or indirectly, more than a five percent (5%) interest in Grantee or its affiliates.
- b. **[Intentionally Omitted.]**
- c. **Vendors on Scrutinized Companies Lists:** If this Agreement is in the amount of \$1 million or more, in executing this Agreement, Grantee certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, F.S.
  - 1) Pursuant to section 287.135(5), F.S., DEO may immediately terminate this Agreement for cause if Grantee is found to have submitted a false certification or if Grantee is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List during the term of the Agreement.
  - 2) If DEO determines that Grantee has submitted a false certification, DEO will provide written notice to Grantee. Unless Grantee demonstrates in writing, within ninety (90) days of receipt of the notice, that DEO’s determination of false certification was made in error, DEO shall bring a civil action against Grantee. If DEO’s determination is upheld, a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed on Grantee, and Grantee will be ineligible to bid on any Agreement with an agency or local governmental entity for three (3) years after the date of DEO’s determination of false certification by the Grantee.
  - 3) In the event that federal law ceases to authorize the states to adopt and enforce the contracting prohibition identified herein, this provision shall be null and void.
- d. **Discriminatory Vendors:** Grantee shall disclose to DEO if it or any its affiliates, as defined in section 287.134(1)(a), F.S., appears on the discriminatory vendor list. An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134, F.S. may not:
  - 1) submit a bid, proposal, or reply on a contract or agreement to provide any goods or services to a public entity;
  - 2) submit a bid, proposal, or reply on a contract or agreement with a public entity for the construction or repair of a public building or public work;

- 3) submit bids, proposals, or replies on leases of real property to a public entity;
- 4) be awarded or perform work as a contractor, subcontractor, Grantee, sub-Grantee, supplier or consultant under a contract or agreement with any public entity; or
- 5) transact business with any public entity.

**9. [Intentionally Omitted.]**

**10. Information Release:**

- a. DEO does not endorse any Grantee, commodity, or service. No public disclosure or news release pertaining to this Agreement shall be made without the prior written approval of DEO. Grantee is prohibited from using Agreement information, sales values/volumes and/or DEO customers in sales brochures or other promotions, including press releases, unless prior written approval is obtained from DEO.
- b. Grantee acknowledges that DEO is subject to the provisions of chapter 119, F.S., relating to public records and that reports, invoices, and other documents Grantee submits to DEO under this Agreement may constitute public records under Florida Statutes. Grantee shall cooperate with DEO regarding DEO's efforts to comply with the requirements of chapter 119, F.S.
- c. If Grantee submits records to DEO that are confidential and exempt from public disclosure as trade secrets or proprietary confidential business information, such records should be identified as such by Grantee prior to submittal to DEO. Failure to identify the legal basis for each exemption from the requirements of chapter 119, F.S., prior to submittal of the record to DEO serves as Grantee's waiver of a claim of exemption.
- d. Grantee shall allow public access to all records made or received by Grantee in conjunction with this Agreement, unless the records are exempt from section 24(a) of Article I of the State Constitution and section 119.07(1), F.S. For records made or received by Grantee in conjunction with this Agreement, Grantee shall respond to requests to inspect or copy such records in accordance with chapter 119, F.S. For all such requests for records that are public records, as public records are defined in section 119.011, F.S., Grantee shall be responsible for providing such public records per the cost structure provided in chapter 119, F.S., and in accordance with all other requirements of chapter 119, F.S., or as otherwise provided by law.
- e. In addition to Grantee's responsibility to directly respond to each request it receives for records made or received by Grantee in conjunction with this Agreement and to provide the applicable public records in response to such request, Grantee shall notify DEO of the receipt and content of such request by sending an e-mail to [PRRequest@deo.myflorida.com](mailto:PRRequest@deo.myflorida.com) within one (1) business day from receipt of such request.
- f. Grantee shall notify DEO verbally within twenty-four (24) chronological hours and in writing within seventy-two (72) chronological hours if any data in Grantee's possession related to this Agreement is subpoenaed or improperly used, copied, or removed (except

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

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

- a. Grantee and its subcontractors may only expend funding under this Agreement for allowable costs resulting from obligations incurred during the Agreement period.
- b. Grantee shall refund to DEO any balance of unobligated funds which has been advanced or paid to Grantee.
- c. Grantee shall refund to DEO all funds paid in excess of the amount to which Grantee or its subcontractors are entitled under the terms and conditions of the Agreement.

**G. Grantee Payments:**

1. Grantee will provide DEO's Agreement Manager invoices in accordance with the requirements of the State of Florida Reference Guide for State Expenditures ([http://www.myfloridacfo.com/aadir/reference\\_guide/](http://www.myfloridacfo.com/aadir/reference_guide/)) with detail sufficient for a proper pre-audit and post-audit thereof. Invoices must also comply with the following:
  - a. Invoices must be legible and must clearly reflect the goods/services that were provided in accordance with the terms of the Agreement for the invoice period. Payment does not become due under the Agreement until the invoiced deliverable(s) and any required report(s) are approved and accepted by DEO.
  - b. Invoices must contain the Grantee's name, address, federal employer identification number or other applicable Grantee identification number, the Agreement number, the invoice number, and the invoice period. DEO or the State may require any additional information from Grantee that DEO or the State deems necessary to process an invoice.
  - c. Invoices must be submitted in accordance with the time requirements specified in the Scope of Work.
2. At DEO's or the State's option, Grantee may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Grantee supply electronic invoices in lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to DEO's Agreement Manager through the Ariba Supplier Network (ASN) in one of the following mechanisms – EDI 810, cXML, or web-based invoice entry within the ASN.
3. Payment shall be made in accordance with section 215.422, F.S., Rule 69I-24, F.A.C., and section 287.0585, F.S., which govern time limits for payment of invoices. Section 215.422, F.S., provides that agencies have five (5) working days to inspect and approve goods and services unless the Scope of Work specifies otherwise. DEO has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are



received, inspected and approved. The Scope of Work may specify conditions for retainage. Invoices returned to a Grantee due to preparation errors will result in a delay of payment. Invoice payment requirements do not start until a properly completed invoice is provided to DEO. DEO is responsible for all payments under the Agreement.

4. Section 55.03(1), F.S., identifies the process applicable to the determination of the rate of interest payable on judgments and decrees, and pursuant to section 215.422(3)(b), F.S., this same process applies to the determination of the rate of interest applicable to late payments to vendors for goods and services purchased by the State and for contracts which do not specify a rate of interest. The applicable rate of interest is published at:

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

**H. Final Invoice:**

Grantee shall submit the final invoice for payment to DEO no later than 60 days after the Agreement ends or is terminated. If Grantee fails to do so, all rights to payment are forfeited and DEO will not honor any requests submitted after this time period.

**I. Return or Recoupment of Funds:**

1. Grantee shall return to DEO any overpayments due to unearned funds or funds disallowed pursuant to the terms of this Agreement that were disbursed to Grantee by DEO. In the event that Grantee or its independent auditor discovers that overpayment has been made, Grantee shall repay said overpayment within forty (40) calendar days without prior notification from DEO. In the event that DEO first discovers an overpayment has been made, DEO will notify Grantee by letter. Should repayment not be made in a timely manner, DEO shall be entitled to charge interest at the lawful rate of interest on the outstanding balance beginning forty (40) calendar days after the date of notification or discovery. Refunds should be sent to DEO's Agreement Manager, and made payable to the "Department of Economic Opportunity."
2. If authorized and approved, Grantee may be provided an advance as part of this Agreement.
3. Notwithstanding the damages limitations of Section II.F., if Grantee's non-compliance with any provision of the Agreement results in additional cost or monetary loss to DEO or the State of Florida, DEO can recoup that cost or loss from monies owed to Grantee under this Agreement or any other Agreement between Grantee and any State entity. In the event that the discovery of this cost or loss arises when no monies are available under this Agreement or any other Agreement between Grantee and any State entity, Grantee will repay such cost or loss in full to DEO within thirty (30) days of the date of notice of the amount owed, unless DEO agrees, in writing, to an alternative timeframe.

**J. Vendor Ombudsman:**

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

**K. Audits and Records:**

1. Representatives of DEO, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability or representatives of the federal government and their duly authorized representatives shall have access to any of Grantee's books, documents, papers, and records, including electronic storage media, as they may relate to this Agreement, for the purposes of conducting audits or examinations or making excerpts or transcriptions.
2. Grantee shall maintain books, records, and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by DEO under this Agreement.
3. Grantee shall comply with all applicable requirements of section 215.97, F.S., and Attachment 2, Audit Requirements; and, if an audit is required thereunder, Grantee shall disclose all related party transactions to the auditor.
4. Grantee shall retain all Grantee records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement in accordance with the record retention requirements of Part V of Attachment 2, Audit Requirements. If Grantee is a contractor as defined in section 119.0701, F.S., Grantee shall cooperate with DEO to facilitate the duplication and transfer of such records or documents upon request of DEO.
5. If Grantee is a contractor as defined in section 119.0701, F.S., Grantee shall transfer, at no cost to DEO, all public records upon completion or termination of this Agreement, and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All electronic records shall be provided to DEO in a DEO-compatible format.
6. Grantee shall include the aforementioned audit and record keeping requirements in all approved subrecipient subcontracts and assignments.
7. Within sixty (60) days of the close of Grantee's fiscal year, on an annual basis, Grantee shall electronically submit a completed Audit Compliance Certification (a version of this certification is attached hereto as Attachment 3) to [audit@deo.myflorida.com](mailto:audit@deo.myflorida.com). Grantee's timely submittal of one completed Audit Compliance Certification for each applicable fiscal year will fulfill this requirement within all agreements (e.g., contracts, grants, memorandums of understanding, memorandums of agreement, economic incentive award agreements, etc.) between DEO and Grantee.

**L. Employment Eligibility Verification:**

1. Executive Order 11-116, signed May 27, 2011, by the Governor of Florida, requires DEO contracts in excess of nominal value to expressly require Grantee to:

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

[http://www.dhs.gov/files/programs/gc\\_1185221678150.shtm](http://www.dhs.gov/files/programs/gc_1185221678150.shtm)

3. If Grantee does not have an E-Verify MOU in effect, Grantee must enroll in the E-Verify system prior to hiring any new employee after the effective date of this Agreement.

**M. Duty of Continuing Disclosure of Legal Proceedings:** (NOTE: If Grantee is a state agency or subdivision, as defined in section 768.28(2), F.S., pursuant to section 768.28(19), F.S., the provisions of this section are not applicable).

1. Prior to execution of this Agreement, Grantee must disclose all prior or on-going civil or criminal litigation, investigations, arbitration or administrative proceedings (Proceedings) involving Grantee (and each subcontractor) in a written statement to DEO's Agreement Manager. Thereafter, Grantee has a continuing duty to promptly disclose all Proceedings upon occurrence.
2. This duty of disclosure applies to Grantee's or subcontractor's officers and directors when any Proceeding relates to the officer or director's business or financial activities. Details of settlements that are prevented from disclosure by the terms of the settlement may be annotated as such.
3. Grantee shall promptly notify DEO's Agreement Manager of any Proceeding relating to or affecting the Grantee's or subcontractor's business. If the existence of such Proceeding causes the State concern that the Grantee's ability or willingness to perform the Agreement is jeopardized, Grantee shall be required to provide DEO's Agreement Manager all reasonable assurances requested by DEO to demonstrate that:
  - a. Grantee will be able to perform the Agreement in accordance with its terms and conditions; and,

- b. Grantee and/or its employees, agents, or subcontractor(s) have not and will not engage in conduct in performing services for DEO which is similar in nature to the conduct alleged in such Proceeding.

**N. Assignments and Subcontracts:**

1. Grantee agrees to neither assign the responsibility for this Agreement to another party nor subcontract for any of the work contemplated under this Agreement without prior written approval of DEO. Any sublicense, assignment, or transfer occurring without the prior approval of DEO, shall be null and void.
2. Grantee agrees to be responsible for all work performed and all expenses incurred in fulfilling the obligations of this Agreement. If DEO permits Grantee to subcontract all or part of the work contemplated under this Agreement, including entering into subcontracts with vendors for services, it is understood by Grantee that all such subcontract arrangements shall be evidenced by a written document containing all provisions necessary to ensure subcontractor's compliance with applicable state and federal law. Grantee further agrees that DEO shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract. Grantee, at its expense, will defend DEO against such claims.
3. Grantee agrees that all Grantee employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All Grantee employees, subcontractors, or agents performing work under the Agreement must comply with all DEO security and administrative requirements identified herein. DEO may conduct, and Grantee shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by Grantee. DEO may refuse access to, or require replacement of, any of Grantee's employees, subcontractors, or agents for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with DEO's security or administrative requirements identified herein. Such refusal shall not relieve Grantee of its obligation to perform all work in compliance with the Agreement. DEO may reject and bar from any facility for cause any of Grantee's employees, subcontractors, or agents.
4. Grantee agrees that the State of Florida shall at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental agency in the State of Florida, upon giving prior written notice to Grantee. In the event the State of Florida approves transfer of Grantee's obligations, Grantee remains responsible for all work performed and all expenses incurred in connection with the Agreement. In addition, this Agreement shall bind the successors, assigns, and legal representatives of Grantee and of any legal entity that succeeds to the obligations of the State of Florida.
5. Grantee agrees to make payments to the subcontractor within seven (7) working days after receipt of full or partial payments from DEO in accordance with section 287.0585, F.S., unless otherwise stated in the Agreement between Grantee and subcontractor. Grantee's failure to

pay its subcontractors within seven (7) working days will result in a penalty charged against Grantee and paid to the subcontractor in the amount of one-half of one (1) percent of the amount due per day from the expiration of the period allowed herein for payment. Such penalty shall be in addition to actual payments owed and shall not exceed fifteen (15) percent of the outstanding balance due.

6. Grantee shall provide a Minority and Service-Disabled Veteran Business Enterprise Report for each invoice period summarizing the participation of certified and non-certified minority and service-disabled veteran subcontractors/material suppliers for that period, and project to date. The report shall include the names, addresses and dollar amount of each certified and non-certified Minority Business Enterprise and Service-Disabled Veteran Enterprise participant and a copy must be forwarded to DEO's Agreement Manager. The Office of Supplier Diversity at (850) 487-0915 will assist in furnishing names of qualified minorities. DEO's Minority Coordinator at (850) 245-7260 will assist with questions and answers.
7. DEO shall retain the right to reject any of Grantee's or subcontractor's employees whose qualifications or performance, in DEO's judgment, are insufficient.

**O. [Intentionally Omitted.]**

**P. Nonexpendable Property:**

1. For the requirements of this Section of the Agreement, "nonexpendable property" is the same as "property" as defined in section 273.02, F.S., (equipment, fixtures, and other tangible personal property of a non-consumable and nonexpendable nature, with a value or cost of \$1,000 or more, and a normal expected life of one year or more; hardback-covered bound books that are circulated to students or the general public, with a value or cost of \$25 or more; and hardback-covered bound books, with a value or cost of \$250 or more).
2. All nonexpendable property, purchased under this Agreement, shall be listed on the property records of Grantee. Grantee shall inventory annually and maintain accounting records for all nonexpendable property purchased and submit an inventory report to DEO with the final expenditure report. The records shall include, at a minimum, the following information: property tag identification number, description of the item(s), physical location, name, make or manufacturer, year, and/or model, manufacturer's serial number(s), date of acquisition, and the current condition of the item.
3. At no time shall Grantee dispose of nonexpendable property purchased under this Agreement for these services without the written permission of and in accordance with instructions from DEO.
4. Immediately upon discovery, Grantee shall notify DEO, in writing, of any property loss with the date and reason(s) for the loss.
5. Grantee shall be responsible for the correct use of all nonexpendable property furnished under this Agreement.
6. A formal Agreement amendment is required prior to the purchase of any item of nonexpendable property not specifically listed in the approved Agreement budget.

7. Title (ownership) to all nonexpendable property acquired with funds from this Agreement shall be vested in DEO and said property shall be transferred to DEO upon completion or termination of the Agreement unless otherwise authorized in writing by DEO.

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

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

**R. Information Resource Acquisition:**

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

**S. Insurance:**

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

Upon execution of this Agreement, Grantee shall provide DEO written verification of the existence and amount for each type of applicable insurance coverage. Within thirty (30) days of the effective date of the Agreement, Grantee shall furnish DEO proof of applicable insurance coverage by standard ACORD form certificates of insurance. In the event that any applicable coverage is cancelled by the insurer for any reason, Grantee shall immediately notify DEO of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within fifteen (15) business days after the cancellation of coverage.

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

**1. Grantee's Commercial General Liability Insurance:**

Unless Grantee is a state agency or subdivision as defined by section 768.28(2), F.S., Grantee shall provide adequate commercial general liability insurance coverage and hold such liability

insurance at all times during this Agreement. A self-insurance program established and operating under the laws of the State of Florida may provide such coverage.

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

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

**3. Other Insurance:**

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

**T. Confidentiality and Safeguarding Information:**

1. Each Party may have access to confidential information made available by the other. The provisions of the Florida Public Records Act, Chapter 119, F.S., and other applicable state and federal laws will govern disclosure of any confidential information received by the State of Florida.
2. Grantee must implement procedures to ensure the appropriate protection and confidentiality of all data, files, and records involved with this Agreement.
3. Except as necessary to fulfill the terms of this Agreement and with the permission of DEO, Grantee shall not divulge to third parties any confidential information obtained by Grantee or its agents, distributors, resellers, subcontractors, officers, or employees in the course of performing Agreement work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or DEO.
4. Grantee agrees not to use or disclose any information concerning a recipient of services under this Agreement for any purpose not in conformity with state and federal law or regulations except upon written consent of the recipient, or his responsible parent or guardian when authorized by law, if applicable.
5. If Grantee has access to either DEO's network or any DEO applications, or both, in order to fulfill Grantee's obligations under this Agreement, Grantee agrees to abide by all applicable DEO Information Technology Security procedures and policies. Grantee (including its employees, sub-contractors, agents, or any other individuals to whom Grantee exposes confidential information obtained under this Agreement), shall not store, or allow to be stored, any confidential information on any portable storage media (*e.g.*, laptops, thumb drives, hard drives, *etc.*) or peripheral device with the capacity to hold information. Failure to strictly comply with this provision shall constitute a breach of Agreement.

6. Grantee shall notify DEO in writing of any disclosure of unsecured confidential information of DEO by Grantee, its employees, agents, or representatives which is not in compliance with the terms of this Agreement (of which it becomes aware). Grantee also shall report to DEO any Security Incidents of which it becomes aware, including those incidents reported to Grantee by its sub-contractors or agents. For purposes of this Agreement, "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of DEO information in Grantee's possession or electronic interference with DEO operations; however, random attempts at access shall not be considered a security incident. Grantee shall make a report to DEO not more than seven (7) business days after Grantee learns of such use or disclosure. Grantee's report shall identify, to the extent known: (i) the nature of the unauthorized use or disclosure, (ii) the confidential information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Grantee has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Grantee has taken or shall take to prevent future similar unauthorized use or disclosure. Grantee shall provide such other information, including a written report, as reasonably requested by DEO's Information Security Manager.
  
7. In the event of a breach of security concerning confidential personal information involved with this Agreement, Grantee shall comply with section 501.171, F.S., as applicable. When notification to affected persons is required under this section of the statute, Grantee shall provide that notification, but only after receipt of DEO's approval of the contents of the notice. Defined statutorily, and for purposes of this Agreement, "breach of security" or "breach" means the unauthorized access of data in electronic form containing personal data. Good faith acquisition of personal information by an employee or agent of the Grantee is not a breach, provided the information is not used for a purpose unrelated to the Grantee's obligations under this Agreement or is not subject to further unauthorized use.

**U. Warranty of Ability to Perform:**

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

**V. Patents, Copyrights, and Royalties:**

1. Pursuant to section 286.021, F.S., if any discovery or invention arises or is developed in the course or as a result of work or services performed with funds from this Agreement, Grantee shall refer the discovery or invention to DEO who will refer it to the Department of State to determine whether patent protection will be sought in the name of the State of Florida. Any and all patent rights accruing under or in connection with the performance of the Agreement are hereby reserved to the State of Florida. The rights to any invention resulting from this Agreement that is for the performance of experimental, developmental, or research work are governed by 37 CFR Part 401 and any of its implementing regulations as applicable.



2. Where activities supported by this Agreement produce original writings, sound recordings, pictorial reproductions, drawings or other graphic representations and works of any similar nature, DEO has the right to use, duplicate, and disclose such materials in whole or in part, in any manner, for any purpose whatsoever and to allow others acting on behalf of DEO to do so. In the event that any books, manuals, films, websites, web elements, electronic information, or other copyrightable materials are produced Grantee shall notify DEO. Any and all copyrights accruing under or in connection with the performance funded by this Agreement are hereby reserved to the State of Florida.
3. In accordance with the provisions of section 1004.23, F.S., a State University is authorized in its own name to perform all things necessary to secure letters of patent, copyrights, and trademarks on any works it produces. Any action taken by the university in securing or exploiting such trademarks, copyrights, or patents shall, within thirty (30) days, be reported in writing by the president of the university to the Department of State in accordance with section 1004.23(6), F.S.

**W. Independent Contractor Status:**

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

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

assistance benefits, or employee benefits of any kind. Grantee shall ensure that its employees, subcontractors, and other agents, receive benefits and necessary insurance (health, workers' compensation, reemployment assistance benefits) from an employer other than the State of Florida.

6. Grantee, at all times during the Agreement, must comply with the reporting and Reemployment Assistance contribution payment requirements of chapter 443, F.S.

**X. Electronic Funds Transfer:**

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

[http://www.fldfs.com/aadir/direct\\_deposit\\_web/Vendors.htm](http://www.fldfs.com/aadir/direct_deposit_web/Vendors.htm)

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

**II. GRANTEE AND DEO AGREE:**

**A. Renegotiation or Modification:**

The Parties agree to renegotiate this Agreement if federal and/or state revisions of any applicable laws or regulations make changes to this Agreement necessary. In addition to changes necessitated by law, DEO may at any time, with written notice to Grantee, make changes within the general scope of this Agreement. Such changes may include modification of the requirements, changes to processing procedures, or other changes as decided by DEO. Any investigation necessary to determine the impact of the change shall be the responsibility of Grantee. Modifications of provisions of this Agreement shall only be valid when they have been reduced to writing and duly signed and dated by all Parties.

**B. Time is of the Essence:**

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

**C. Termination:**

**1. Termination Due to the Lack of Funds:**

In the event funds to finance this Agreement become unavailable or if federal or state funds upon which this Agreement is dependent are withdrawn or redirected, DEO may terminate this Agreement upon no less than twenty-four (24) hour notice in writing to Grantee. DEO shall be the final authority as to the availability of funds and will not reallocate funds

earmarked for this Agreement to another program thus causing "lack of funds." In the event of termination of this Agreement under this provision, Grantee will be compensated for any work satisfactorily completed prior to notification of termination.

**2. Termination for Cause:**

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

**3. Termination for Convenience:**

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

**D. Dispute Resolution:**

Unless otherwise stated in Attachment 1, Scope of Work, disputes concerning the performance of the Agreement shall be decided by DEO, who shall reduce the decision to writing and serve a copy on Grantee. The decision shall be final and conclusive unless within twenty-one (21) days from the date of receipt, Grantee files with DEO a petition for administrative hearing. DEO's decision on the petition shall be final, subject to Grantee's right to review pursuant to chapter 120, F.S. Exhaustion of administrative remedies is an absolute condition precedent to Grantee's ability to pursue any other form of dispute resolution; provided however, that the Parties may employ the alternative dispute resolution procedures outlined in chapter 120, F.S.

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

1. Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and DEO, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors, provided, however, that Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or DEO.

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

**F. Limitation of Liability:**

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

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

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

Neither Party shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party's control, or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting delay or disruption in the Party's performance obligation under this Agreement. If the delay is excusable under this paragraph, the delay will not result in any

additional charge or cost under the Agreement to either Party. In the case of any delay Grantee believes is excusable under this paragraph, Grantee shall notify DEO in writing of the delay or potential delay and describe the cause of the delay either: (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if Grantee could reasonably foresee that a delay could occur as a result; or (2) within five (5) calendar days after the date Grantee first had reason to believe that a delay could result, if the delay is not reasonably foreseeable. **THE FOREGOING SHALL CONSTITUTE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. DEO, in its sole discretion, will determine if the delay is excusable under this paragraph and will notify Grantee of its decision in writing. No claim for damages, other than for an extension of time, shall be asserted against DEO. Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from DEO for direct, indirect, consequential, impact, or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist, Grantee shall perform at no increased cost, unless DEO determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to DEO or the State, in which case, DEO may do any or all of the following: (1) accept allocated performance or deliveries from Grantee, provided that Grantee grants preferential treatment to DEO with respect to products or services subjected to allocation; (2) purchase from other sources (without recourse to and by Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity; or (3) terminate the Agreement in whole or in part.

**H. Preservation of Remedies and Severability:**

Except with respect to Section II.D. herein, no delay or omission to exercise any right, power, or remedy accruing to either Party upon breach or default by either Party under this Agreement, will impair any such right, power or remedy of either Party; nor will such delay or omission be construed as a waiver of any breach or default or any similar breach or default. If any provision, in whole or in part, of this Agreement is held to be void or unenforceable by a court of competent jurisdiction, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable, and all other provisions remain in full force and effect.

**I. Authority of Grantee's Signatory:**

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

**J. Execution in Counterparts:**

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

**K. Contact Information for Grantee and DEO Contacts:**

**DEO's Agreement Manager:**

Beth Frost  
Department of Economic Opportunity  
107 East Madison Street, MSC 160  
Tallahassee, FL 32399-4120  
Telephone: (850) 717-8487  
Facsimile: (850) 717-8522  
Email: Beth.Frost@deo.myflorida.com

**Grantee's Agreement Manager:**

George Garrett, Planning Director  
9805 Overseas Highway  
Marathon, Florida 33050  
(305) 289-4111  
Fax: (305) 743-3667  
Email: garrettg@ci.marathon.fl.us

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

**L. Notices:**

The contact information provided in accordance with Section II.K. above shall be used by the Parties for all communications under this Agreement. Where the term "written notice" is used to specify a notice requirement herein, said notice shall be deemed to have been given (i) when personally delivered, (ii) when transmitted via facsimile with confirmation of receipt or email with confirmation of receipt or (iii) the third business day following the day on which the same is sent by certified or registered mail, postage prepaid, with return receipt.

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M. Execution:

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

IN WITNESS THEREOF, and in consideration of the mutual covenants set forth above and in the attachments hereto, the Parties have caused to be executed this 40-page Agreement by their undersigned officials duly authorized.

CITY OF MARATHON

DEPARTMENT OF ECONOMIC OPPORTUNITY

By [Signature]  
Signature  
Mark Senmartin  
\_\_\_\_\_  
Mayor

By [Signature]  
Julie A. Dennis Signature Interim  
William B. Killingsworth, Director  
\_\_\_\_\_  
Division of Community Development

Date NOV. 13, 2015

Date 12/2/16

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

OFFICE OF GENERAL COUNSEL  
DEPARTMENT OF ECONOMIC OPPORTUNITY

By: [Signature]  
Approved Date: 11.29.15

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**Attachment 1**  
**SCOPE OF WORK**

- 1. PROJECT DESCRIPTION:** This Community Planning Technical Assistance grant is provided pursuant to section 163.3168, F.S., and Specific Appropriation 2237, Chapter 2015-232, Laws of Florida, to provide direct and/or indirect technical assistance to help Florida communities find creative solutions to fostering vibrant, healthy communities, while protecting the functions of important State resources and facilities.

The Grantee will revise and expand the Land Development Regulations (LDRs) regarding subdivisions and address the following: clarification of the differences between plat and replat; clarification regarding clustering requirements; detail regarding infrastructure fees; clarification regarding requirements for rezoning to conditional use; timeliness of stormwater improvements; development of a definition of natural resources and habitat; and clarification regarding when bonding is necessary.

- 2. GRANTEE RESPONSIBILITIES:** To perform the tasks and timely provide DEO with the deliverables identified in the table in paragraph 4 below pursuant to the terms of this Agreement.
- 3. DEO'S RESPONSIBILITIES:** To receive and review deliverables and, upon approval of deliverables, process payment pursuant to the terms of this Agreement.
- 4. DELIVERABLES:** The specific deliverables, tasks, performance measures, due dates, and payment amount are set forth in the following table:

<b>Deliverables</b>	<b>Performance Measures</b>	<b>Due Date</b>	<b>Fixed Payment Amount</b>
<p>Deliverable 1: Grantee shall create and submit to DEO a table of criteria and weight the components to be used in the evaluation of conservation acquisition priorities, consistent with the Principles for Guiding Development, Section 380.0552 (7), F.S. The table shall include:</p> <ol style="list-style-type: none"> <li>The area projected to be submerged under one foot of sea level rise;</li> <li>Submerged land;</li> <li>Parcels within areas of Tropical Hardwood Hammock that meet a size quantification (establish the size);</li> </ol>	<p>Completion of all tasks in accordance with Deliverable 1, Scope of Work, evidenced by submission to DEO of the required documentation, in both hard copy and on a compact disc containing a searchable Adobe Portable Document Format (PDF) that responds to DEO comments.</p>	<p>December 31, 2016</p>	<p>\$12,500.00</p>



<ol style="list-style-type: none"> <li>4. Canal frontage;</li> <li>5. Vacant scarified land;</li> <li>6. FEMA V zones;</li> <li>7. Areas containing infrastructure;</li> <li>8. Upland native habitat;</li> <li>9. Parcels within areas greater than or equal to four acres of Tropical Hardwood Hammock;</li> <li>10. Florida Forever project boundaries;</li> <li>11. FEMA CBRS areas; and</li> <li>12. Parcels with greater than 50% wetlands.</li> </ol>			
<p>Deliverable 2: Grantee shall submit to DEO revised Land Development Regulations (LDRs) in a strikethrough/ underline format, that address local government requirements for subdivision of land and the approval process, and are consistent with the City of Marathon Comprehensive Plan and the Principles for Guiding Development, Section 380.0552(7), Florida Statutes. Revisions shall:</p> <ol style="list-style-type: none"> <li>1. Define plat, replat and subdivision; and clarify the difference between a plat, replat and subdivision; identify the respective applicant requirements in the approval process; identify infrastructure construction level required or payment of fees required, and at what interval in the approval process for sewer, stormwater, potable water and fire needs, sidewalks, roads;</li> <li>2. Define the following terms for land development code purposes: natural resources,</li> </ol>	<p>Completion of all tasks in accordance with Deliverable 2, Scope of Work, evidenced by submission to DEO of the required documentation, in both hard copy and digitally.</p>	<p>January 30, 2016</p>	<p>\$9,500.00</p>

<p>natural areas, associations, environmentally sensitive natural systems, and habitat to identify when open space designation and clustering applies to guide development away from important natural resources;</p> <p>3. Clarify clustering requirements for natural resources/natural areas for subdivisions, replats, plats, lot splits, or parcels proposed for development; and</p> <p>4. Develop a section that requires identification of open space on a site plan for parcels proposed for subdivision or containing more than one principal structure. Include a requirement that the open space be overlaid over the vegetation survey at concept approval level, or prior to construction plan approval if such a step is established, to ensure that natural resources, regulated or protected trees, contiguous vegetation, or habitat will be a priority in determining placement of access driveways and lot layouts.</p>			
<p>Deliverable 3: Grantee shall submit to DEO revised LDRs that address infrastructure improvements, in a strikethrough/underline format, consistent with the City of Marathon Comprehensive Plan and the Principles for Guiding Development Section 380.0552(7), Florida Statutes. Revisions shall:</p> <p>1. Provide more detailed steps for approval of subdivisions,</p>	<p>Completion of all tasks in accordance with Deliverable 3, Scope of Work, evidenced by submission to DEO of the required documentation, in both hard copy and digitally.</p>	<p>March 4, 2016</p>	<p>\$9,500.00</p>

<p>plats, replats, and Conditional Use approvals, identifying at what point construction plan approval has been granted, and at what stage of approval improvements must be constructed, bonded, or paid for and the minimal requirements that must be met prior to the council granting final plat approval for recordation;</p> <ol style="list-style-type: none"> <li>2. Identify which types of development require bonding of improvements and at what stage of the approval process bonding is necessary;</li> <li>3. Indicate the minimum stormwater improvements that must be constructed and at which point within the approval process for subdivisions, plats, replats, and conditional uses;</li> <li>4. Develop code that identifies the construction approval stage at which point the proposed site plan is binding on all parties and when improvements must be constructed; and</li> <li>5. Identify any infrastructure inspection approvals that are required prior to final plat being recorded.</li> </ol>			
<p>Deliverable 4: Grantee shall revise and submit to DEO LDRs that address the recognition of lawfully established units and a staff check list consistent with the City of Marathon Comprehensive Plan and the Principles for Guiding Development Section 380.0552(7), Florida Statutes that includes:</p>	<p>Completion of all tasks in accordance with Deliverable 4, Scope of Work, evidenced by submission to DEO of the required documentation, in both hard copy and digitally.</p>	<p>April 15, 2016</p>	<p>\$3,500.00</p>

<ol style="list-style-type: none"> <li>1. Property cards, aerials, photographs, permits, letters, telephone directories, public facility/utility documents such as water, sewer or electric accounts; affidavits, residential county directory entries, rental, occupancy or lease records, state and/or county licenses; and</li> <li>2. Staff check list of items to be included and analyzed within Planning Commission staff reports which address calculations for: parcel size, name of land use district, zoning, density/ intensity allowed, density/intensity existing and proposed, floor area ratio, vegetation survey, concurrency analysis, setbacks from wetlands and mean high water, open space required for existing, and proposed.</li> </ol>			
<p>Deliverable 5: Grantee shall prepare and submit to DEO a GIS database evaluating vacant lands according to Deliverable 1 and maps of conservation priority areas as defined in Deliverable 1, consistent with the Principles Guiding Development, Section 380.0552 (7), F.S. that contain:</p> <ol style="list-style-type: none"> <li>1. GIS database evaluating vacant parcels according to the criteria established in Deliverable 1; and</li> <li>2. Map of the lands characterized in Deliverable 1 showing conservation priority areas.</li> </ol>	<p>Completion of all tasks in accordance with Deliverable 5, Scope of Work, evidenced by submission to DEO of the required documentation, in both hard copy and on a compact disk containing an Adobe Portable Document Format (PDF) and Geographic Information System files that respond to DEO comments.</p>	<p>May 29, 2016</p>	<p>\$7,500.00</p>
			<p><b>Total: \$42,500.00</b></p>

5. **SUBCONTRACTS:** In accordance with Section I.N.1., and subject to the terms and conditions in Sections I.N.2. through 7. of this Agreement, this paragraph constitutes DEO's written approval for Grantee to subcontract for any of the deliverables and/or tasks identified in the Scope of Work for this Agreement. A copy of the executed subcontract shall be provided to DEO's Agreement Manager upon execution by all parties. Grantee shall be solely liable for all work performed and all expenses incurred as a result of any such subcontract.
6. **BUSINESS DAY; COMPUTATION OF TIME:** For the purpose of this Agreement, a "business day" is any day that is not a Saturday, Sunday, or a state or federal legal holiday. In computing any time period provided in this Agreement, the date from which the time period runs is not counted. The last day of the time period ends at 5:00 p.m. on that day.
7. **REQUIREMENT TO SUBMIT PRELIMINARY DRAFT DELIVERABLES TO DEO; DEO REVIEW AND COMMENT.** Unless waived in writing by DEO, Grantee shall submit preliminary drafts of all written deliverables to DEO for review and comment no later than ten (10) calendar days before the deliverable due date. Grantee is not required to submit to DEO preliminary drafts of notices of public hearings, agendas, meeting notes, and public meeting sign-in sheets that may be required under paragraph 4 above. DEO shall provide any written comments on each preliminary draft to Grantee no later than five (5) calendar days before the deliverable due date. The deliverable submitted to DEO for payment shall address any DEO comments on the preliminary draft deliverable. For the purpose of this Agreement, DEO's review of a preliminary draft document is not a review under the Community Planning Act. DEO's review and comments will be based on the requirements of the Community Planning Act and sound planning principles.
8. **PLAN AMENDMENTS MUST BE "IN COMPLIANCE."** Proposed comprehensive plan amendments that are deliverables under the Scope of Work must be "in compliance" as defined in section 163.3184(1)(b), F.S., and will be evaluated for compliance as part of DEO's review and determination of whether the deliverable is sufficient to satisfy the requirements in the Scope of Work. DEO's compliance determination will be a limited determination without input from the review agencies identified in section 163.3184(2), F.S. A limited compliance determination for the purpose of this Agreement is not binding on DEO in a subsequent review under section 163.3184, F.S. Further, a limited compliance determination under this Agreement does not preclude review and comment by review agencies and does not preclude a challenge to the plan amendment by DEO based on comments by review agencies or by an affected person.
9. **EXTENSIONS OF TIME OF DELIVERABLE DUE DATES:** Notwithstanding section II.A of this Agreement, DEO's Agreement Manager, in DEO's sole discretion, may authorize extensions of deliverable due dates without a written modification of this Agreement. Extensions shall be in accordance with the following:
  - a. Requests for extension of one or more deliverable due dates shall be submitted in writing (which may be by electronic mail) to DEO's Agreement Manager no later than four (4) business days before the due date (or the earliest of multiple due dates for which the extension is requested);
  - b. A request for extension must state the reason for the extension; and

- c. DEO's Agreement Manager shall approve or deny a request for extension of a deliverable due date by electronic mail to Grantee's Agreement Manager within two (2) business days after receipt of the request. Only written approvals of extensions shall be effective.

This authority does not apply to an extension of the Agreement Period defined in Section I.C. of this Agreement.

**10. REVIEW AND ACCEPTANCE OF DELIVERABLES:** Deliverables shall be reviewed by DEO for sufficiency under this Agreement. Written notice of DEO's determination that the deliverable is sufficient or is not sufficient under this Agreement shall be provided to Grantee's Agreement Manager by U. S. Mail or electronic mail no later than fifteen (15) business days after receipt of the deliverable. For deliverables that DEO determines are insufficient, see Section 11.b. below. The deliverable amount specified in paragraph 4 above does not establish the value of the deliverable.

**11. FINANCIAL CONSEQUENCES:** Pursuant to Section 1.E.8. of this Agreement, the following financial consequences shall be imposed for Grantee's failure to perform in accordance with this Agreement:

- a. **Late Deliverables:** If a deliverable as described in the above Scope of Work is provided to DEO more than five (5) business days late, a financial consequence of \$50 per business day, up to a maximum of \$500, shall be assessed until the deliverable is received by DEO. The financial consequence for a late deliverable is independent of, and does not preclude imposition of, a financial consequence if the deliverable is not sufficient to satisfy the requirements in the Scope of Work.

**b. Insufficient Deliverable; Notice; Opportunity to Cure:**

- i. If DEO reasonably determines that a deliverable described in the above Scope of Work is not sufficient to satisfy the requirements in the Scope of Work, DEO shall provide notice of insufficiency and an opportunity to cure to Grantee's Agreement Manager in accordance with Section II.L. of this Agreement. Grantee shall have five (5) business days from receipt of DEO's notice to provide a corrected deliverable that addresses the issues raised in the notice of insufficiency. If Grantee does not correct the deliverable within the five (5) business day period, a financial consequence of \$50 per business day, up to a maximum of \$500, shall be assessed for each business day until the corrected deliverable is received by DEO.
- ii. If DEO reasonably determines that a corrected deliverable is not sufficient to satisfy the requirements in the Scope of Work, it shall provide notice to Grantee's Agreement Manager. Grantee shall not receive a second opportunity to cure. Beginning on the date of DEO's notice to Grantee that the corrected deliverable is not sufficient to satisfy the requirements in the Scope of Work, a financial consequence of \$50 per business day, up to a maximum of \$500, shall be assessed for each business day until a sufficient deliverable is received by DEO. Each deliverable must be deemed sufficient under the Scope of Work in DEO's reasonable judgment before the end of the Agreement Period in order for payment of an invoice for the deliverable to be made.

- c. Imposition of the above described financial consequences shall in no manner affect DEO's right to terminate the Agreement as provided elsewhere in the Agreement.

**12. SUBMITTAL OF INVOICES:** Subject to the terms and conditions of this Agreement, invoices for each deliverable shall be submitted to DEO's Agreement Manager by U. S. Mail or by electronic mail either (a) with a deliverable, or (b) no later than seven (7) calendar days after written notice to Grantee that DEO has accepted the deliverable. Invoices are not required to be submitted through the Ariba Supplier Network described in Section I.G.2. of this Agreement. **Invoices shall be submitted in the format shown on Attachment 1-A hereto, an electronic copy of which shall be provided by DEO to the Grantee.**

**13. NO PARTIAL OR PRO-RATED PAYMENTS:** No partial or pro-rated payments will be made without prior written modification in accordance with Section II.A. of this Agreement.

**14. ADVERTISING AND INFORMATION RELEASE:** Notwithstanding Sections I.F.6. and I.F.10. of this Agreement, Grantee is authorized to disclose to the public on its website or by other means that it has been awarded a technical assistance grant from DEO for the work described in this Scope of Work.

**15. VERIFICATION OF EXPENDITURES; GRANT CLOSEOUT:** Section 215.971(2)(c), F.S., requires that DEO's Agreement Manager reconcile and verify all funds received against all funds expended during the Agreement Period and produce a final reconciliation report. To facilitate preparation of a final reconciliation report, Grantee shall provide DEO's Agreement Manager with documentation to support the payment requests submitted under this Agreement, along with the Grant Closeout Form attached hereto as Attachment 1-B (an electronic copy of which shall be provided by DEO to the Grantee), no later than sixty (60) days after the expiration or termination of this Agreement. Verification of expenditures documentation shall consist of the following:

**a. For Tasks Performed by a Subcontractor:**

1. A cover letter signed by the Grantee's Agreement Manager certifying that the payments claimed for the deliverables were specifically for the project described in the Agreement Scope of Work,
2. Copies of invoices submitted to Grantee by the Subcontractor, and
3. Proof of payment of invoices from the Subcontractor to Grantee for tasks performed pursuant to this Agreement (e.g., cancelled checks, bank statement showing deduction).

**b. For Tasks Performed by Grantee's Employees:**

- i. A cover letter signed by the Grantee's Grant Manager certifying that the payments claimed for the deliverables were specifically for the project described in the Agreement Scope of Work. Copies of invoices submitted to Grantee by the Subcontractor.
- ii. Identification of Grantee's employees who performed tasks under this Agreement and, for each such employee:

- a. The percentage of the employee's time devoted to tasks under this Agreement or the number of total hours each employee devoted to tasks under this Agreement.
- b. Payroll register or similar documentation that shows the employee's gross salary, fringe benefits, other deductions, and net pay.
- c. If the employee is paid hourly, a document reflecting the hours worked times the rate is pay is acceptable.
- iii. Invoices or receipts for other direct costs.
- iv. Usage log for in house charges (e.g., postage, copies, etc.) that shows the units times the rate charged. The rate must be reasonable.

**16. NOTIFICATION OF INSTANCES OF FRAUD:** Instances of Grantee operational fraud or criminal activities shall be reported to DEO's Agreement Manager within twenty-four (24) chronological hours.

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

**18. GRANTEE'S RESPONSIBILITIES UPON TERMINATION:** If DEO issues a Notice of Termination to Grantee, except as otherwise specified by DEO in that notice, the Grantee shall:

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

**19. CONFLICTS BETWEEN SCOPE OF WORK AND REMAINDER OF AGREEMENT:** In the event of a conflict between the provisions of this Scope of Work and other provisions of this Agreement, the provisions of this Scope of Work shall govern.

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Attachment 1-A

INVOICE

INVOICE NO.: Click here to enter text.

INVOICE DATE: Click here to enter text.


REMIT TO:  
 GRANTEE NAME  
 ADDRESS  
 CITY, STATE, ZIP  
 PHONE

FEID NO.	GRANT NO.	SERVICE PERIOD	
		FROM	TO
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

DELIVERABLE NO.	DESCRIPTION	AMOUNT
Click here to enter text.	MUST BE CONSISTENT WITH DELIVERABLES AS DEFINED IN ATTACHMENT A, SCOPE OF WORK	Click here to enter text.
Click here to enter text.	MUST BE CONSISTENT WITH DELIVERABLES AS DEFINED IN ATTACHMENT A, SCOPE OF WORK	Click here to enter text.
Click here to enter text.	MUST BE CONSISTENT WITH DELIVERABLES AS DEFINED IN ATTACHMENT A, SCOPE OF WORK	Click here to enter text.
<b>TOTAL</b>		Click here to enter text.

Attachment 1-B

Rick Scott  
GOVERNOR



FLORIDA DEPARTMENT OF  
ECONOMIC OPPORTUNITY

Jesse Panuccio  
EXECUTIVE DIRECTOR

**Grant Agreement Final Closeout Form**

---

Recipient Name: _____	Contract Amount: _____
Vendor ID: _____	Deobligated Funds: _____
Contract End Date: _____	Final Contract Amount: _____

**Section A: Financial Reconciliation**

1. Total Recipient Funds Received from DEO	_____
2. Total Recipient Expenditures	_____
3. Balance of Unexpended Program Income (from Section B)	_____
4. If negative, this amount must be refunded to the Department. If positive, this amount is to be remitted to the Recipient. _____	

**Section B: Statement of Recipient Income**

There was no recipient income earned under this contract.  
 The following recipient income was earned under this contract.

Description of Recipient Income			
Source	Amount	Expended	Balance
<b>Total Program Income</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

**Section C: Property Inventory Certification**

No tangible property was purchased in the contract period.  
 All non-expendable and non-consumable tangible property having a useful life of more than one year and acquired at a cost of \$1,000 or more per unit with grant funds are listed below. I do hereby certify that the property inventory described below is complete and correct. Notification will be sent immediately to the Department of Economic Opportunity if any changes occur to this inventory. I will not destroy, sell, or otherwise dispose of this property without written permission of the Department.

Description of Property Inventory					
Description and Serial Number	Quantity	Acquisitions		Condition	Location
		Cost	Date		

**Section D: Recipient Certification**

By signing below, I certify, that the above representations for Financial Reconciliation, Recipient Income, and Property Inventory are true and accurate.

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Date Signed: \_\_\_\_\_

**Section E: DEO Internal Review and Approval**

By signing below, I certify, that the above representations for Financial Reconciliation, Recipient Income and Property Inventory are true and accurate.

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Date Signed: \_\_\_\_\_

## Attachment 2

## AUDIT REQUIREMENTS

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

**MONITORING**

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

**AUDITS****PART I: FEDERALLY FUNDED**

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

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

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

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

## **PART II: STATE FUNDED**

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

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

<http://www.myflorida.com/audgen/pages/flsaa.htm>

## **PART III: OTHER AUDIT REQUIREMENTS**

*(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not*

*required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of state financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)*

N/A

**PART IV: REPORT SUBMISSION**

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

- A. DEO at each of the following addresses:

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

or

Paper (hard copy):

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

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

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

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

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

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

or

Paper (hard copy):

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

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

A. DEO at each of the following addresses:

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

or

Paper (hard copy):

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

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

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

Email Address: [flaudgen\\_localgovt@aud.state.fl.us](mailto:flaudgen_localgovt@aud.state.fl.us)

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

A. DEO at each of the following addresses:

N/A

5. Any reports, management letter, or other information required to be submitted to DEO pursuant to this agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

6. Recipients, when submitting financial reporting packages to DEO for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (non-profit and for-profit organizations), Rules of the Auditor General, should indicate the date that the

reporting package was delivered to the recipient in correspondence accompanying the reporting package.

**PART V: RECORD RETENTION**

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

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**EXHIBIT 1 to Attachment 2**

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

*NOTE: If the resources awarded to the recipient represent more than one Federal program, provide the same information shown below for each Federal program and show total Federal resources awarded.*

Federal Program

N/A

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

*NOTE: If the resources awarded to the recipient represent more than one Federal program, list applicable compliance requirements for each Federal program in the same manner as shown below.*

Federal Program:

*List applicable compliance requirements as follows:*

N/A

*NOTE: Instead of listing the specific compliance requirements as shown above, the State awarding agency may elect to use language that requires the recipient to comply with the requirements of applicable provisions of specific laws, rules, regulations, etc. For example, for Federal Program 1, the language may state that the recipient must comply with a specific law(s), rule(s), or regulation(s) that pertains to how the awarded resources must be used or how eligibility determinations are to be made. The State awarding agency, if practical, may want to attach a copy of the specific law, rule, or regulation referred to.*

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

**MATCHING RESOURCES FOR FEDERAL PROGRAMS:**

*NOTE: If the resources awarded to the recipient for matching represent more than one Federal program, provide the same information shown below for each Federal program and show total State resources awarded for matching.*

Federal Program

N/A

**SUBJECT TO SECTION 215.97, FLORIDA STATUTES:**

*NOTE: If the resources awarded to the recipient represent more than one State project, provide the same information shown below for each State project and show total state financial assistance awarded that is subject to Section 215.97, Florida Statutes.*



State Project: **DEPARTMENT OF ECONOMIC OPPORTUNITY – CSFA 40.038 – DIVISION OF COMMUNITY DEVELOPMENT - \$ 42,500.00**

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

1. ACTIVITIES ARE LIMITED TO THOSE IN THE SCOPE OF WORK.
2. N/A
3. N/A

*NOTE: List applicable compliance requirements in the same manner as illustrated above for Federal resources. For matching resources provided by DEO for Federal programs, the requirements might be similar to the requirements for the applicable Federal programs. Also, to the extent that different requirements pertain to different amounts of the non-Federal resources, there may be more than one grouping (i.e., 1, 2, 3, etc.) listed under this category.*

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

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**ATTACHMENT 3  
Audit Compliance Certification**

Grantee Name: \_\_\_\_\_

FEIN: \_\_\_\_\_ Grantee's Fiscal Year: \_\_\_\_\_

Contact Person Name and Phone Number: \_\_\_\_\_

Contact Person Email Address: \_\_\_\_\_

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Authorized Representative

\_\_\_\_\_  
Title of Authorized Representative