

# FLORIDA JOB GROWTH GRANT FUND TRANSPORTATION INFRASTRUCTURE PROJECT AGREEMENT

1. **Purpose of this Agreement:** This Agreement sets forth the terms and conditions under which the State will provide State financial assistance to the Recipient for the capital costs and eligible related costs of the Project, as further described in **Exhibit "A"**.
2. **Term; Commencement and Completion of the Project:**
  - a. This Agreement is effective as of the date on which all Parties have executed this Agreement (the "Effective Date"), and shall continue until the earlier of: (i) December 31, 2034 (the "Expiration Date"), (ii) the date on which this Agreement is terminated pursuant to Section 6, or (iii) the Project Completion Date (defined below).
  - b. Execution of this Agreement by all Parties constitutes the Recipient's Notice to Proceed for any non-construction phases of the Project. If the Project involves a construction phase, the Recipient may not begin the construction phase of the Project until FDOT issues a written Notice to Proceed for the construction phase. Prior to commencing any construction work described in this Agreement, the Recipient shall request a Notice to Proceed from FDOT.
  - c. The Recipient shall promptly commence the Project upon the Effective Date, and shall complete the Project, and place the Project in service, on or before June 1, 2020 (the "Project Completion Date"). The Project Completion Date may be extended by a written agreement signed by all the Parties.
  - d. The Recipient acknowledges that no funding for the Project will be provided by the State under this Agreement for work on the Project that is not timely completed and invoiced in accordance with the terms of this Agreement. DEO shall not approve, and FDOT shall not reimburse the Recipient for, the cost for any work performed before the Effective Date or after the expiration or termination of this Agreement. Notwithstanding the expiration of the Project Completion Date and the consequent potential unavailability of any unexpended portion of State funding to be provided under this Agreement, the Recipient shall remain obligated to complete all aspects of the Project identified in **Exhibit "A"** in accordance with the remaining terms of this Agreement, unless otherwise agreed by the Parties, in writing.
3. **Funding.**
  - a. ☐ If this box is selected, advance payment is authorized for this Agreement and **Exhibit "H"**, Alternative Advance Payment Financial Provisions is attached and incorporated into this Agreement.
  - b. This Agreement is a cost reimbursement agreement. The total amount awarded under this Agreement shall not exceed **Two Million Sixty-Five Thousand dollars and zero cents (\$2,065,000.00)**. FDOT shall reimburse Recipient up to **One Million Four Hundred Eighty Thousand One Hundred Eighty dollars and zero cents (\$1,480,180.00)** and DEO shall reimburse Recipient up to **Five Hundred Eighty-Four Thousand Eight Hundred Twenty dollars and zero cents (\$584,820.00)** for costs incurred to complete the Project pursuant to this Agreement. The State of Florida, FDOT's, and DEO's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If such funds are not appropriated or available for the Agreement purpose, such event will not constitute a default by FDOT, DEO or the State. DEO agrees to notify Recipient in writing at the earliest possible time if funds are not appropriated or available.
  - c. If this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), F.S., are hereby incorporated (reference to the Department in this paragraph, which is required by law to be incorporated verbatim, is a reference to FDOT):

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

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contracts of the Department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year.”

- 4. Amendments, Extensions, and Assignment:** This Agreement may be amended or extended upon mutual written agreement of the Parties. The Recipient may not assign, transfer, or otherwise encumber this Agreement under any circumstances without the prior written consent of DEO, which consent may be withheld in DEO's sole discretion. Any attempted assignment of this Agreement or any of the rights hereunder in violation of this provision is void *ab initio*.
- 5. Termination or Suspension of Project:**
- a. DEO may, by written notice to the Recipient, suspend any or all of the State's obligations under this Agreement for the Recipient's failure to comply with applicable law or the terms of this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected to DEO's satisfaction.
  - b. DEO may terminate this Agreement in whole or in part if:
    - i. DEO determines in its sole and absolute discretion that it is in the State of Florida's interest to do so;
    - ii. Recipient breaches any of its representations, warranties, covenants, or other obligations in this Agreement in any material respect;
    - iii. Recipient or any of its employees or agents commits fraud or willful misconduct regarding this Agreement, the Project, or the transactions contemplated hereby and thereby;
    - iv. 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 24-hour written notice to Recipient. DEO shall be the final authority as to the availability of funds. If this Agreement is terminated pursuant to this provision, Recipient will be paid for any work satisfactorily completed prior to notification of termination;
    - v. Recipient institutes or consents to the institution of any bankruptcy or insolvency proceeding, or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, or similar officer is appointed without the application or consent of such person or entity and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any bankruptcy or insolvency proceeding relating to Recipient or to all or any material part of its property is instituted without the consent of Recipient and Recipient fails to challenge such proceeding or such proceeding is challenged but continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding;
    - vi. Recipient becomes unable to or admits in writing its inability to or fails generally to pay its debts as they become due, or any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of Recipient or Recipient otherwise becomes insolvent; or
    - vii. A preponderance of evidence that Recipient is not proceeding with the Project, including, without limitation, a decision by Recipient not to proceed with the Project or to terminate this Agreement, (i. through vii. collectively, the "Termination Events").
    - viii. If DEO exercises its right to terminate this Agreement as the result of the occurrence of a Termination Event, DEO shall deliver such notice in accordance with the Notice section of this Agreement, with instructions as to the effective date of termination, or the stage of work at which the Agreement is terminated.
    - ix. Notwithstanding anything in this Agreement to the contrary, if DEO exercises its right to terminate this Agreement as the result of the occurrence of a Termination Event, any reimbursement payments that have not been disbursed to Recipient, including any payment that has been authorized and not yet disbursed, shall be immediately forfeited and Recipient shall return funds within thirty (30) days of the termination of this Agreement. All work in progress on Florida Department of Transportation right-of-way will become the property of the Florida Department of Transportation and will be turned over promptly by Recipient. 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. Recipient shall not furnish any product after it receives the notice of termination, except as DEO

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**6. Maintenance Obligations:** If the Project includes construction then the following provision is incorporated into this Agreement:

- a. The Recipient agrees to maintain any portion of the Project not located on the State Highway System constructed under this Agreement for its useful life. If the Recipient constructs any improvement on FDOT right-of-way, the Recipient ☐ shall x☒ shall not maintain the improvements located on the FDOT right-of-way made for their useful life. If the Recipient is required to maintain Project improvements located on FDOT right-of-way beyond final acceptance, then Recipient shall, prior to any disbursement of the State funding provided under this Agreement, also execute a Maintenance Memorandum of Agreement in a form that is acceptable to FDOT. The Recipient has agreed to the foregoing by resolution, and such resolution is attached and incorporated into this Agreement as **Exhibit "E"**. This provision will survive termination of this Agreement.

**7. Restrictions, Prohibitions, Controls and Labor Provisions:**

- a. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- b. In accordance with Section 287.134, F.S., an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity.
- c. An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by FDOT to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Recipient.
- d. No funds received pursuant to this Agreement may be expended for lobbying the Florida Legislature, judicial branch, or any state agency, in accordance with Section 216.347, F.S.
- e. The State shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement.
- f. The Recipient shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Recipient during the term of the contract, and expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
- g. The Recipient shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project.

**13. Indemnification and Insurance:**

- a. It is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third-party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this

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- b. If any information provided herein 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.

CONTACT INFORMATION	
Recipient's Payee:	Recipient's Agreement Manager:
Clay County Board of County Commissioners	Stephanie Kopelousos, County Manager
P.O. Box 1366	P.O. Box 1366
Green Cove Springs, Florida 32043	Green Cove Springs, Florida 32043
Telephone: 904-284-6394	Telephone: 904-657-1736
	Stephanie.kopelousos@claycountygov.com
DEO's Agreement Manager:	FDOT's Agreement Manager:
Demetris Thomas	Jasmin Raffington
107 E. Madison Street MSC, B-047	605 Suwannee Street
Tallahassee Florida 32399	Tallahassee, Florida 32399
Telephone: 850-245-7393	(850) 414-5266
<a href="mailto:Demetris.Thomas@deo.myflorida.com">Demetris.Thomas@deo.myflorida.com</a>	<a href="mailto:jasmin.raffington@dot.state.fl.us">jasmin.raffington@dot.state.fl.us</a>

### 14. Exhibits and Attachments.

- a. **Exhibit and Attachment List:** The following list of Exhibits and Attachments is for reference only, and the incorporation by reference of any or all of the listed Exhibits or Attachments is set forth more specifically below, in this Section or as otherwise provided in the body of this Agreement.

Exhibit "A": Project Description and Responsibilities  
Exhibit "B": Schedule of Financial Assistance  
Exhibit "C": Engineer's Certification of Compliance  
Exhibit "D": State Financial Assistance (Florida Single Audit Act)  
Exhibit "E": Recipient Resolution  
Exhibit "F": Terms and Conditions of Construction in FDOT Right-of-Way  
Exhibit "G": Tangible Personal Property, as defined in Chapter 273, F.S  
Exhibit "H": Alternative Pay Method  
Exhibit "I": Audit Requirements  
Attachment 1 – Contract Payment Requirements

- b. **Exhibits "A", "B", "D", "E", and "I"** are attached to this Agreement and are hereby incorporated as if set forth fully herein.
- c. ☒ The Project will involve construction, therefore, **Exhibit "C", Engineer's Certification of Compliance** is attached and incorporated into this Agreement.
- d. ☒ A portion or all of the Project will utilize FDOT right-of-way and, therefore, **Exhibit "F", Terms and Conditions of Construction in FDOT Right-of-Way**, is attached and incorporated into this Agreement.
- e. ☐ The following Exhibit(s), in addition to those listed in 16.a. and 16.b., are attached and incorporated into this Agreement: \_\_\_\_\_

\*Additional Exhibit(s): \_\_\_\_\_

### 15. Return on Investment.

The Recipient's failure to meet the Return on Investment criteria set forth herein will result in the additional financial consequences set forth in Section 18, below.

- a. The Recipient shall certify that a private capital investment (excluding the acquisition or leasing of real property) of at least \$11,700,921 has been made and paid for by private businesses at the location of the Project or in connection with the Project, calculated as set forth in Section 20, below, after the Effective

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Date and on or before December 31st of the year on which the ten (10) year anniversary of the Completion Date falls (such date, the "Capital Investment Date").

- b. The Recipient shall certify that at least 719 New Jobs have been created as a result of the Project, calculated as set forth in Section 1, after the Effective Date and on or before December 31st of the year on which the ten (10) year anniversary of the Completion Date falls (such date, the "Job Creation Date").
- c. The Recipient shall certify that Retained Jobs have been retained as a result of the Project, calculated as set forth in Section 20, below.

### **16. Sanctions for Failure to Meet Return on Investment.**

- a. For any performance period in which the Recipient does not meet the requirements set forth in this Agreement or any Exhibit or Attachment hereto, DEO may demand, and the Recipient shall repay to the State, a prorated amount of forty percent (40%) of the total award under this Agreement. If the Recipient does not satisfy the requirements set forth in Section 17(b) and (c), above, then DEO may demand, and the Recipient shall repay to the State, a prorated amount of one hundred percent (100%) of the total award under this Agreement. If the Recipient has not received reimbursement for the total amount of funds available under this Agreement, then DEO will reduce the total award amount under this Agreement by an amount equal to such sanction, and the Recipient shall only be required to repay out of Recipient's funds the difference thereon. DEO has the right, in its sole discretion, to demand repayment of all funds provided to the Recipient under this Agreement if the Recipient has not met all of the performance requirements set forth herein as of the Expiration Date or the date this Agreement is otherwise terminated. If DEO makes such a demand for repayment the Recipient will remit funds to DEO within twenty-four (24) months of such demand. In addition to any other remedies available to DEO, in the event that Recipient fails to remit such funds to DEO within twenty-four (24) months of such demand, then the amounts due from Recipient will accumulate interest from the date of such demand until the repayment. DEO will calculate interest based on a 365-day year using a fixed annual rate equal to 500 basis points over the "Prime Rate" as reported in The Wall Street Journal on the Effective Date. DEO shall calculate interest on the basis of the number of days elapsed after the 24th month and until the day the Recipient actually makes repayment. Notwithstanding anything in this Agreement to the contrary, in no event shall the aggregate sanctions imposed pursuant to this Agreement exceed the total award plus interest, if any, as determined pursuant to this Section.
- b. Notwithstanding anything herein to the contrary, subject to the terms and conditions of this Section 18(b), DEO hereby grants to Recipient the one-time right, privilege and option (the "Option") to extend the Expiration Date, the Completion Date, the Job Creation Date, and the Capital Investment Date by twelve (12) months. In the event that Recipient exercises the Option, within ten (10) business days of exercising the Option, Recipient shall pay to DEO a sanction equal to ten percent (10%) of the total award under this Agreement. The Option shall be exercisable in whole but not in part at any time from and after the Effective Date. Recipient may exercise the Option by delivering to DEO written notice of Recipient's intention to exercise the Option (an "Exercise Notice"). Upon DEO's receipt of an Exercise Notice, the exercise of the Option shall be irrevocable.
- c. The Parties acknowledge and agree that the remedies set forth in this Section 5 constitute liquidated damages and that in the event of a breach, the actual damages suffered by DEO and the State would be unreasonably difficult to determine and that the Parties would not have a convenient and adequate alternative to the liquidated damages set forth in this Section 18. Each of the Parties further acknowledge and agree that the liquidated damages provided in this Section 18 bears a reasonable relationship to the anticipated harm that would be caused by any such breach, is a genuine pre-estimate of the damages that DEO and the State will suffer or incur as a result of any such breach, and is not a penalty. Recipient irrevocably waives any right that it may have to raise as a defense that any such liquidated damages are excessive or punitive. The Parties acknowledge that the provisions contained in this Section 18 are an integral part of the transactions contemplated by this Agreement and that without these provisions DEO would not enter into this Agreement.

### **17. Reporting.**

- a. Quarterly: Recipient shall report on a quarterly basis all progress relating to the tasks identified in **Exhibit "A."** Quarterly reports are due to DEO no later than 30 calendar days after the end of each quarter of the

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program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are September 30, December 31, March 31, and June 30. The quarterly report shall include a summary of project progress, indicating percentage of completion of each task identified in Section 4, and the Minority and Service-Disabled Veteran Business Enterprise Report required in this Agreement. The summary shall also include any issues or events occurring which affect the ability of Grantee to meet the terms of this Agreement.

- b. Close-out Report: No later than 60 calendar days after this Agreement ends or is terminated, Recipient shall provide copies of all paid invoices to document completed work.
- c. Follow-up Reports: By no later than January 31st of the year immediately following the year on which the ten (10) year anniversary of the Completion Date falls, Recipient shall provide DEO with a written certification of the actual number of New Jobs created by each business as a result of the Project (including the name of each business), Retained Jobs retained by each business as a result of the Project (including the name of each business) (if applicable), and the amount of private capital investment made and paid for by private businesses at the location of the Project or in connection with the Project after the Effective Date (including the name of each business). This paragraph will survive termination of this Agreement.

### **18. Criteria for Measuring Return on Investment.**

- a. Project Jobs Definitions and Determination. The following definitions and procedures will be used in determining and reporting the number of new jobs created as a result of the Project.
  - i. New Job – means a full-time salaried employee, or a full-time equivalent (an “FTE”) employee who works at least 35 paid hours per week, created as a result of the Project. New Jobs may include positions obtained from a temporary employment agency or employee leasing company, through a union agreement, or co-employment under a professional employer organization agreement that result directly from the Project in this state. New Jobs may not include temporary or seasonal jobs associated with cyclical business activities, or to substitute for permanent employees on a leave of absence, or temporary construction jobs related to the Project. In tabulating hours worked, any paid leave an employee takes during the pay period, such as vacation or sick leave, may be included. Jobs only constitute New Jobs if they are created on or after the Effective Date, and only if they result in a net increase in overall employment as a result of the Project. Jobs are not considered new if they moved from another Florida location to the location of the Project, unless the relocated positions are back-filled with net new-to-Florida full-time-equivalent jobs paying at least the wage of the transferred position(s).
  - ii. Retained Jobs – Retained Jobs are jobs that would have been eliminated, or relocated to another Florida location or outside of the state, if the Project was not undertaken by the Recipient.
  - iii. Leased Employees – Leased employees may be counted toward a Recipient’s jobs requirement if they are engaged to meet an on-going labor requirement directly resulting from the Project. Independent Contractors meeting the criteria of leased employees may also be counted towards Recipient’s job requirement so long as the actual wages paid, excluding expenses, by a business are documented on a form 1099 Miscellaneous Income to the individual person. Unless payments are in substance for individual independent contractors, payments made to limited liability companies or other business entities (identified on the 1099 with an FEIN) generally do not qualify as New Jobs as they relate to the “fee-for-service” arrangement described below. Employees of a business that has entered into a fee-for-service contract with a business benefiting from the Project in which the primary purpose of the contract is to perform services (rather than to provide individual employees) are not Project Jobs. Examples of fee-for-service contracts in which the service providers’ employees are generally not considered “New Jobs” include, but are not limited to, mail-room services, janitorial and landscaping services, food-service providers, accounting services provided by independent certified public accounting firms and legal services provided by law firms.
- b. Calculation of Project Jobs. The following methods will be used to determine the number of Project Jobs.
  - i. Monthly Head count of Salaried Project Jobs: For salaried Project Jobs, add the monthly totals of salaried full-time jobs and divide by the number of months.
  - ii. Monthly Average of FTE Project Jobs: For FTE Project Jobs, add the hours worked each month by hourly employees and divide by 151.6 hours (1,820 hours per year divided by 12 months) to

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calculate the number of FTE Project Jobs. If the Recipient uses pay periods of less than one month, total all of the reported hours worked by the FTEs during the Performance Certification Period and divide by 1,820 (35 hours x 52 weeks) to determine the average FTE employment for the Period. No individual may be considered more than one FTE regardless of the number of hours worked by such individual.

- iii. New Job Calculation – The number of New Jobs created on or after the Effective Date must equal or exceed the number of jobs in existence prior to the Effective Date. The number of New Jobs required to be created in accordance with this Agreement for the applicable performance period must exceed the number of existing jobs plus the number of New Jobs created in any performance period.
- c. Determination of Capital Investment. DEO accepts as capital investment so-called “hard” costs (such as construction and renovations of buildings, and acquisition of equipment) and “soft” costs (such as eligible capitalized labor, architectural and engineering services, and document printing and mailing costs). Eligible capital investment expenditures are those that are ordered/invoiced and paid for on or after the Effective Date and before the Capital Investment Date.

***[Remainder of page intentionally left blank]***

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

**DEPARTMENT OF ECONOMIC  
OPPORTUNITY**

**By** \_\_\_\_\_  
Signature

**Name** Chris Peary

**Title** Chief of Staff

**Date** \_\_\_\_\_

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

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

**By:** \_\_\_\_\_

**Approved Date:** \_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION**

**By** \_\_\_\_\_  
Signature

**Name** Mike Dew

**Title** Secretary

**Date** \_\_\_\_\_

**Legal Review:**

**OFFICE OF GENERAL COUNSEL  
DEPARTMENT OF TRANSPORTATION**

**By:** \_\_\_\_\_

**Approved Date:** \_\_\_\_\_

**Clay County Board of County  
Commissioners**

**By** \_\_\_\_\_  
Signature

**Name** Gavin Rollins

**Title** Chairman

**Date** \_\_\_\_\_



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