

FLORIDA JOB GROWTH GRANT FUND TRANSPORTATION INFRASTRUCTURE PROJECT AGREEMENT

FPN: <u>44360115401</u>	FDOT Fund: <u>2540001</u>	FDOT FLAIR Category: <u>108741</u>
	FDOT Org Code: <u>55400110965</u>	FDOT FLAIR Obj: <u>751000</u>

County No: _____ FDOT Contract No: _____ Vendor No: F596000553-004

DEO Agreement No.: <u>G0038</u>	DEO Fund: <u>202041001</u>	DEO FLAIR Category: <u>108741</u>
	DEO Org Code: <u>40400100000</u>	DEO FLAIR Obj: <u>751002</u>

THIS FLORIDA JOB GROWTH GRANT FUND TRANSPORTATION INFRASTRUCTURE PROJECT AGREEMENT (“Agreement”) is entered into this ____ day of ____ 20____, between and among the State of Florida Department of Transportation, (“FDOT”), the State of Florida Department of Economic Opportunity, (“DEO”) and the Clay County Board of County Commissioners, (“Recipient”). FDOT, DEO, and the Recipient are sometimes individually referred to in this Agreement as a “Party” and collectively as the “Parties”. References to the “State” collectively include DEO and FDOT.

RECITALS

- A. Chapter 2017-233, Laws of Florida (the “Act”), created the Florida Job Growth Grant Fund, section 288.101, Florida Statutes (“F.S.”); and
- B. Section 28 of the Act provides that, for the 2017-2018 fiscal year: (1) the nonrecurring sum of \$60,000,000 from the State Economic Enhancement and Development Trust Fund is appropriated directly to DEO to administer contracts approved by the Governor for the Florida Job Growth Grant Fund; and (2) the nonrecurring sum of \$25,000,000 from the State Transportation Trust Fund is appropriated to FDOT to enter into an agreement with DEO to provide for infrastructure for contracts approved by the Governor for the Florida Job Growth Grant Fund; and
- C. Public infrastructure projects eligible for State financial assistance under the Act include technical structures such as roads, bridges, tunnels, water supply, sewers, electrical grids, and telecommunications facilities; and
- D. The Recipient has been approved to receive funding from the Florida Job Growth Grant Fund for a public infrastructure project under the provisions of section 288.101, Florida Statutes (“F.S.”); and
- E. The funds awarded to the Recipient under this Agreement will be provided by FDOT and DEO; and
- F. The Recipient will utilize the funding provided under this Agreement solely for the eligible capital costs and related costs of the project, as more particularly described in **Exhibit “A”** (the “Project”); and
- G. Section 288.101(4), F.S., provides that DEO shall administer contracts for projects approved by the Governor and funded from the Florida Job Growth Grant Fund; and
- H. FDOT has agreed to provide its assistance with the implementation of road, bridge and tunnel projects that have been approved for funding from the Florida Job Growth Grant Fund, and FDOT desires to assist with implementation of such projects.

NOW, THEREFORE, for and in consideration of the agreements, covenants, and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

AGREEMENT

- 1. Authority:** The State is authorized to enter into this Agreement pursuant to section 288.101, F.S. The Recipient by Resolution or other form of official authorization, a copy of which is attached hereto and incorporated herein as **Exhibit “E”**, has authorized its officers to execute this Agreement on its behalf.

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- 2. 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”**.
- 3. 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 the fifth anniversary of the Effective Date (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.
- 4. 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

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contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year.”

- 5. 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*.
- 6. 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

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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 specifically instructs Recipient in writing. Recipient shall not be entitled to recover any cancellation charges or lost profits.

7. Work Approval, Invoicing, and Payment:

- a. Section 288.101, F.S.** Recipient shall: (a) construct or repair the state or local public infrastructure that is the subject of this Agreement, as described in **Exhibit "A"**, in a manner that meets and complies with all federal, state, and local laws, rules, and regulations, including but not limited to, the requirements of section 288.101, F.S.; (b) not use funds provided under this Agreement for the exclusive benefit of any single company, corporation, or business entity; (c) use funds provided under this Agreement to promote economic recovery in specific regions of the state, economic diversification, or economic enhancement in a targeted industry via the construction or repair of the public infrastructure; and (d) the public infrastructure must be: (i) owned by the public, and be for public use or predominately benefit the public; and (ii) if the public infrastructure is leased or sold, it must be leased or sold at fair market rates or value.
- b. Section 215.971, F.S.**
- i. Recipient shall perform the tasks contained in **Exhibit "A"**. **Exhibit "A"** contains the deliverables, minimum levels of service required to be performed, criteria for evaluating successful performance of each deliverable, and the financial consequences that apply if Recipient fails to perform the minimum levels of service. Neither DEO nor FDOT will provide requested reimbursements to the Recipient until DEO and/or FDOT (as applicable) determines satisfactory completion of each deliverable described in **Exhibit "A"** in accordance with the minimum levels of service, and gives Recipient written notice of same.
 - ii. Recipient may only expend funding under this Agreement for allowable costs resulting from obligations incurred during the Agreement period. To be eligible for reimbursement, costs must be in compliance with laws, rules and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures.
 - iii. Recipient shall refund to DEO and/or FDOT (as applicable) any balance of unobligated funds which has been advanced or paid to Recipient upon expiration or termination of this Agreement. Recipient shall refund to DEO and/or FDOT (as applicable) all funds paid in excess of the amount to which Recipient is entitled under the terms and conditions of the Agreement.
- c. Work Approval.**
- i. If FDOT determines at any time that Recipient's performance is unsatisfactory, FDOT shall notify DEO and the Recipient of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by FDOT. The Recipient shall, within thirty (30) days after notice from FDOT, provide FDOT and DEO with a corrective action plan describing how the Recipient will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to FDOT, FDOT shall advise DEO that the Recipient may not be reimbursed to the extent of the non-performance. FDOT and DEO will not authorize any request for reimbursement from the Recipient until the Recipient resolves the deficiency. If the deficiency is subsequently resolved, the Recipient may bill for the unpaid reimbursement request(s) in the next invoice package. If the Recipient is unable to resolve the deficiency, the funds shall be forfeited at the end of the Agreement's term.
 - ii. Prior to submitting any invoice package to DEO, the Recipient shall request approval from FDOT of all work performed for which reimbursement will be sought. Upon request by FDOT, the Recipient shall provide an engineer's certification of compliance certifying that the work performed for which reimbursement will be sought has been performed.
 - iii. FDOT shall review the work and any supporting documentation provided by the Recipient. If FDOT determines that the Recipient's performance is not in accordance with this Agreement, FDOT will notify the Recipient of any deficiencies, and the time period in which such deficiencies must be corrected. If the Recipient does not satisfactorily correct its performance following notice by FDOT, FDOT will issue a recommendation to DEO that this Agreement should be terminated, or the State's obligation to pay should be suspended until such time as the Recipient corrects its performance.

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- iv. Upon completion of the Project, the Recipient shall certify to FDOT and DEO that the work: (i) was performed within the Agreement period; (ii) was performed in the course of accomplishing a deliverable; (iii) that the work was performed in accordance with the terms of this Agreement, industry standards, and all applicable state and federal laws, rules, and regulations; and (iv) if the Project will be owned by the Recipient, that the Project was completed in accordance with applicable plans and specifications and that the Project has been accepted by the Recipient as suitable for its intended purpose.
- d. Invoice Approval and Payment.**
- i. Travel expenses are not eligible for reimbursement under this Agreement.
 - ii. The Recipient shall submit invoices no more often than monthly and no less than quarterly and in detail sufficient for a proper pre-audit and post-audit, based on the deliverables established in **Exhibit "A"**. Deliverables and costs incurred must be received and approved by DEO prior to DEO's approval of any requested reimbursement. The Recipient shall use the format for the invoice and progress report that is approved by the State.
 - iii. The Recipient must submit complete invoice packages to DEO for approval. An incomplete invoice package will not be accepted. A complete invoice package must include, at a minimum:
 1. An invoice;
 2. A progress report;
 3. All documentation necessary to show that the costs incurred were allowable, reasonable, and necessary for the completion of one or more deliverables, as set forth in **Exhibit "A"**;
 4. All documents submitted to FDOT necessary for FDOT to approve the work, and;
 5. The FDOT work certification.
 - iv. Supporting documentation must establish that the deliverables were received and accepted in writing by the Recipient and must also establish that the required minimum standards or level of service to be performed based on the criteria for evaluating successful completion as specified in **Exhibit "A"** has been met. All costs invoiced shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of charges as described in **Attachment 1 – Contract Payment Requirements**.
 - v. Upon approval of invoice packages for the first **One Million Four Hundred Eighty Thousand One Hundred Eighty dollars and zero cents (\$1,480,180.00)** in eligible costs incurred to complete the Project as described in **Exhibit "A"**: (i) DEO will transmit the approved invoice packages to FDOT for payment to the Recipient; and FDOT, on behalf of DEO, shall reimburse the Recipient from the State Transportation Trust Fund for costs and as set forth in **Exhibit "B"**. Upon approval of invoice packages for eligible Project costs in excess of **One Million Four Hundred Eighty Thousand One Hundred Eighty dollars and zero cents (\$1,480,180.00)** and up to **Two Million Sixty Five Thousand and zero cents (\$2,065,000)**, DEO shall reimburse the Recipient from the State Economic Enhancement Development Trust Fund and as set forth in **Exhibit "B"**. Payment shall be made only after receipt and approval of deliverables and costs incurred unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, F.S., or the FDOT Comptroller under Section 334.044(29), F.S.
 - vi. In determining the amount of the payment, the State will exclude all Project costs incurred by the Recipient before the Effective Date of this Agreement, costs incurred prior to issuance of a Notice to Proceed, costs incurred after the expiration or termination of this Agreement, costs which are not provided for in the latest approved Schedule of Financial Assistance in **Exhibit "B"** for the Project, costs agreed to be borne by the Recipient or its contractors and subcontractors for not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the State.
- e. For avoidance of doubt: (i) no invoice package for reimbursement will be transmitted to or accepted by FDOT until DEO has approved the contents of the invoice for completeness and accuracy, and that all costs are in compliance with the Florida Reference Guide for State Expenditures, and; (ii) a request for work approval does not constitute receipt of an invoice package for purposes of sub-paragraphs 7.f. and 7.g., below.

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- f. Recipients receiving financial assistance from the State should be aware of the following time frames. Inspection and approval of deliverables and costs incurred shall take no longer than 20 days from FDOT's receipt of the approved invoice package from DEO. FDOT has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. By entering into this Agreement, the Recipient specifically acknowledges and agrees that the 20-day period for prompt payment provided under section 215.422, F.S., shall be measured from the latter of the date the invoice is received or the deliverables and costs incurred are received, inspected, and approved by FDOT.
 - g. If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), F.S., will be due and payable, in addition to the invoice amount, to the Recipient. Interest penalties of less than one (1) dollar will not be enforced unless the Other Party requests payment. Invoices that have to be returned to a Recipient because of Recipient preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.
 - h. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Recipients who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.
 - i. The Recipient shall maintain an accounting system or separate accounts to ensure funds and projects are tracked separately. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the State at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to FDOT and DEO upon request. Records of costs incurred include the Recipient's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the contractor and subcontractors considered necessary by FDOT or DEO for a proper audit of costs.
 - j. Upon request, the Recipient shall provide progress reports to DEO in the standard format used by DEO and at intervals established by DEO. The State will be entitled at all times to be advised, at its request, as to the status of the Project and of details thereof.
 - k. Any Project funds made available pursuant to this Agreement which are determined by the State to have been expended by the Recipient in violation of this Agreement or any other applicable law or regulation, shall be promptly refunded in full. Acceptance by the State of any documentation or certifications, mandatory or otherwise permitted, that the Recipient files shall not constitute a waiver of the State's right to verify all information at a later date by audit or investigation. If any claim is made by the State resulting from an audit or for work or services performed pursuant to this Agreement, the State may offset such amount from payments due for work or services done under any other agreement which it has with the Recipient owing such amount if, upon demand, payment of the amount is not made within 60 days to the State. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the State.
 - l. The Recipient must submit the final invoice on the Project to DEO within 120 days after the completion of the Project and no later than August 15, 2023. Invoices submitted after the 120-day time period or August 15, 2023 will not be paid.
8. **General Requirements:** The Recipient shall complete the Project with all practical dispatch in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement and all applicable laws, rules, and regulations.
- a. The Recipient must obtain written approval from FDOT prior to performing itself (through the efforts of its employees) any aspect of the Project that will be funded under this Agreement. If the Recipient proceeds with any phase of the Project utilizing its employees, the Recipient will only be reimbursed for direct costs (this excludes general overhead).

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- b. The Recipient shall provide FDOT certification and a copy of appropriate documentation substantiating that all required right-of-way necessary for the Project has been obtained. Certification is required prior to authorization for advertisement for or solicitation of bids for construction of the Project, including if no right-of-way is required.
- c. 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.
- d. The Recipient shall have the sole responsibility for resolving claims and requests for additional work for the Project by the Recipient's contractors and consultants. No funds will be provided for payment of claims or additional work on the Project under this Agreement without the prior written approval of the claim or request for additional work by FDOT.
- e. If this box is checked, this contract includes the purchase of Tangible Personal Property as defined in Chapter 273, F.S., and is acquired in accordance with Rule 60A-1.017, Florida Administrative Code. The specific property(ies) and line item cost(s) is(are) detailed on **Exhibit "G"**, and will be subsequently transferred to and controlled by FDOT upon completion of services or end of the contract, whichever occurs first. Upon receipt of property, the Recipient shall forward to FDOT a copy of the purchase invoice/property description/serial number and date of receipt. FDOT will forward inventory control label(s) to be affixed to all property. The Recipient will accommodate physical inventories required by FDOT.

9. Contracts of the Recipient

- a. FDOT has the right to review and approve any and all third-party contracts with respect to the Project before the Recipient executes any contract or obligates itself in any manner requiring the disbursement of funds under this Agreement, including consultant or construction contracts or amendments thereto. If FDOT exercises this right it shall send notice of its review and approval of any such contract to DEO within five business days of receipt of such contract from the Recipient. If the Recipient fails to obtain such approval, FDOT may recommend DEO may deny payment to the Recipient. FDOT may review the qualifications of any consultant or contractor and approve or disapprove the employment of such consultant or contractor.
- b. If the Project includes the construction of improvements on FDOT right-of-way and a consultant contract for engineering, architecture or surveying services, the Recipient shall comply in full with provisions of Section 287.055, F.S., Consultants' Competitive Negotiation Act. In all cases where the provisions of Section 287.055, F.S., are applicable to work performed on the Project, the Recipient shall certify to the State that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.
- c. If the Project is procured pursuant to Chapter 255 for construction services and at the time of the competitive solicitation for the Project 50 percent or more of the cost of the Project is to be paid from state-appropriated funds, then the Recipient must comply with the requirements of Section 255.0991 and Section 255.0992, F.S.

10. Design and Construction Standards and Required Approvals:

- a. The Recipient is responsible for obtaining all permits necessary for the Project.
- b. If the Project involves construction on FDOT right-of-way, the Recipient shall provide FDOT with written notification of either its intent to:
 - i. Award the construction of the Project to a FDOT prequalified contractor which is the lowest responsive bidder in accordance with applicable state and federal statutes, rules, and regulations. The Recipient shall then submit a copy of the bid tally sheet(s) and awarded bid contract, or
 - ii. Construct the Project utilizing existing Recipient employees, if the Recipient can complete said Project within the time frame set forth in this Agreement. The Recipient's use of this option is subject to prior written approval by FDOT, or

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- iii. If the Project is not located on FDOT's right-of-way and the provisions of Section 255.0992, Florida Statutes, are applicable to the Project, that the Recipient will award the construction to a qualified contractor in accordance with section 255.0992 and other applicable law.

- c. The Recipient shall hire a qualified contractor using the Recipient's normal bid procedures to perform the construction work for the Project. For projects that are not located on FDOT's right-of-way, the Recipient is not required to hire a contractor prequalified by FDOT unless FDOT notifies the Recipient prior to letting of the construction work that FDOT will require the Recipient to hire a contractor prequalified by FDOT. If the Project is not located on FDOT's right-of-way and the provisions of Section 255.0992, Florida Statutes, are applicable to the Project, FDOT will not require the Recipient to hire a FDOT prequalified contractor.

- d. The Recipient is responsible for provision of Construction Engineering Inspection (CEI) services. The State reserves the right to require the Recipient to hire a FDOT prequalified consultant firm that includes one individual that has completed the Advanced Maintenance of Traffic Level Training. The Recipient shall hire a FDOT prequalified consultant firm in accordance with the provisions of this paragraph for any Project work on FDOT right-of-way. Administration of the CEI staff shall be under the responsible charge of a State of Florida Licensed Professional Engineer who shall provide the certification that all design and construction for the Project meets the minimum construction standards established by FDOT. DEO, upon recommendation from FDOT, shall have the right, but not the obligation, to approve the CEI firm. If the Project is not located on FDOT's right-of-way and the provisions of Section 255.0992, Florida Statutes, are applicable to the Project, FDOT will not require the Recipient to hire a FDOT prequalified consultant. FDOT, upon notice to DEO, shall have the right, but not the obligation, to perform independent assurance testing during the course of construction of the Project. Subject to the approval of FDOT, the Recipient may choose to satisfy the requirements set forth in this paragraph by either hiring a FDOT prequalified consultant firm or utilizing Recipient staff that meet the requirements of this paragraph, or a combination thereof.

- e. The Recipient is responsible for the preparation of all design plans for the Project. The State reserves the right to require the Recipient to hire a FDOT pre-qualified consultant for the design phase of the Project using the Recipient's normal procurement procedures to perform the design services for the Project. The Recipient shall hire a FDOT prequalified consultant firm in accordance with the provisions of this paragraph for any Project design work on FDOT right-of-way. If the Project is not located on FDOT's right-of-way and the provisions of Section 255.0992, F.S., are applicable to the Project, FDOT will not require the Recipient to hire a FDOT prequalified consultant. If the Recipient is required to hire a FDOT prequalified consultant to perform design services for the Project, the Recipient shall adhere to the FDOT Conflict of Interest Procedure (FDOT Topic No. 375-030-006) or Conflict of Interest Procedure for SCRAP, SCOP, and CIGP Grant Projects (FDOT Topic No. 750-000-002). All design work on the Project shall be performed in accordance with the requirements of all applicable laws and governmental rules and regulations and federal and state accepted design standards for the type of construction contemplated by the Project, including, as applicable, but not limited to, the applicable provisions of the Manual of Uniform Traffic Control Devices (MUTCD) and the American Association of State Highway and Transportation Officials (AASHTO) Policy on Geometric Design of Streets and Highways. All design work for any portion of the Project to be located on FDOT right-of-way shall conform to all applicable standards of FDOT, as provided in **Exhibit "F"**, if a portion of the Project will be located on FDOT's right of way.

- f. The Recipient will provide copies of the final design plans and specifications and final bid documents to the FDOT Construction Project Manager prior to requesting a FDOT Notice to Proceed to commence construction of the Project. FDOT will specify the number of copies required and the required format. Upon FDOT's issuance of a Notice to Proceed, FDOT shall send copies of the final design plans and specifications, the final bid documents, and the Notice to Proceed to DEO's Agreement Manager for this Agreement.

- g. The Recipient shall require the Recipient's contractor to post a payment and performance bond in accordance with applicable law.

- h. The Recipient shall be responsible to ensure that the construction work under this Agreement is performed in accordance with the approved construction documents, and that it will meet all applicable Recipient and FDOT standards.

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- i. Upon completion of the work authorized by this Agreement, the Recipient shall notify FDOT and DEO in writing of the completion of construction of the Project; and for all design work that originally required certification by a Professional Engineer, this notification shall contain an Engineers Certification of Compliance, signed and sealed by a Professional Engineer, the form of which is attached hereto as **Exhibit "C"**. The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the approved plans, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation.
- j. The Recipient shall provide FDOT with as-built plans of any portions of the Project funded through this Agreement prior to final inspection.
- k. In accordance with s. 287.05805, F.S., if funding provided under this Agreement is used for the purchase of or improvements to real property not owned by or transferred to FDOT, Recipient shall grant 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 years from the date of purchase or the completion of the improvements or as further required by law.
- I. NONEXPENDABLE PROPERTY:
 - i. For the requirements of this section of the Agreement, "nonexpendable property" is the same as "property" as defined in s. 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).
 - ii. All nonexpendable property, purchased under this Agreement, shall be listed on the property records of Recipient. Recipient 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.
 - iii. At no time shall Recipient dispose of nonexpendable property purchased under this Agreement without the written permission of and in accordance with instructions from DEO.
 - iv. Immediately upon discovery, Recipient shall notify DEO, in writing, of any property loss with the date and reason(s) for the loss.
 - v. Recipient shall be responsible for the correct use of all nonexpendable property Recipient purchased or FDOT or DEO furnished under this Agreement.
 - vi. A formal Agreement amendment is required prior to the purchase of any item of nonexpendable property not specifically listed in the approved Agreement budget.
 - vii. 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. Notwithstanding the other provisions of this paragraph, title to nonexpendable property installed on FDOT right-of-way shall vest in FDOT and said property shall be transferred to FDOT upon completion or termination of this Agreement.
- m. DISPOSITION OF PROJECT PROPERTY: Pursuant to section 10.I. of this Agreement, upon termination of the Agreement period, Recipient is authorized to retain ownership of any nonexpendable property purchased under this Agreement; however, Recipient hereby grants to DEO a right of first refusal in all such property prior to disposition of any such property during its depreciable life, in accordance with the depreciation schedule in use by Recipient, Recipient shall provide written notice of any such planned disposition and await DEO's response prior to disposing of the property. "Disposition" as used herein, shall include, but is not limited to, Recipient no longer using the nonexpendable property for the uses authorized herein; the sale, exchange, transfer, trade-in, or disposal of any such nonexpendable property. DEO, in its sole discretion, may require Recipient to refund to DEO the fair market value of the nonexpendable property at the time of disposition rather than taking possession of the nonexpendable property. This section shall

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survive the termination or expiration of this Agreement. This paragraph does not apply to nonexpendable property installed on FDOT right-of-way, which shall be transferred to FDOT in accordance with section 10.I.

11. 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 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.

12. 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:

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- 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 Agreement. The Recipient guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Recipient or any subcontractor, in connection with this Agreement. Additionally, to the extent permitted by law and as limited by and pursuant to the provisions of Section 768.28, F.S., the Recipient agrees to indemnify and hold harmless the State, including FDOT and DEO, and the State's officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Recipient and persons employed or utilized by the Recipient in the performance of this Agreement. This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida or the Recipient's sovereign immunity. Additionally, the Recipient agrees to include the following indemnification in all contracts with contractors/subcontractors and consultants/subconsultants who perform work in connection with this Agreement:

"To the fullest extent permitted by law, the Recipient's contractor/consultant shall indemnify and hold harmless the Recipient and the State of Florida, Department of Transportation and Department of Economic Opportunity, including their officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor or consultant and persons employed or utilized by the contractor or consultant in the performance of this Agreement. This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida or the Recipient's sovereign immunity."

- b. The Recipient shall provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, ensure that the subcontractor(s) and subconsultants have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), ensure that such employees are covered by Workers' Compensation insurance through the PEO's or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent contractors, sole proprietorships or partners are covered by insurance required under Florida's Workers' Compensation law.
- c. The Recipient shall, or cause its contractor or consultant to carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. Recipient shall, or cause its contractor to cause the State to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the State as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Agreement, and may not be shared with or diminished by claims unrelated to the Agreement. The policy/ies and coverage described herein may be subject to a deductible and such deductibles shall be paid by the Named Insured. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention unless the Recipient is a state agency or subdivision of the State of Florida that elects to self-perform the Project. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, FDOT shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The Department shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The State's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the State may have.

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- d. When the Agreement includes the construction of a railroad grade crossing, railroad overpass or underpass structure, or any other work or operations within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, the Recipient shall, or cause its contractor to, in addition to the insurance coverage required above, procure and maintain Railroad Protective Liability Coverage (ISO Form CG 00 35) where the railroad is the Named Insured and where the limits are not less than \$2,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than \$6,000,000. The railroad shall also be added along with the State as an Additional Insured on the policy/ies procured pursuant to the paragraph above. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, both FDOT and the railroad shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The insurance described herein shall be maintained through final acceptance of the work. Both FDOT and the railroad shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy or coverage described herein. The State's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights the State may have.
- e. When the Agreement involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the State as an Additional Insured on the Commercial General Liability policy/ies procured above.

14. Miscellaneous:

- a. In no event shall any payment to the Recipient constitute or be construed as a waiver by the State of any breach of covenant or any default which may then exist on the part of the Recipient and the making of such payment, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the State with respect to such breach or default.
- b. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- c. The Recipient and the State agree that the Recipient, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the State as a result of this Agreement.
- d. By execution of the Agreement, the Recipient represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.
- e. Nothing in the Agreement shall require the Recipient to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Recipient will at once notify FDOT in writing in order that appropriate changes and modifications may be made by the State and the Recipient to the end that the Recipient may proceed as soon as possible with the Project.
- f. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.
- g. The Recipient shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Recipient in conjunction with this Agreement. The State reserves the right to unilaterally terminate this Agreement for failure by the Recipient to comply with the provisions of Chapter 119, F.S.
- h. If FDOT or DEO respectively receives a request for public records relating to the Project, but it does not possess a record requested, upon notice from FDOT or DEO, the Recipient must provide any requested records in its possession or control to the requesting Party, or allow the records to be inspected or copied

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within a reasonable time. If the Recipient does not comply with the requesting Party's request for records, the requesting Party shall enforce the provisions set forth in this Agreement. A Recipient who fails to provide public records to FDOT or DEO within a reasonable time may be subject to penalties under section 119.10, F.S.

- i. If the Project involves construction work on FDOT right-of-way, the provisions on this paragraph are part of this Agreement. The Recipient shall:
 - i. Keep and maintain public records that ordinarily and necessarily would be required by FDOT in order to perform the work being performed by the Recipient.
 - ii. Provide the public with access to public records on the same terms and conditions that FDOT would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
 - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
 - iv. Meet all requirements for retaining public records and transfer, at no cost, to FDOT all public records in possession of the Recipient upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to FDOT in a format that is compatible with the information technology systems of FDOT. Failure by the Recipient to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the State. The Recipient shall promptly provide FDOT with a copy of any request to inspect or copy public records in possession of the Recipient and shall promptly provide FDOT a copy of the Recipient's response to each such request.

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

- j. The Recipient agrees to comply with Section 20.055(5), F.S., and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), F.S.
- k. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida law, the laws of Florida shall prevail. The Recipient agrees to waive forum and venue and that the State shall determine the forum and venue in which any dispute under this Agreement is decided.

15. Contact Information and Notices:

- a. Except as otherwise specifically provided in this Agreement, the contact information provided in accordance with this section 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 email with confirmation of receipt if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid); (iii) the day following the day (except if not a business day then the next business day) on which the same has been delivered prepaid to a recognized overnight delivery service; or (iv) the third business day following the day on which the same is sent by certified or registered mail, postage prepaid, with return receipt.

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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
Demetris.Thomas@deo.myflorida.com	jasmin.raffington@dot.state.fl.us

16. 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): _____

17. 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 \$ 1,500,000.00 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. Retained Jobs, calculated as set forth in Section 19, below, is not applicable to this Agreement.

18. 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.

19. 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 program year and shall be sent each quarter until submission of the administrative close-out report. The

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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.

20. 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 and 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 calculate the number of FTE Project Jobs. If the Recipient uses pay periods of less than one month,

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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**

DEPARTMENT OF TRANSPORTATION

By _____
Signature
Name _____ **Chris Peary**
Title _____ **Chief of Staff**
Date _____

By _____
Signature
Name _____ **Mike Dew**
Title _____ **Secretary**
Date _____

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

Legal Review:

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

**OFFICE OF GENERAL COUNSEL
DEPARTMENT OF TRANSPORTATION**

By: _____

By: _____

Approved Date: _____

Approved Date: _____

**CLAY COUNTY BOARD OF COUNTY
COMMISSIONERS**

By _____
Signature
Name _____ **Gavin Rollins**
Title _____ **Chairman**
Date _____

FLORIDA JOB GROWTH GRANT FUND TRANSPORTATION INFRASTRUCTURE PROJECT AGREEMENT

EXHIBIT "A"

PROJECT DESCRIPTION AND RESPONSIBILITIES FPN: 44360115401

This exhibit forms an integral part of the Florida Job Growth Grant Agreement between the State of Florida, Department of Transportation, the State of Florida Department of Economic Opportunity and Clay County Board of County Commissioners (Recipient).

PROJECT LOCATION:

- The project is on the National Highway System.
- The project is on the State Highway System.

PROJECT LENGTH AND MILE POST LIMITS:

PROJECT DESCRIPTION:

Grantee has been awarded \$2,065,000 to construct the phase of a new urban roadway (Atlantis Drive) that will extend east from Trail Ridge Road and Challenger Drive in Clay County, Florida. Atlantis Drive is a proposed ½ mile segment of a road that will provide access from Trail Ridge Road and Challenger Drive to a proposed multi-use project called Challenger Center. With this construction, Challenger Center will be a major employment hub in Clay County. This area of Clay County is already experiencing rapid growth with the construction of the First Coast Expressway (FCX), which is a freeway facility proposed to connect I-10 in Jacksonville to I-95 in St. John County. A focus of the County's Economic Development Element of the 2025 Comprehensive Plan is the need for these type of employment center, such as Challenger Center.

1. RECIPIENT RESPONSIBILITIES: Recipient will complete the following tasks:

- a. Project Design
 - 1) Survey
 - 2) Geotechnical survey
 - 3) Environmental studies and mitigation
 - 4) Civil design
 - 5) Permitting
- b. Construction Engineering and Inspection
- c. Construct the final intersection configuration consisting of four lanes and then a 2680-linear foot two-lane asphalt road with required infrastructure. The road will include the following features:
 - 1) Right-of-way clearing
 - 2) Intersection improvements including milling and resurfacing of the western side.
 - 3) Construct a 24 foot wide roadway with a 4' bike lane for the east bound portion of the future four lane road.
 - 4) Construct stormwater conveyance system and stormwater ponds
 - 5) Reconstruct signalization at the intersection of Challenger Drive
 - 6) Install necessary signage and striping
- d. Wetlands mitigation as required by permits necessary for the Project
- e. Utility Infrastructure
 - Construct water distribution facility, sewer collection facility, and reclaim distribution facilities funded by Clay County Utility Authority.

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**FLORIDA JOB GROWTH GRANT FUND
TRANSPORTATION INFRASTRUCTURE PROJECT AGREEMENT**

2. DELIVERABLES: Recipient shall provide the following services as specified: *[examples listed only, specify per project]*

Deliverable No. 1: Project Design		
Tasks	Minimum Level of Service	Financial Consequences
Complete Project Design activities as detailed in Section 1.a. of this Exhibit A.	At a minimum, complete one task listed under Section 1.a. of Exhibit A, evidenced by the following documentation: a. Copy of completed document, as appropriate to the task (e.g., completed survey, study, designs, permits); and b. Invoice package in accordance with Section 7 of this Agreement.	Failure to meet the minimum level of service shall result in non-payment. Failure to complete all tasks detailed in Section 1.a. of this Exhibit A on or before the Project Completion Date shall result in a financial consequence of \$1,000 for each task not completed.
DELIVERABLE NOT TO EXCEED: \$5,000.00		
Deliverable No. 2: Construction Engineering and Inspection (CEI)		
Tasks	Minimum Level of Service	Financial Consequences
Hire and provide ongoing support for Construction Engineering and Inspection as detailed in Section 1.b. of this Exhibit A.	At a minimum, Recipient shall hire a consultant to perform CEI for the project. Recipient may be reimbursed on a monthly basis for CEI services, evidenced by the following documentation: a. Copy of any and all sub-agreements executed for CEI for this project; b. Copy of any and all amendments to sub-agreements executed for CEI for this project; c. Copy of monthly CEI status report, including any anticipated delays in the project schedule, no later than the 20 th day after the end of each month; and d. Invoice package in accordance with Section 7 of this Agreement.	Failure to meet the minimum level of service shall result in non-payment. Failure to submit the required reports and documents by the 10 th of each month, in accordance with Section 1.b. of this Exhibit A shall result in a financial consequence of \$1,000 for each day after the 20 th of the month that the report is not submitted.
DELIVERABLE NOT TO EXCEED: \$175,000.00		
Deliverable No. 3: Roadway Construction		
Tasks	Minimum Level of Service	Financial Consequences
Complete roadway construction as detailed in Section 1.c. of this Exhibit A.	At a minimum, complete twenty five percent (25%) of the roadway construction as detailed in Section 1.c. of this Exhibit A. Recipient may request reimbursement upon 25%, 50%, 75% and 100% completion of the deliverable as evidenced by the following documentation:	Failure to meet the minimum level of service shall result in non-payment. Failure to complete all tasks detailed in Section 1.c. of this Exhibit A on or before the Project Completion Date shall result in a financial consequence of

FLORIDA JOB GROWTH GRANT FUND TRANSPORTATION INFRASTRUCTURE PROJECT AGREEMENT

	a. Completed AIA Forms G702 and G703, signed by a licensed professional certifying to the percentage of project completion; b. Photographs of project in progress; and c. Invoice package in accordance with Section 7 of this Agreement.	10% (\$180,500) of the total award for this deliverable.
DELIVERABLE NOT TO EXCEED: \$1,805,000.00		
Deliverable No. 4: Wetlands Mitigation		
Tasks	Minimum Level of Service	Financial Consequences
Complete wetlands mitigation as detailed in Section 1.d. of this Exhibit A.	Completion of wetlands mitigation as detailed in Section 1.d., as evidenced by the following documentation: a. Copy of mitigation plan addressing requirements for permitting; b. Certification by the Grantee that all mitigation requirements have been addressed; c. Copies of all reports, surveys, inspections or other documentation as evidence that mitigation requirements have been met. d. Invoice package in accordance with Section 7 of this Agreement.	Failure to meet the minimum level of service shall result in non-payment. Failure to complete all tasks detailed in Section 1.d of this Exhibit A on or before the Project Completion Date shall result in a financial consequence of 10% (\$8,000) of the total award for this deliverable.
DELIVERABLE NOT TO EXCEED: \$80,000.00		
TOTAL AMOUNT NOT TO EXCEED \$2,065,000.00		

3. SPECIAL CONSIDERATIONS BY RECIPIENT:

- a. The audit report(s) required in the Agreement shall include a Schedule of Project Assistance that will reflect FDOT's contract number, the Financial Project Number (FPN), the amount of state funding action (receipt and disbursement of funds), any local funding action, and the funding action from any other source with respect to the project.
- b. The Recipient is required to provide a copy of the design plans for FDOT's review and approval to coordinate permitting with FDOT, and notify FDOT prior to commencement of any right-of-way activities.
- c. The Recipient shall commence the project's activities subsequent to the execution of this Agreement and shall perform in accordance with the following schedule:

- a) Design to be completed by 2/20/2019.
- b) Construction contract to be let by 5/1/2019.
- c) Construction to be completed by the fifth anniversary of the Effective Date.

If this schedule cannot be met, the Recipient will notify DEO in writing with a revised schedule or the project is subject to the withdrawal of funding.

SPECIAL CONSIDERATIONS BY STATE: N/A

FLORIDA JOB GROWTH GRANT FUND TRANSPORTATION INFRASTRUCTURE PROJECT AGREEMENT

EXHIBIT "B" SCHEDULE OF FINANCIAL ASSISTANCE

RECIPIENT NAME & BILLING ADDRESS: Clay County BOCC P.O. Box 1366 Green Cove Springs, FL 32043	FINANCIAL PROJECT NUMBER: 44360115401
--	--

I. PHASE OF WORK by Fiscal Year:	FY 2017-18	FY	FY	TOTAL
Design- Phase 34	\$	\$	\$	\$
Maximum State Participation-	%	%	%	%
DEO Florida Job Growth Grant Fund - SEEDTF	or \$ 5,000.00	or \$	or \$	or \$
Maximum State Participation- <u>(Insert Program Name)</u>	%	%	%	%
	or \$	or \$	or \$	or \$
Maximum State Participation- <u>(Insert Program Name)</u>	%	%	%	%
	or \$	or \$	or \$	or \$
Local Participation (Any applicable waiver noted in Exhibit "A")	%	%	%	%
	or \$	or \$	or \$	or \$
In-Kind Contribution	\$	\$	\$	\$
Cash	\$	\$	\$	\$
Combination In-Kind/Cash	\$	\$	\$	\$
Right of Way- Phase 44	\$	\$	\$	\$
Maximum State Participation- <u>(Insert Program Name)</u>	%	%	%	%
	or \$	or \$	or \$	or \$
Maximum State Participation- <u>(Insert Program Name)</u>	%	%	%	%
	or \$	or \$	or \$	or \$
Maximum State Participation- <u>(Insert Program Name)</u>	%	%	%	%
	or \$	or \$	or \$	or \$
Local Participation (Any applicable waiver noted in Exhibit "A")	%	%	%	%
	or \$	or \$	or \$	or \$
In-Kind Contribution	\$	\$	\$	\$
Cash	\$	\$	\$	\$
Combination In-Kind/Cash	\$	\$	\$	\$
Construction/CEI - Phase 54	\$	\$	\$	\$
Maximum State Participation- FDOT Florida Job Growth Grant Fund - STTF	%	%	%	%
	or \$ 1,480,180.00	or \$	or \$	or \$
Maximum State Participation- DEO Florida Job Growth Grant Fund - SEEDTF	%	%	%	%
	or \$ 579,820.00	or \$	or \$	or \$
Maximum State Participation- <u>(Insert Program Name)</u>	%	%	%	%
	or \$	or \$	or \$	or \$
Local Participation (Any applicable waiver noted in Exhibit "A")	%	%	%	%
	or \$	or \$	or \$	or \$
In-Kind Contribution	\$	\$	\$	\$
Cash	\$	\$	\$	\$
Combination In-Kind/Cash	\$	\$	\$	\$
<u>(Insert Phase and number)</u>	\$	\$	\$	\$
II. TOTAL PROJECT COST:	\$2,065,000.00	\$	\$	\$

The State's fiscal year begins on July 1. For this project, funds are not projected to be available until after the 1st of July of each fiscal year. The State will notify the Recipient, in writing, when funds are available.

**FLORIDA JOB GROWTH GRANT FUND
TRANSPORTATION INFRASTRUCTURE PROJECT AGREEMENT**

EXHIBIT "C"

ENGINEER'S CERTIFICATION OF COMPLIANCE

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

NOTICE OF COMPLETION

FLORIDA JOB GROWTH GRANT AGREEMENT
Between
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
THE STATE OF FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY
and CLAY COUNTY BOARD OF COUNTY COMMISSIONERS

PROJECT DESCRIPTION: _____

FPID#: _____

In accordance with the Terms and Conditions of the Florida Job Growth Grant Agreement, the undersigned provides notification that the work authorized by this Agreement is complete as of _____, 20__.

By: _____
Name: _____
Title: _____

ENGINEER'S CERTIFICATION OF COMPLIANCE

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

By: _____, P.E.

SEAL:

Name: _____

Date: _____

**FLORIDA JOB GROWTH GRANT FUND
TRANSPORTATION INFRASTRUCTURE PROJECT AGREEMENT**

EXHIBIT "D"

STATE FINANCIAL ASSISTANCE (FLORIDA SINGLE AUDIT ACT)

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

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

Awarding Agency: Florida Department of Economic Opportunity
State Project Title: ECONOMIC DEVELOPMENT TAX REFUND, TAX CREDIT, AND GRANT PROGRAM
CSFA Number: 40.043
***Award Amount:** \$2,065,000.00

*The state award amount may change with supplemental agreements

Specific project information for CSFA Number 40.043 is provided at: <https://apps.fldfs.com/fsaa/searchCatalog.aspx>

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

State Project Compliance Requirements for CSFA Number 40.043 are provided at:
<https://apps.fldfs.com/fsaa/searchCompliance.aspx>

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

**FLORIDA JOB GROWTH GRANT FUND
TRANSPORTATION INFRASTRUCTURE PROJECT AGREEMENT**

EXHIBIT "E"

RECIPIENT RESOLUTION

The Recipient Resolution, or other official authorization, authorizing entry into this Agreement is attached and incorporated into this Agreement.

FLORIDA JOB GROWTH GRANT FUND TRANSPORTATION INFRASTRUCTURE PROJECT AGREEMENT

EXHIBIT "F"

TERMS AND CONDITIONS OF CONSTRUCTION IN FDOT RIGHT-OF-WAY

Construction on FDOT Right-of-Way. If the Project involves construction on FDOT right-of-way, then the following provisions apply to any and all portions of the Project that are constructed on FDOT right-of-way:

- a. The Project shall be designed and constructed in accordance with the latest edition of the FDOT's Standard Specifications for Road and Bridge Construction and the FDOT Design Standards and Manual of Uniform Traffic Control Devices ("MUTCD"). The following guidelines shall apply as deemed appropriate by FDOT: the FDOT Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, the FDOT Plans Preparation Manual ("PPM") (as of January 1, 2018, the Department Design Manual ("FDM") will replace the PPM) and the FDOT Traffic Engineering Manual. The Recipient will be required to submit any construction plans required by the FDOT for review and approval prior to any work being commenced. Should any changes to the plans be required during construction of the Project, the Recipient shall be required to notify the FDOT of the changes and receive approval from the FDOT prior to the changes being constructed. The Recipient shall maintain the area of the Project at all times and coordinate any work needs of the FDOT during construction of the Project.
- b. The Recipient shall notify the FDOT a minimum of 48 hours before beginning construction within FDOT right-of-way. The Recipient shall notify the FDOT should construction be suspended for more than 5 working days. The FDOT contact person for construction is Jasmin Raffington.
- c. The Recipient shall be responsible for monitoring construction operations and the maintenance of traffic ("MOT") throughout the course of the Project in accordance with the latest edition of the FDOT Standard Specifications, section 102. The Recipient is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of the FDOT Design Standards, Index 600 series. Any MOT plan developed by the Recipient that deviates from the FDOT Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the FDOT prior to implementation.
- d. The Recipient shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility.
- e. The Recipient will be responsible for obtaining all permits that may be required by other agencies or local governmental entities.
- f. It is hereby agreed by the Parties that this Agreement creates a permissive use only and all improvements located on the FDOT's right-of-way resulting from this Agreement shall become the property of the FDOT. Neither the granting of the permission to use the FDOT right-of-way nor the placing of facilities upon the FDOT property shall operate to create or vest any property right to or in the Recipient, except as may otherwise be provided in separate agreements. The Recipient shall not acquire any right, title, interest or estate in FDOT right-of-way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the Recipient's use, occupancy or possession of FDOT right-of-way. The Parties agree that this Agreement does not, and shall not be construed to, grant credit for any future transportation concurrency requirements pursuant to Chapter 163, Florida Statutes.
- g. The Recipient shall not cause any liens or encumbrances to attach to any portion of the FDOT's property, including but not limited to, the FDOT's right-of-way.
- h. The Recipient shall perform all required testing associated with the design and construction of the Project. Testing results shall be FDOT-entered into the FDOT's Materials Acceptance and Certification database application and the FDOT must provide the final Materials Certification for the Project. The FDOT shall have the right to perform its own independent testing while the Project.
- i. The Recipient shall exercise the rights granted herein and shall otherwise perform this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all

FLORIDA JOB GROWTH GRANT FUND TRANSPORTATION INFRASTRUCTURE PROJECT AGREEMENT

applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, but not limited to, those of the FDOT, applicable Water Management District, Florida FDOT of Environmental Protection, Environmental Protection Recipient, the Army Corps of Engineers, the United States Coast Guard and local governmental entities.

- j. If the FDOT determines a condition exists which threatens the public's safety, the FDOT may, at its discretion, cause construction operations to cease and immediately have any potential hazards removed from its right-of-way at the sole cost, expense, and effort of the Recipient. The Recipient shall bear all construction delay costs incurred by the FDOT.
- k. The Recipient shall be responsible to maintain and restore all features that might require relocation within the FDOT right-of-way.
- l. The Recipient will be solely responsible for clean up or restoration required to correct any environmental or health hazards that may result from construction operations.
- m. The acceptance procedure will include a final "walk-through" by Recipient and FDOT personnel. Upon completion of construction, the Recipient will be required to submit to the FDOT final as-built plans and an engineering certification that construction was completed in accordance to the plans. Submittal of the final as-built plans shall include one complete set of the signed and sealed plans on 11" X 17" plan sheets and an electronic copy prepared in Portable Document Format (PDF). Prior to the termination of this Agreement, the Recipient shall remove its presence, including, but not limited to, all of the Recipient's property, machinery, and equipment from FDOT right-of-way and shall restore those portions of FDOT right-of-way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project.
- n. If the FDOT determines that the Project is not completed in accordance with the provisions of this Agreement, the FDOT shall deliver written notification of such to the Recipient. The Recipient shall have thirty (30) days from the date of receipt of the FDOT's written notice, or such other time as the Recipient and the FDOT mutually agree to in writing, to complete the Project and provide the FDOT with written notice of the same (the "Notice of Completion"). If the Recipient fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the FDOT, within its discretion may: 1) provide the Recipient with written authorization granting such additional time as the FDOT deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Recipient's sole cost and expense, without FDOT liability to the Recipient for any resulting loss or damage to property, including, but not limited to, machinery and equipment. If the FDOT elects to correct the deficiency(ies), the FDOT shall provide the Recipient with an invoice for the costs incurred by the FDOT and the Recipient shall pay the invoice within thirty (30) days of the date of the invoice.
- o. The Recipient shall implement best management practices for erosion and pollution control to prevent violation of state water quality standards. The Recipient shall be responsible for the correction of any erosion, shoaling, or water quality problems that result from the construction of the Project.
- p. Portable Traffic Monitoring Site (PTMS) or a Telemetry Traffic Monitoring Site (TTMS) may exist within the vicinity of your proposed work. It is the responsibility of the Recipient to locate and avoid damage to these sites. If a PTMS or TTMS is encountered during construction, the FDOT must be contacted immediately.
- q. During construction, highest priority must be given to pedestrian safety. If permission is granted to temporarily close a sidewalk, it should be done with the express condition that an alternate route will be provided, and shall continuously maintain pedestrian features to meet Americans Disability Act (ADA) standards.
- r. Restricted hours of operation will be from n/a, (unless otherwise approved by the applicable FDOT District Operations Engineer, or designee).
- s. Lane closures on the state road system must be approved by the applicable FDOT District Operations Engineer or designee and coordinated with the Public Information Office at least two weeks prior to the closure. The contact information for the FDOT's Public Information Office is:

**FLORIDA JOB GROWTH GRANT FUND
TRANSPORTATION INFRASTRUCTURE PROJECT AGREEMENT**

Tracy Hisler-Pace, District 2
Northeast Florida
(800)-207-8236
FDOT-D2PIO@dot.state.fl.us

Note: (Highlighted sections indicate need to confirm information with District Office or appropriate DOT person managing the Agreement)

**FLORIDA JOB GROWTH GRANT FUND
TRANSPORTATION INFRASTRUCTURE PROJECT AGREEMENT**

Exhibit "H"

ALTERNATIVE ADVANCE PAYMENT FINANCIAL PROVISIONS

If payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes or the FDOT Comptroller under Section 334.044(29), Florida Statutes:

1. The invoiced amount cannot exceed the amount of the invoice received from the Recipient's contractor(s) or consultant(s).
2. All invoices received from the Recipient shall clearly separate the cost of the contractor(s) or consultant(s) from the Recipient's cost billed.
3. All of the Recipient's invoiced costs must have been incurred prior to the date of the invoice.
4. All invoices submitted must provide complete documentation, including a copy of the contractor's or consultant's invoice(s), to substantiate the cost on the invoice.
5. The Recipient must certify on each invoice that the costs from the contractor(s) or consultant(s) are valid and have been incurred by the contractor(s) or consultant(s).
6. Each monthly invoice subsequent to the first invoice from the Recipient must contain a statement from the Recipient that the previous month's cost incurred by the contractor(s) or consultant(s) has been paid by the Recipient to the contractor(s) or consultant(s).

FLORIDA JOB GROWTH GRANT FUND TRANSPORTATION INFRASTRUCTURE PROJECT AGREEMENT

EXHIBIT "I"

AUDIT REQUIREMENTS

The administration of resources awarded by DEO to the recipient (herein otherwise referred to as "Recipient") may be subject to audits and/or monitoring by DEO as described in this Attachment.

Monitoring

In addition to reviews of audits conducted in accordance with 2 CFR part 200 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 2 CFR Part 200, 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 2 CFR Part 200, as revised.

1. In the event that the recipient expends \$750,000 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 2 CFR Part 200, 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 2 CFR Part 200, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200, 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 F of 2 CFR Part 200, as revised.

3. If the recipient expends less than \$750,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of 2 CFR Part 200, as revised, is not required. In the event that the recipient expends less than \$750,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 200, 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 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 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 \$750,000 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.

FLORIDA JOB GROWTH GRANT FUND TRANSPORTATION INFRASTRUCTURE PROJECT AGREEMENT

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 \$750,000 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 \$750,000 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 2 CFR Part 200, as revised, and required by Part I of this agreement shall be submitted, when required by Section .512, 2 CFR Part 200, as revised, by or on behalf of the recipient directly to each of the following:

A. DEO at each of the following addresses:

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

or

Paper (hard copy):
Department Economic Opportunity
MSC # 130, Caldwell Building
107 East Madison Street
Tallahassee, FL 32399-4126

B. The Federal Audit Clearinghouse designated in 2 CFR Part 200, as revised (the number of copies required by Section .512, 2 CFR Part 200, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

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

C. Other Federal agencies and pass-through entities in accordance with Section .512, 2 CFR Part 200, as revised.

2. Pursuant to Section .512, 2 CFR Part 200, as revised, the recipient shall submit a copy of the reporting package described in Section .512, 2 CFR Part 200, as revised, and any management letter issued by the auditor, to DEO at each of the following addresses:

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

or

Paper (hard copy):
Department Economic Opportunity
MSC # 130, Caldwell Building
107 East Madison Street
Tallahassee, FL. 32399-4126

FLORIDA JOB GROWTH GRANT FUND TRANSPORTATION INFRASTRUCTURE PROJECT AGREEMENT

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

A. DEO at each of the following addresses:

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

or

Paper (hard copy):
Department Economic Opportunity
MSC # 130, Caldwell Building
107 East Madison Street
Tallahassee, FL 32399-4126

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

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

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

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 2 CFR Part 200, 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 2 CFR Part 200 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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