



Interoffice Memorandum

June 11, 2019

TO: Mayor Jerry L. Demings  
-AND-  
Board of County Commissioners

FROM: Eric Ushkowitz, Economic Development Administrator  
Office of Economic, Trade & Tourism Development

SUBJECT: **June 18, 2019 – Consent Agenda Item**

Approval and Execution of (1) Resolution of the Orange County Board of County Commissioners regarding the Florida Job Growth Infrastructure Grant Agreement with the State of Florida Department of Economic Opportunity for the Kirkman Road Extension Project; and (2) Florida Job Growth Infrastructure Grant Agreement

Orange County Government applied for a grant through the State of Florida Department of Economic Opportunity (DEO) for the proposed Kirkman Road Extension between Carrier Drive on the north and Universal Boulevard on the south. DEO administer the Florida Job Growth Grant Fund program and has accepted the County's proposal. The amount of the grant would be up to \$16,000,000. As you may recall, an agreement and resolution were both approved by the Board on December 18, 2018, and submitted to DEO. However, after submittal, revisions were made by DEO which require the Board to approve this revised agreement.

The agreement has been reviewed by the appropriate staff and the County Attorney's Office.

**ACTION REQUESTED:** Approval and execution of (1) Resolution of the Orange County Board of County Commissioners regarding the Florida Job Growth Infrastructure Grant Agreement with the State of Florida Department of Economic Opportunity for the Kirkman Road Extension Project, with directions to the Clerk of the Board to attach a copy of the executed Resolution as Exhibit E to the Florida Job Growth Infrastructure Grant Agreement, and (2) Florida Job Growth Infrastructure Grant Agreement State of Florida Department of Economic Opportunity DEO Agreement No.: G0053. All Districts.

EU/lb

Attachments

BCC Mtg. Date: June 18, 2019

**FLORIDA JOB GROWTH INFRASTRUCTURE GRANT AGREEMENT  
STATE OF FLORIDA  
DEPARTMENT OF ECONOMIC OPPORTUNITY**

**THIS FLORIDA JOB GROWTH INFRASTRUCTURE GRANT AGREEMENT** (this “Agreement”) is made and entered into by and between the State of Florida, Department of Economic Opportunity (“DEO”), and Orange County, a charter county and political subdivision of the State of Florida (“Grantee”). DEO and Grantee are sometimes referred to herein individually as a “Party” and collectively as “the Parties.”

**RECITALS**

**WHEREAS**, Pursuant to section 288.101, Florida Statutes (“F.S.”) Grantee submitted a proposal for funds;

**WHEREAS**, based on Grantee’s submitted proposal and any amendments thereto (collectively, the “Proposal”), DEO has determined that the project described in **Exhibit A, Scope of Work**, attached and incorporated in this Agreement (the “Project”) is necessary to facilitate the economic development and growth of the State;

**WHEREAS**, DEO has determined that Grantee’s commitments satisfy the requirements necessary to recommend the proposed project described in the Proposal to the Governor of the State of Florida for an award from the Florida Job Growth Grant Fund (the “Grant Fund”) pursuant to Section 288.101, F.S.;

**WHEREAS**, DEO is authorized to enter into this Agreement pursuant to section 288.101, F.S.. Grantee has authorized its officers to execute this Agreement on Grantee’s behalf by Resolution or, alternatively, by other DEO-approved form of official authorization, a copy of which is attached as Exhibit E and made a part of this Agreement;

**WHEREAS**, the following Exhibits are attached hereto and incorporated herein as an integral part of this Agreement:

- **Exhibit A: Scope of Work**
- **Exhibit B: Audit Requirements**
- **Exhibit C: Audit Compliance Certification**
- **Exhibit D: Intentionally left Blank**
- **Exhibit E: Grantee’s Resolution;**
- **Exhibit F: Notice of Completion and Engineer’s Certification of Compliance; and**

**WHEREAS**, this Agreement and its Exhibits are hereinafter collectively referred to as the “Agreement”, and if any inconsistencies or conflict between the language of this Agreement and its Exhibits arise, then the language of the Exhibits shall control, but only to the extent of the conflict or inconsistency;

**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. TERM.** This Agreement is effective as of the date on which DEO executes this Agreement (such date, the “Effective Date”) and shall continue until the earlier to occur of (a) December 31, 2025 (such date, the “Expiration Date”) unless an extension of the time period is requested by Grantee and granted in writing by DEO prior to the expiration of this Agreement or (b) the date on which this Agreement is terminated

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pursuant to Section 27. Notwithstanding the foregoing, the provisions of Sections 2, 7-11, 15, 16, 19, 26-31, 37, and Sections 5 and 11 of Exhibit A, Scope of Work shall survive the termination or expiration of this Agreement; provided, however, that the record-keeping and audit-related obligations set forth in Section 11 shall terminate in accordance with the requirements of Section 11. Expiration of this Agreement will be considered termination of the Project. Notwithstanding the foregoing, in the event that Grantee fully satisfies its obligations set forth in Exhibit A, Scope of Work, as determined by DEO in its reasonable discretion, prior to the date set forth in the preceding sentence, then the “Expiration Date” shall be the date of such determination.

**2. PERFORMANCE REQUIREMENTS:** Grantee shall perform the services specified herein in accordance with the terms and conditions of this Agreement and all attachments and exhibits attached hereto and incorporated herein.

**3. TYPE OF AGREEMENT:** This Agreement is a *cost reimbursement* agreement.

**4. RELEASE OF FUNDS:** DEO shall pay Grantee up to *Sixteen Million Dollars and Zero Cents (\$16,000,000.00)* in consideration for Grantee’s performance and services pursuant to this Agreement. In accordance with s. 287.0582, F.S., the State of Florida and DEO’s performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. DEO has final authority as to both the availability of funds and what constitutes an “annual appropriation” of funds. The lack of appropriation or availability of funds shall not constitute a default by DEO. Grantee shall not use funds provided pursuant to s. 288.101, F.S., for the exclusive benefit of any single company, corporation, or business entity. DEO has final authority as to what may constitute an “exclusive benefit of any single company, corporation, or business entity” under this Agreement. Use of funds provided pursuant to s. 288.101, F.S., for the exclusive benefit of any single company, corporation, or business entity is strictly prohibited, and DEO may, in its sole discretion, terminate this Agreement and demand immediate repayment of all funds, plus reasonable interest thereon, if DEO determines that Grantee used funds provided pursuant to this Agreement for the exclusive benefit of any single company, corporation, or business entity. Grantee is liable for all costs in excess of the amount paid by DEO.

**5. PAYMENTS TO GRANTEE:**

**a.** Grantee shall provide DEO’s Agreement Manager invoices in accordance with the requirements of the State of Florida Reference Guide for State Expenditures ([http://www.myfloridacfo.com/aadir/reference\\_guide/](http://www.myfloridacfo.com/aadir/reference_guide/)) and with detail sufficient for a proper pre-audit and post-audit thereof. Invoices must also comply with the following:

**1)** Invoices must be legible and must clearly reflect the goods/services that were provided in accordance with the terms of this Agreement for the invoice period. Payment does not become due under this Agreement until DEO accepts and approves the invoiced deliverable(s) and any required report(s).

**2)** Invoices must contain Grantee’s name, address, federal employer identification number or other applicable Grantee identification number, this Agreement number, the invoice number, and the invoice period. DEO or the State may require any additional information from Grantee that DEO or the State deems necessary to process an invoice in their sole and absolute discretion.

**3)** Invoices must be submitted in accordance with the time requirements specified in Exhibit A, SCOPE OF WORK.

**b.** At DEO’s or the State’s option, Grantee may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Grantee supply electronic invoices in lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to DEO’s Agreement Manager through the Ariba Supplier Network (ASN) in one of the following mechanisms – EDI 810, cXML, or web-based invoice entry within the ASN.

**c.** Payment shall be made in accordance with s. 215.422, F.S., governing time limits for payment of invoices. The SCOPE OF WORK may specify conditions for retainage. Invoices returned to a Grantee due to preparation errors will result in a delay of payment. DEO is responsible for all payments under this Agreement.

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**d.** Section 55.03(1), F.S., identifies the process applicable to the determination of the rate of interest payable on judgments and decrees, and pursuant to s. 215.422(3)(b), F.S., this same process applies to the determination of the rate of interest applicable to late payments to vendors for goods and services purchased by the State and for contracts which do not specify a rate of interest. The applicable rate of interest is published at: <http://www.myfloridacfo.com/aadir/interest.htm>.

**e.** If authorized and approved, Grantee may be provided an advance as part of this Agreement.

**f. VENDOR OMBUDSMAN:** In accordance with s. 215.422(5), F.S., a Vendor Ombudsman, within the Department of Financial Services, advocates for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Chief Financial Officer's Hotline, (800) 342-2762.

**6. REQUIREMENTS OF SECTION 287.058(1)(A) THROUGH (I), FLORIDA STATUTES:**

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

**b.** Travel expenses are not authorized under this Agreement.

**c.** DEO shall have the right to unilaterally cancel this Agreement for Grantee's refusal to allow public access to all documents, papers, letters or other materials made or received by Grantee in conjunction with this Agreement, unless the records are exempt from s. 24(a) of Article I of the State Constitution and s. 119.07(1), F.S.

**d.** Grantee shall perform all tasks contained in Exhibit A, SCOPE OF WORK, attached hereto and incorporated herein.

**e.** DEO shall not pay Grantee until DEO: (1) determines satisfactory completion of each Deliverable described in the SCOPE OF WORK in accordance with the "Minimum Level of Service" and (2) gives Grantee written notice of same.

**f.** Grantee shall comply with all criteria stated in Exhibit A, SCOPE OF WORK, and final date by which such criteria must be met for completion of this Agreement.

**g.** This Agreement may not be renewed.

**h.** If Grantee fails to perform in accordance with this Agreement, DEO shall apply the financial consequences specified in Exhibit A, SCOPE OF WORK, of this Agreement.

**i.** Unless otherwise agreed upon in a separate writing, Grantee shall own all intellectual property rights preexisting the starting date of this Agreement, and the State of Florida through DEO shall own all intellectual property rights Grantee or Grantee's agent or contractor created or otherwise developed in performance of this Agreement after the starting date of this Agreement; provided, further, that proceeds derived from the sale, licensing, marketing, or other authorization related to any such state-owned intellectual property right shall be handled in the manner specified by applicable state statute.

**7. REPRESENTATIONS AND WARRANTIES.** Grantee hereby makes the following representations and warranties to DEO, each of which shall be deemed to be a separate representation and warranty, all of which have been made for the purpose of inducing DEO to enter into this Agreement, and in reliance on which DEO has entered into this Agreement, as of the Effective Date, the dates on which Grantee submits each request for reimbursement under this Agreement, and the dates on which Grantee receives any reimbursement:

**a.** Grantee has all necessary power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary actions on the part of Grantee. After Grantee's execution and delivery and upon DEO's execution and delivery of this Agreement, this Agreement constitutes the legal, valid, and binding obligation of Grantee, enforceable against Grantee in accordance with its terms (subject to applicable bankruptcy, insolvency, moratorium, reorganization, or similar laws affecting the rights of creditors generally and the availability of equitable remedies).

**b.** Grantee's execution and delivery of this Agreement and Grantee's performance of the transactions contemplated hereby do not: (i) conflict with or result in a breach of any provision of Grantee's charter or similar constitutive document, (ii) result in violation or breach of or constitute a default (or an event which, with or without notice or lapse of time or both, would constitute a default) under, or result in

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the termination, modification, cancellation or acceleration under the terms, conditions, or provisions of any of Grantee's indentures, material agreements or other material instruments; or (iii) violate any applicable law or regulation. Grantee has not been convicted of a "public entity crime" (as such term is defined in Section 287.133 of the Florida Statutes) nor has Grantee been placed on the "discriminatory vendor list" (as such term is defined in Section 287.134 of the Florida Statutes). None of Grantee's elected or appointed officers, agents, employees, or other persons acting on its behalf has taken any act in furtherance of an offer, payment, promise to pay, authorization, or ratification of the payment, directly or indirectly, of any gift, money or anything of value to a government official or to obtain or retain business from any person or entity in violation of applicable law.

c. No event, change or condition has occurred that has had, or would reasonably be expected to have, a material adverse effect on the financial condition of Grantee or the Project, in each case, since the date of the Proposal. No litigation, investigation, claim, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of or before any arbitrator or governmental authority is pending or, to the knowledge of Grantee, threatened by or against Grantee or against any of its properties or assets, which, individually or in the aggregate, could reasonably be expected to result in a material and adverse effect on the financial condition of Grantee, the Project, or Grantee's ability to perform its obligations under this Agreement. No state or federal criminal investigation, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of the Office of the Attorney General of the State of Florida, any State Attorney in the State of Florida, the United States Department of Justice, or any other prosecutorial or law enforcement authority is pending or, to the knowledge of Grantee, threatened by or against Grantee or any of its elected officials.

d. DEO shall be deemed to have relied upon the express representations and warranties set forth herein notwithstanding any knowledge on the part of DEO of any untruth of any such representation or warranty of Grantee expressly set forth in this Agreement, regardless of whether such knowledge was obtained through DEO's own investigation or otherwise, and regardless of whether such knowledge was obtained before or after the execution and delivery of this Agreement. No information, report, financial statement, exhibit or schedule furnished by Grantee to DEO or Enterprise Florida, Inc., in connection with the negotiation of this Agreement (including, without limitation, the Proposal) or delivered pursuant to this Agreement when taken together, contained or contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading.

### 8. LAWS APPLICABLE TO THIS AGREEMENT:

a. The laws of the State of Florida shall govern the construction, enforcement and interpretation of this Agreement, regardless of and without reference to whether any applicable conflicts of laws principles may point to the application of the laws of another jurisdiction; without limiting the provisions of the DISPUTE RESOLUTION Section of this Agreement, the exclusive personal jurisdiction and venue to resolve any and all disputes between them including, without limitation, any disputes arising out of or relating to this Agreement shall be in the state courts of the State of Florida in the County of Leon. The Parties expressly consent to the exclusive personal jurisdiction and venue in any state court located in Leon County, Florida, and waive any defense of forum non conveniens, lack of personal jurisdiction, or like defense, and further agree that any and all disputes between them shall be solely in the State of Florida. Should any term of this Agreement conflict with any applicable law, rule, or regulation, the applicable law, rule, or regulation shall control over the provisions of this Agreement. IN ANY LEGAL OR EQUITABLE ACTION BETWEEN THE PARTIES, THE PARTIES HEREBY EXPRESSLY WAIVE TRIAL BY JURY TO THE FULLEST EXTENT PERMITTED BY LAW.

b. If applicable, Grantee is in compliance with the rules for e-procurement as directed by rule 60A-1.033, F.A.C., and that it will maintain eligibility for this Agreement through the MyFloridaMarketplace.com system.

c. Grantee shall not expend any funds provided under this Agreement for the purpose of lobbying the Legislature, the judicial branch, or any state agency. DEO shall ensure compliance with s. 11.062, F.S., and s. 216.347, F.S. Grantee shall not, in connection with this or any other agreement with the State, directly or indirectly: (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of

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discretion, or violation of a known legal duty; or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), “gratuity” means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of DEO’s Inspector General, or other authorized State official, Grantee shall provide any type of information the Inspector General deems relevant to Grantee’s integrity or responsibility. Such information may include, but shall not be limited to, Grantee’s business or financial records, documents, or files of any type or form that refer to or relate to this Agreement. Grantee shall retain such records in accordance with the record retention requirements of Part V of Exhibit B, AUDIT REQUIREMENTS.

**d.** Grantee shall reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of Grantee’s compliance with the terms of this or any other agreement between Grantee and the State which results in the suspension or debarment of Grantee. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. Grantee shall not be responsible for any costs of investigations that do not result in Grantee’s suspension or debarment. Grantee understands and will comply with the requirements of s. 20.055(5), F.S., including but not necessarily limited to, the duty of Grantee and any of Grantee’s subcontractors to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to s. 20.055, F.S.

**e. Public Entity Crime:** Grantee is aware of and understands the provisions of s. 287.133(2)(a), F.S. pursuant to which a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on an agreement to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on an agreement with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor or consultant under an agreement with any public entity and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017, F.S., for Category Two (\$35,000 in 2017) for a period of 36 months from the date of being placed on the convicted vendor list. Grantee shall disclose to DEO if Grantee, or any of Grantee’s affiliates, as defined in s. 287.133(1)(a) of the Florida Statutes, is on the convicted vendor list or on any similar list maintained by any other state or the federal government.

**f. Limitations on Advertising of Agreement:** Subject to chapter 119, F.S., Grantee shall not publicly disseminate any information concerning this Agreement without prior written approval from DEO, including, but not limited to, mentioning this Agreement in a press release or other promotional material, identifying DEO or the State as a reference, or otherwise linking Grantee’s name and either a description of this Agreement or the name of DEO or the State in any material published, either in print or electronically, to any entity that is not a Party to this Agreement, except potential or actual employees, agents, representatives, or subcontractors with the professional skills necessary to perform the work services this Agreement requires.

**g. Disclosure of Sponsorship:** As required by s. 286.25, F.S., if Grantee is a nongovernmental organization that sponsors a program financed wholly or in part by state funds, including any funds obtained through this Agreement, it shall, in publicizing, advertising, or describing the sponsorship of the program, state: “Sponsored by (Grantee’s name) and the State of Florida, Department of Economic Opportunity.” If the sponsorship reference is in written material, the words “State of Florida, Department of Economic Opportunity” shall appear in the same size letters or type as the name of the organization.

**h. Mandatory Disclosure Requirements:**

**1) Conflict of Interest:** This Agreement is subject to chapter 112, F.S. Grantee shall disclose the name of any officer, director, employee, or other agent who is also an employee of the State. Grantee shall also disclose the name of any State employee who owns, directly or indirectly, more than a 5 percent interest in Grantee or Grantee’s affiliates.

**2) Vendors on Scrutinized Companies Lists:** Grantee is aware of and understands the provisions of s. 287.134(2)(a), F.S. As required by s. 287.135(5), Grantee certifies that it is not: (1) listed on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, F.S.; (2) engaged in a boycott of Israel; (3) listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, F.S.; (4)

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engaged in business operations in Cuba or Syria; or (5) engaged in business operations with the government of Venezuela or in any company doing business with the government of Venezuela.

**a)** Pursuant to s. 287.135(5), F.S., DEO may immediately terminate this Agreement if Grantee submits a false certification as to the above, or if Grantee is placed on the Scrutinized Companies that Boycott Israel List, engages in a boycott of Israel, is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has engaged in business operations in Cuba, Syria, or Venezuela.

**b)** If DEO determines that Grantee has submitted a false certification, DEO will provide written notice to Grantee. Unless Grantee demonstrates in writing, within 90 calendar days of receipt of the notice, that DEO's determination of false certification was made in error, DEO shall bring a civil action against Grantee. If DEO's determination is upheld, a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed on Grantee, and Grantee will be ineligible to bid on any Agreement with any agency or local governmental entity for three years after the date of DEO's determination of false certification by Grantee.

**c)** If federal law ceases to authorize the states to adopt and enforce the contracting prohibition identified herein, this provision shall be null and void.

**3) Discriminatory Vendors:** Grantee shall disclose to DEO if it or any of its affiliates, as defined by s. 287.134(1) (a.), F.S., appears on the discriminatory vendor list. An entity or affiliate placed on the discriminatory vendor list pursuant to s. 287.134, F.S., may not: (1) submit a bid, proposal, or reply on a contract or agreement to provide any goods or services to a public entity; (2) submit a bid, proposal, or reply on a contract or agreement with a public entity for the construction or repair of a public building or public work; (3) submit bids, proposals, or replies on leases of real property to a public entity; (4) be awarded or perform work as a contractor, subcontractor, Grantee, supplier, subgrantee, or consultant under a contract or agreement with any public entity; or (5) transact business with any public entity.

**4) Abuse, Neglect, and Exploitation Incident Reporting:** In compliance with ss. 39.201 and 415.1034, F.S., an employee of Grantee who knows or has reasonable cause to suspect that a child, aged person, or disabled adult is or has been abused, neglected, or exploited shall immediately report such knowledge or suspicion to the Florida Abuse Hotline by calling 1-800-96ABUSE, or via the web reporting option at [www.myflfamilies.com/service-programs/abuse-hotline](http://www.myflfamilies.com/service-programs/abuse-hotline), or via fax at 1-800-914-0004.

**5) Information Release:**

**a)** Grantee shall keep and maintain public records required by DEO to perform Grantee's responsibilities hereunder. Grantee shall, upon request from DEO's custodian of public records, provide DEO with a copy of the requested records or allow the records to be inspected or copied within a reasonable time per the cost structure provided in chapter 119, F.S., and in accordance with all other requirements of chapter 119, F.S., or as otherwise provided by law. Upon expiration or termination of this Agreement, Grantee shall transfer, at no cost, to DEO all public records in possession of Grantee or keep and maintain public records required by DEO to perform the service. If Grantee keeps and maintains public records upon completion of this Agreement, Grantee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to DEO, upon request from the DEO's custodian of records, in a format that is compatible with the information technology systems of DEO.

**b)** If DEO does not possess a record requested through a public records request, DEO shall notify Grantee of the request as soon as practicable, and Grantee must provide the records to DEO or allow the records to be inspected or copied within a reasonable time. If Grantee does not comply with DEO's request for records, DEO shall enforce the provisions set forth in this Agreement. A Grantee who fails to provide public records to DEO within a reasonable time may be subject to penalties under s. 119.10, F.S.

**c)** Grantee acknowledges that DEO is subject to the provisions of chapter 119, F.S., relating to public records and that reports, invoices, and other documents Grantee submits to DEO under this Agreement may constitute public records under Florida Statutes. Grantee shall cooperate with DEO regarding DEO's efforts to comply with the requirements of chapter 119, F.S.

**d)** If Grantee submits records to DEO that are confidential and exempt from public disclosure as trade secrets or proprietary confidential business information, such records should be identified as such by Grantee prior to submittal to DEO. Failure to identify the legal basis for each exemption from the requirements of chapter 119, F.S., prior to submittal of the record to DEO may serve as

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a waiver of a claim of exemption. Grantee shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement term and following completion of this Agreement if Grantee does not transfer the records to DEO upon termination of this Agreement.

**e)** Grantee shall allow public access to all records made or received by Grantee in conjunction with this Agreement, unless the records are exempt from s. 24(a) of Article I of the State Constitution and s. 119.07(1), F.S. For records made or received by Grantee in conjunction with this Agreement, Grantee shall respond to requests to inspect or copy such records in accordance with chapter 119, F.S.

**f)** In addition to Grantee's responsibility to directly respond to each request it receives for records made or received by Grantee in conjunction with this Agreement and to provide the applicable public records in response to such request, Grantee shall notify DEO of the receipt and content of such request by sending an e-mail to [PRRequest@deo.myflorida.com](mailto:PRRequest@deo.myflorida.com) within one business day from receipt of such request.

**g)** Grantee shall notify DEO verbally within 24 chronological hours and in writing within 72 chronological hours if any data in Grantee's possession related to this Agreement is subpoenaed or improperly used, copied, or removed (except in the ordinary course of business) by anyone except an authorized representative of DEO. Grantee shall cooperate with DEO in taking all steps as DEO deems advisable to prevent misuse, regain possession, and/or otherwise protect the State's rights and the data subject's privacy.

**h) IF GRANTEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO GRANTEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS by telephone at 850-245-7140, via e-mail at [PRRequest@deo.myflorida.com](mailto: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.**

**6) Funding Requirements of s. 215.971(1), F.S.:**

**a)** Grantee and its subcontractors may only expend funding under this Agreement for allowable costs resulting from obligations incurred during the term of this Agreement. 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 ([http://www.myfloridacfo.com/aadir/reference\\_guide/](http://www.myfloridacfo.com/aadir/reference_guide/)).

**b)** Grantee shall refund to DEO any balance of unobligated funds which has been advanced or paid to Grantee.

**c)** Grantee shall refund to DEO all funds paid in excess of the amount to which Grantee or its subcontractors are entitled under the terms and conditions of this Agreement.

**7) Section 288.101, F.S.:** Grantee shall: (a) construct or repair the state or local public infrastructure that is the subject of this Agreement, as described in Exhibit A, SCOPE OF WORK, 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 s. 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.



**9. FINAL INVOICE:** Grantee shall submit the final invoice for payment to DEO no later than 60 calendar days after this Agreement ends or is terminated. If Grantee fails to do so, DEO, in its sole and absolute discretion, may refuse to honor any requests submitted after this time period and may consider Grantee to have forfeited any and all rights to payment under this Agreement.

**10. RECOUPMENT OF FUNDS:**

**a.** Grantee shall refund to DEO any overpayment of funds due to unearned or disallowed funds under this Agreement as follows: (a) if Grantee or an independent auditor discovers an overpayment, Grantee shall repay to DEO such overpayment no later than 30 calendar days after discovery or notification of each such overpayment; or (b) if DEO first discovers an overpayment, DEO shall notify Grantee in writing, and Grantee shall repay to DEO each such overpayment no later than 30 calendar days after receiving DEO's notification. Refunds should be sent to DEO's Agreement Manager, and made payable to the "Department of Economic Opportunity." DEO may charge interest at the lawful rate of interest on the outstanding balance beginning on the 31st calendar day after the date of notification or discovery. DEO is the final authority as to what may constitute an "overpayment" under this Agreement.

**b.** Notwithstanding any other provisions of this Agreement, including but not limited to the damages limitations of the LAWS APPLICABLE TO THIS AGREEMENT Section herein, if Grantee is non-compliant with any provision of this Agreement or applicable law, or if DEO imposes financial consequences on Grantee pursuant to the terms of this Agreement, DEO has the right to recoup all resulting cost, monetary loss and/or funds owed to DEO or the State of Florida, from monies owed to Grantee under this Agreement or any other Agreement between Grantee and any State entity. If the discovery of such noncompliance or imposition of financial consequences and resulting cost, loss, and/or debt to DEO or the State of Florida arises when no monies are owed to Grantee under this Agreement or any other Agreement between Grantee and any State entity, Grantee shall pay DEO in full such cost, loss, and/or funds owed to DEO or the State of Florida with non-State funds within 30 calendar days of the date of notice of the amount owed, unless DEO agrees, in writing, to an alternative timeframe. DEO, in DEO's sole and absolute discretion, shall determine the resulting cost, loss and/or funds owed to DEO or the State of Florida under this Agreement.

**11. AUDITS AND RECORDS:**

**a.** Representatives of DEO, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability or representatives of the federal government and their duly authorized representatives shall have access to any of Grantee's books, documents, papers, and records, including electronic storage media, as they may relate to this Agreement, for the purposes of conducting audits or examinations or making excerpts or transcriptions.

**b.** Grantee shall maintain books, records, and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds DEO provided under this Agreement.

**c.** Grantee shall comply with all applicable requirements of s. 215.97, F.S., and Exhibit B, AUDIT REQUIREMENTS; and, if an audit is required thereunder, Grantee shall disclose all related party transactions to the auditor.

**d.** Grantee shall retain all Grantee's records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement in accordance with the record retention requirements of Part V of Exhibit B, AUDIT REQUIREMENTS. Upon DEO's request, Grantee shall cooperate with DEO to facilitate the duplication and transfer of such records or documents.

**e.** Grantee shall include the aforementioned audit and record keeping requirements in all approved subrecipient subcontracts and assignments.

**f.** Within 60 calendar days of the close of Grantee's fiscal year, on a yearly basis, Grantee shall electronically submit a completed AUDIT COMPLIANCE CERTIFICATION (a version of this certification is attached hereto as Exhibit C) to [audit@deo.myflorida.com](mailto:audit@deo.myflorida.com). Grantee's timely submittal of one completed AUDIT COMPLIANCE CERTIFICATION for each applicable fiscal year will fulfill this requirement within

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all agreements (e.g., contracts, grants, memorandums of understanding, memorandums of agreement, economic incentive award agreements, etc.) between DEO and Grantee.

**g.** Grantee shall (i) maintain all funds Grantee received pursuant to this Agreement in bank accounts separate from its other operating or other special purposes accounts, or (ii) expressly designate in Grantee's business records and accounting system, maintained in good faith and in the regular course of business, that such funds originated from this Agreement. Grantee shall not commingle the funds provided under this Agreement with any other funds, projects, or programs. DEO may, in its sole and absolute discretion, disallow costs that result from purchases made with commingled funds.

**12. EMPLOYMENT ELIGIBILITY VERIFICATION:** Grantee shall utilize the U.S. Department of Homeland Security's E-Verify system (<https://www.e-verify.gov/>) to verify the employment eligibility of all new employees Grantee hired during the term of this Agreement. Grantee shall include in all subcontracts under this Agreement, the requirement that subcontractors performing work or providing services pursuant to this Agreement utilize the E-Verify system to verify the employment eligibility of all new employees subcontractor hired during the term of the subcontract.

### **13. DUTY OF CONTINUING DISCLOSURE OF LEGAL PROCEEDINGS:**

**a.** Prior to execution of this Agreement, Grantee must disclose in a written statement to DEO's Agreement Manager all prior or on-going civil or criminal litigation, investigations, arbitration or administrative proceedings arising directly from or related directly to the Project (collectively "Proceedings") involving Grantee (and each subcontractor of Grantee). Thereafter, Grantee has a continuing duty to promptly disclose all Proceedings upon occurrence.

**b.** This duty of disclosure applies to Grantee's or Grantee's subcontractor's officers and directors when any Proceeding relates to the officer or director's business or financial activities. Details of settlements that are prevented from disclosure by the terms of the settlement may be annotated as such.

**c.** Grantee shall promptly notify DEO's Agreement Manager of any Proceeding relating to or affecting Grantee's or Grantee's subcontractor's business. If the existence of such Proceeding causes the State concern about Grantee's ability or willingness to perform this Agreement, then upon DEO's request, Grantee shall provide to DEO's Agreement Manager all reasonable assurances that: (i) Grantee will be able to perform this Agreement in accordance with its terms and conditions; and (ii) Grantee and/or its employees, agents, or subcontractor(s) have not and will not engage in conduct in performing services for DEO which is similar in nature to the conduct alleged in such Proceeding.

### **14. ASSIGNMENTS AND SUBCONTRACTS:**

**a.** Grantee shall not assign, sublicense, or otherwise transfer its rights, duties, or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of DEO, which consent may be withheld in DEO's sole and absolute discretion; provided however, Grantee may assign, in whole or in part, its rights and obligations hereunder to Universal City Development Partners, Ltd. and/or an affiliated entity. Any Grantee's attempted assignment of this Agreement or any of the rights hereunder in violation of this provision shall be void *ab initio*. DEO will at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental entity in the State of Florida upon giving prior written notice of same to Grantee.

**b.** Grantee shall be responsible for all work performed and all expenses incurred in fulfilling the obligations of this Agreement. If DEO permits Grantee to subcontract all or part of the work contemplated under this Agreement, including entering into subcontracts with vendors for services, Grantee shall formalize all such subcontracts in documents containing all provisions appropriate and necessary to ensure subcontractor's compliance with this Agreement and applicable state and federal law. Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under each subcontract; provided, however, nothing herein shall be construed as a waiver of Grantee's sovereign immunity or of the provisions of s. 768.28, F.S. If the State of Florida approves transfer of Grantee's obligations, Grantee remains responsible for all work performed and all expenses incurred in connection with this Agreement. Grantee, at Grantee's expense, shall defend DEO against all Grantee's subcontractors' claims of expenses or liabilities incurred under subcontracts.

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c. Grantee shall only use properly trained persons who meet or exceed any specified training qualifications as employees, subcontractors, or agents performing work under this Agreement. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All Grantee's employees, subcontractors, or agents performing work under this Agreement shall comply with all DEO security and administrative requirements detailed herein. DEO may conduct, and Grantee shall cooperate with all security background checks or other assessments of Grantee's employees, subcontractors, or agents. DEO may refuse access to or require replacement of any of Grantee's employees, subcontractors, or agents for cause, including, but not limited to: technical or training qualifications, quality of work, change in security status, or non-compliance with DEO's security or administrative requirements. Such refusal shall not relieve Grantee of its obligation to perform all work in compliance with this Agreement. For cause, DEO may reject and bar any of Grantee's employees, subcontractors, or agents from any facility.

d. This Agreement shall bind the successors, assigns, and legal representatives of Grantee and of any legal entity that succeeds to the obligations of the State of Florida. The State of Florida may assign or transfer its rights, duties, or obligations under this Agreement to another governmental Grantee in the State of Florida.

e. In accordance with s. 287.0585, F.S., and unless otherwise agreed upon in writing between Grantee and subcontractor, Grantee shall pay each Grantee's subcontractor within seven working days of receiving DEO's full or partial payments. Grantee's failure to comply with the immediately preceding sentence shall result in a penalty charged against Grantee and paid to the subcontractor in the amount of one-half of one percent of the amount due per day from the expiration of the period allowed herein for payment. Such penalty shall be in addition to actual payments owed and shall not exceed 15 percent of the outstanding balance due.

f. Monthly, Grantee shall provide to DEO a Minority and Service-Disabled Veteran Business Enterprise Report for each invoice period summarizing the participation of certified and non-certified minority and service-disabled veteran subcontractors/material suppliers for that period and the project to date. This report shall include the names, addresses and compensation dollar amount of each certified and non-certified Minority Business Enterprise and Service-Disabled Veteran Enterprise participant and shall be sent to DEO's Agreement Manager. The Office of Supplier Diversity at (850) 487-0915 is available to provide information re: qualified minorities. DEO's Minority Coordinator can be reached at (850) 245-7260 to answer concerns and questions.

g. This Agreement is for the sole benefit of the Parties and their permitted successors and assigns and nothing herein expressed or implied shall give or be construed to give any person or entity, other than the Parties and such permitted successors and assigns, any legal or equitable rights hereunder.

### 15. NONEXPENDABLE PROPERTY:

a. For purposes of this 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).

b. All nonexpendable property, purchased under this Agreement, shall be listed on the property records of Grantee. Grantee shall inventory annually and maintain accounting records for all nonexpendable property purchased and submit an inventory report to DEO with the final expenditure report. The records shall include, at a minimum, the following information: property tag identification number, description of the item(s), physical location, name, make or manufacturer, year, and/or model, manufacturer's serial number(s), date of acquisition, and the current condition of the item.

c. At no time shall Grantee dispose of nonexpendable property purchased under this Agreement without DEO's written permission; provided further that Grantee shall, at all times, follow DEO's instructions regarding such disposition.

d. Immediately upon discovery, Grantee shall notify DEO, in writing, of any property loss with the date and reason(s) for the loss.

e. Grantee shall be responsible for the correct use of all nonexpendable property Grantee purchases or DEO furnishes under this Agreement.

f. A formal Agreement amendment is required prior to the purchase of any item of nonexpendable property not specifically listed in the approved Agreement budget.

g. 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 this Agreement unless otherwise authorized in writing by DEO.

**16. REQUIREMENTS APPLICABLE TO THE PURCHASE OF OR IMPROVEMENTS TO REAL PROPERTY:** 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, Grantee 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.

**17. INFORMATION RESOURCE ACQUISITION:** Grantee shall obtain prior written approval from the appropriate DEO authority before purchasing any Information Technology Resource (ITR) or conducting any activity that will impact DEO's electronic information technology equipment or software, as both terms are defined in DEO Policy Number 5.01, in any way. ITR includes computer hardware, software, networks, devices, connections, applications, and data. Grantee shall contact the DEO Agreement Manager listed herein in writing for the contact information of the appropriate DEO authority for any such ITR purchase approval.

**18. INSURANCE:** During this Agreement, including the initial Agreement term, renewal(s), and extensions, Grantee, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits as may be reasonably associated with this Agreement and further described below. Providing and maintaining adequate insurance coverage is a material obligation of Grantee, and failure to maintain such coverage may void this Agreement, at DEO's sole and absolute discretion, after DEO's review of Grantee's insurance coverage when Grantee is unable to comply with DEO's requests re: additional appropriate and necessary insurance coverage. The limits of coverage under each policy maintained by Grantee shall not be interpreted as limiting Grantee's liability and obligations under this Agreement. All insurance policies shall be through insurers licensed and authorized to write policies in Florida. Notwithstanding any other provision in this Agreement to the contrary, all insurance obligations of the Grantee shall terminate upon the Completion Date.

a. Upon execution of this Agreement, Grantee shall provide DEO written verification of the existence and amount for each type of applicable insurance coverage. Within thirty (30) calendar days of the Effective Date, Grantee shall furnish DEO proof of applicable insurance coverage by standard ACORD form certificates of insurance. If an insurer cancels any applicable coverage for any reason, Grantee shall immediately notify DEO of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within fifteen (15) business days after the cancellation of coverage. The insurance certificate must name DEO as an additional insured and identify DEO's Agreement Number. Copies of new insurance certificates must be provided to DEO's Agreement Manager with each insurance renewal.

b. DEO shall not pay for any insurance policy deductible. The payment of each such deductible shall be Grantee's sole responsibility. Grantee shall obtain the following types of insurance policies.

**1) Commercial General Liability Insurance:** Unless Grantee is a state agency or subdivision as defined by s. 768.28(2), F.S., Grantee shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during this Agreement. A self-insurance program established and operating under the laws of the State of Florida may provide such coverage.

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

3) **Other Insurance:** During the term of this Agreement, Grantee shall maintain any other insurance as required in Exhibit A, SCOPE OF WORK.

**19. CONFIDENTIALITY AND SAFEGUARDING INFORMATION:**

a. Each Party may have access to confidential information made available by the other. The provisions of the Florida Public Records Act, Chapter 119, F.S., and other applicable state and federal laws will govern disclosure of any confidential information received by the State of Florida.

b. Grantee must implement procedures to ensure the appropriate protection and confidentiality of all data, files, and records involved with this Agreement.

c. Except as necessary to fulfill the terms of this Agreement and with the written permission of DEO, Grantee shall not divulge to third parties any confidential information obtained by Grantee or its agents, distributors, resellers, subcontractors, officers, or employees in the course of performing Agreement work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or DEO.

d. Grantee shall not use or disclose any information concerning a recipient of services under this Agreement for any purpose in conformity with state and federal law or regulations except upon written consent of the recipient, or his responsible parent or guardian when authorized by law, if applicable.

e. When Grantee has access to DEO's network and/or applications, in order to fulfill Grantee's obligations under this Agreement, Grantee shall abide by all applicable DEO Information Technology Security procedures and policies. Grantee (including its employees, subcontractors, agents, or any other individuals to whom Grantee exposes confidential information obtained under this Agreement), shall not store, or allow to be stored, any confidential information on any unsecured portable storage media (*e.g.*, laptops, thumb drives, hard drives, *etc.*) or peripheral device with the capacity to hold information. Failure to strictly comply with this provision shall constitute a breach of Agreement.

f. Grantee shall immediately notify DEO in writing when Grantee, its employees, agents, or representatives become aware of an inadvertent disclosure of DEO's unsecured confidential information in violation of the terms of this Agreement. Grantee shall report to DEO any Security Incidents of which it becomes aware, including incidents sub-contractors or agents reported to Grantee. For purposes of this Agreement, "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of DEO information in Grantee's possession or electronic interference with DEO operations; provided, however, that random attempts at access shall not be considered a security incident. Grantee shall make a report to DEO not more than seven business days after Grantee learns of such use or disclosure. Grantee's report shall identify, to the extent known: (i) the nature of the unauthorized use or disclosure, (ii) the confidential information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Grantee has done or shall do to mitigate any detrimental effect of the unauthorized use or disclosure, and (v) what corrective action Grantee has taken or shall take to prevent future similar unauthorized use or disclosure. Grantee shall provide such other information, including a written report, as DEO's Information Security Manager requests.

g. If a breach of security concerning confidential personal information involved with this Agreement occurs, Grantee shall comply with s. 501.171, F.S., as applicable. When notification to affected persons is required under this section of the statute, Grantee shall provide that notification, but only after receipt of DEO's written approval of the contents of the notice. For purposes of this Agreement, "breach of security" or "breach" means the unauthorized access of data in electronic form containing personal information, as defined in s. 501.171, (1)(a), F.S.. Good faith acquisition of personal information by an employee or agent of Grantee is not a breach, provided the information is not used for a purpose unrelated to Grantee's obligations under this Agreement or is not subject to further unauthorized use.

**20. WARRANTY OF ABILITY TO PERFORM:** Grantee warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish Grantee's ability to satisfy its Agreement obligations. Grantee shall immediately notify DEO in writing if its ability to perform is compromised in any manner during the term of this Agreement.

**21. PATENTS, COPYRIGHTS, AND ROYALTIES:**

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a. All legal title and every right, interest, claim or demand of any kind, in and to any patent, trademark or copyright, or application for the same, or any other intellectual property right to, the work developed or produced under or in connection with this Agreement, is the exclusive property of DEO to be granted to and vested in the Florida Department of State for the use and benefit of the state; and no person, firm or corporation shall be entitled to use the same without the written consent of the Florida Department of State. Any contribution by Grantee or its employees, agents or contractors to the creation of such works shall be considered works made for hire by Grantee for DEO and, upon creation, shall be owned exclusively by DEO. To the extent that any such works may not be considered works made for hire for DEO under applicable law, Grantee agrees, upon creation of such works, to automatically assign to DEO ownership, including copyright interests and any other intellectual property rights therein, without the necessity of any further consideration.

b. If any discovery or invention arises or is developed in the course or as a result of work or services performed with funds from this Agreement, Grantee shall refer the discovery or invention to DEO who will refer it to the Department of State to determine whether patent protection will be sought in the name of the State of Florida.

c. Where the Project includes original writings, sound recordings, pictorial reproductions, drawings or other graphic representations and works of any similar nature, DEO has the right to use, duplicate, and disclose such materials in whole or in part, in any manner, for any purpose whatsoever and to allow others acting on behalf of DEO to do so. Grantee shall give DEO written notice when any books, manuals, films, websites, web elements, electronic information, or other copyrightable materials are produced.

d. Notwithstanding any other provisions herein, in accordance with s. 1004.23, F.S., a state university is authorized in its own name to perform all things necessary to secure letters of patent, copyrights, and trademarks on any works it produces. Within 30 calendar days of same, the president of a state university shall report to the Department of State any such university's action taken to secure or exploit such trademarks, copyrights, or patents in accordance with s. 1004.23(6), F.S.

**22. INDEPENDENT CONTRACTOR STATUS:** In Grantee's performance of its duties and responsibilities under this Agreement, it is mutually understood and agreed that Grantee is at all times acting and performing as an independent contractor. DEO shall neither have nor exercise any control or direction over the methods by which Grantee shall perform its work and functions other than as provided herein.

a. Nothing in this Agreement is intended to or shall be deemed to constitute a partnership or joint venture between the Parties.

b. Except where Grantee is a state agency, Grantee, its officers, agents, employees, subcontractors, or assignees, in performance of this Agreement shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the State of Florida. Nor shall Grantee represent to others that, as Grantee, it has the authority to bind DEO unless specifically authorized to do so.

c. Except where Grantee is a state agency, neither Grantee, nor its officers, agents, employees, subcontractors, or assignees are entitled to state retirement or state leave benefits, or to any other compensation of state employment as a result of performing the duties and obligations of this Agreement.

d. Grantee shall take such actions as may be necessary to ensure that each subcontractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, employee, joint venturer, or partner of the State of Florida.

e. Unless justified by Grantee, and agreed to by DEO in Exhibit A, SCOPE OF WORK, DEO will not furnish services of support (*e.g.*, office space, office supplies, telephone service, secretarial, or clerical support) to Grantee or its subcontractor or assignee.

f. DEO shall not be responsible for withholding taxes with respect to Grantee's compensation hereunder. Grantee shall have no claim against DEO for vacation pay, sick leave, retirement benefits, social security, workers' compensation, health or disability benefits, reemployment assistance benefits, or employee benefits of any kind. Grantee shall ensure that its employees, subcontractors, and other agents, receive benefits and necessary insurance (health, workers' compensation, reemployment assistance benefits) from an employer other than the State of Florida.

g. At all times during this Agreement, Grantee shall comply with the reporting and Reemployment Assistance contribution payment requirements of chapter 443, F.S.

**23. ELECTRONIC FUNDS TRANSFER:** Within 30 calendar days of the date the last Party has signed this Agreement, Grantee shall enroll in Electronic Funds Transfer (EFT) from the State's Chief Financial Officer. Copies of the Authorization form and a sample blank enrollment letter can be found on the vendor instruction page at: <https://www.myfloridacfo.com/Division/AA/Vendors/>. Questions should be directed to the EFT Section at (850) 413-5517. Once enrolled, EFT shall make invoice payments.

**24. MODIFICATION:** If, in DEO's sole and absolute determination, changes to this Agreement are necessitated by law or otherwise, DEO may at any time, with written notice of all such changes to Grantee, modify this Agreement within its original scope and purpose. Grantee shall be responsible for any due diligence necessary to determine the impact of the modification. Any modification of this Agreement Grantee requested must be in writing and duly signed by all Parties in order to be enforceable.

**25. TIME IS OF THE ESSENCE:** Time is of the essence regarding Grantee's performance of obligations set forth in this Agreement. Any additional deadlines for performance for Grantee's obligation to timely provide deliverables under this Agreement including but not limited to timely submittal of reports, are contained in Exhibit A, SCOPE OF WORK, and shall be strictly construed.

**26. CONSTRUCTION; INTERPRETATION:** The title of and the section and paragraph headings in this Agreement are for convenience of reference only and shall not govern or affect the interpretation of any of the terms or provisions of this Agreement. The term "this Agreement" means this Agreement together with all Exhibits hereto, as the same may from time to time be amended, modified, supplemented, or restated in accordance with the terms hereof. The use in this Agreement of the term "including" and other words of similar import mean "including, without limitation" and where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit, or restrict in any manner the construction of the general statement to which it relates. The word "or" is not exclusive and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole, including any Exhibits, and not to any particular section, subsection, paragraph, subparagraph, or clause contained in this Agreement. The use herein of terms importing the singular shall also include the plural, and vice versa. The reference to an agreement, instrument or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and the reference to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. All references to "\$" shall mean United States dollars. The recitals of this Agreement are incorporated herein by reference and shall apply to the terms and provisions of this Agreement and the Parties. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

**27. TERMINATION:** DEO may terminate this Agreement if:

- a. DEO determines in its sole and absolute discretion that it is in the State's interest to do so;
- b. Grantee breaches any of its representations, warranties, covenants, or other obligations in this Agreement in any material respect;
- c. Grantee or any of its employees or agents commits fraud or willful misconduct in connection with this Agreement, the Proposal, or the transactions contemplated hereby and thereby;
- d. 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 Grantee. DEO shall be the final authority as to the availability of funds. If this Agreement is terminated pursuant to this provision, Grantee will be paid for any work satisfactorily completed prior to notification of termination;
- e. Grantee 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

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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 Grantee or to all or any material part of its property is instituted without the consent of Grantee and Grantee 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;

f. Grantee 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 Grantee or Grantee otherwise becomes insolvent; or

g. A preponderance of evidence that Grantee is not proceeding with the Project, including, without limitation, a decision by Grantee not to proceed with the Project, including upon receipt by DEO of Grantee's written request to terminate this Agreement (a. through g. collectively, the "Termination Events").

h. 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 Grantee, including any payment that has been authorized and not yet disbursed, shall be immediately forfeited and Grantee 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 Grantee. The rights and remedies of DEO in this clause are in addition to any other rights and remedies provided by law or under this Agreement. Grantee shall not furnish any product after it receives the notice of termination, except as DEO specifically instructs Grantee in writing. Grantee shall not be entitled to recover any cancellation charges or lost profits.

**28. DISPUTE RESOLUTION:** Unless otherwise stated in Exhibit A, SCOPE OF WORK, DEO shall decide disputes concerning the performance of this Agreement, and DEO shall serve written notice of same to Grantee. DEO's decision shall be final and conclusive unless within 21 calendar days from the date of receipt, Grantee files with DEO a petition for administrative hearing. DEO's final order on the petition shall be final, subject to any right of Grantee to judicial review pursuant to chapter 120.68, F.S. Exhaustion of administrative remedies is an absolute condition precedent to Grantee's ability to pursue any other form of dispute resolution; provided however, that the Parties may employ the alternative dispute resolution procedures outlined in chapter 120, F.S..

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

a. Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and DEO, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors; provided, however, that Grantee shall not indemnify, defend, and hold harmless the State and DEO, and their officers, agents, and employees for that portion of any loss or damages the negligent act or omission of DEO or the State proximately caused, and provided further nothing herein shall be construed as a waiver of Grantee's sovereign immunity or of the provisions of s. 768.28, F.S.

b. Further, Grantee shall fully indemnify, defend, and hold harmless the State and DEO from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right; provided, however, that the foregoing obligation shall not apply to DEO's misuse or modification of Grantee's products or DEO's operation or use of Grantee's products in a manner not contemplated by this Agreement and provided further nothing herein shall be construed as a waiver of Grantee's sovereign immunity or of the provisions of s. 768.28, F.S. If any product is the subject of an infringement suit, or in Grantee's opinion is likely to become the subject of such a suit, Grantee may, at Grantee's sole expense, procure for DEO the right to continue using the product or to modify it to become non-infringing. If Grantee is not reasonably able to modify or otherwise secure for DEO the right to continue using the product, Grantee shall remove the product and refund DEO the amounts paid in excess of a reasonable fee,



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as determined by DEO in its sole and absolute discretion, for past use. DEO shall not be liable for any royalties.

c. Grantee's obligations under the two immediately preceding paragraphs above, with respect to any legal action are contingent upon the State or DEO giving Grantee (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense, and (3) assistance in defending the action at Grantee's sole expense. Grantee shall not be liable for any cost, expense, or compromise incurred or made by the State or DEO in any legal action without Grantee's prior written consent, which shall not be unreasonably withheld.

d. Grantee expressly assumes any and all liability for payment to its agents, employees, contractors, subcontractors, consultants, and subconsultants, as applicable, and shall indemnify and hold DEO harmless from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to any denial or reduction of any invoice submitted by Grantee to DEO for reimbursement for costs under this Agreement where DEO is imposing the financial consequences stated herein; provided, however, nothing herein shall be construed as a waiver of Grantee's sovereign immunity or of the provisions of s. 768.28, F.S.

e. Grantee shall carry or cause its contractor/subcontractor/ consultant/subconsultant to carry and keep in force Worker's Compensation insurance as required for the State of Florida under the Worker's Compensation Law.

f. Grantee shall include the following indemnification in all contracts with contractors, subcontractors, consultants, and subconsultants, who perform work in connection with this Agreement:

"The contractor/subcontractor/consultant/subconsultant shall indemnify, defend, save and hold harmless the Florida Department of Economic Opportunity and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor/subcontractor/ consultant/subconsultant, its officers, agents or employees."]

**30. LIMITATION OF LIABILITY:** For all claims against Grantee under this Agreement, and regardless of the basis on which the claim is made, Grantee's liability under this Agreement for direct damages shall be limited to the greater of \$100,000 or the dollar amount of this Agreement. This limitation shall not apply to claims arising under the INDEMNIFICATION Section of this Agreement. Unless otherwise specifically enumerated in this Agreement or in the purchase order, no Party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless this Agreement or purchase order requires Grantee to back-up data or records), even if the Party has been advised that such damages are possible. No Party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and DEO may, in addition to other remedies available to them at law or equity and upon notice to Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of Grantee or its affiliates to the State against any payments due Grantee under any Agreement with the State.

**31. PRESERVATION OF REMEDIES; SEVERABILITY; RIGHT TO SET-OFF.** No delay or omission to exercise any right, power, or remedy accruing to either Party upon breach or default by either Party under this Agreement, will impair any such right, power, or remedy of either Party; nor will such delay or omission be construed as a waiver of any breach or default or any similar breach or default. If any term or provision of this Agreement is found to be illegal, invalid, or unenforceable, such term or provision will be deemed stricken, and the remainder of this Agreement will remain in full force and effect. DEO and the State shall have all of its common law, equitable and statutory rights of set-off, including, without limitation, the State's option to withhold for the purposes of set-off any moneys due to Grantee under this Agreement up to any amounts due and owing to DEO with respect to this Agreement, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason. The State shall exercise its set-off rights in

accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State or its representatives.

**32. FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE:** Neither Party shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party's control, or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, if a delay results from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting delay or disruption in the Party's performance obligation under this Agreement. If the delay is excusable under this FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE Section, the delay will not result in any additional charge or cost under this Agreement to either Party. In the case of any delay Grantee believes is excusable under this FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE Section, Grantee shall notify DEO in writing of the delay or potential delay and describe the cause of the delay either: (1) within 10 calendar days after the cause that creates or will create the delay first arose, if Grantee could reasonably foresee that a delay could occur as a result; or (2) within five calendar days after the date Grantee first had reason to believe that a delay could result, if the delay is not reasonably foreseeable. **THE FOREGOING SHALL CONSTITUTE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE Section is a condition precedent to such remedy. DEO, in its sole discretion, will determine if the delay is excusable under this FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE Section and will notify Grantee of its decision in writing. No claim for damages, other than for an extension of time, shall be asserted against DEO. Grantee shall not be entitled to an increase in this Agreement price or payment of any kind from DEO for direct, indirect, consequential, impact, or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE Section, after the causes have ceased to exist, Grantee shall perform at no increased cost, unless DEO determines, in its sole discretion, that the delay will significantly impair the value of this Agreement to DEO or the State, in which case, DEO may do any or all of the following: (1) accept allocated performance or deliveries from Grantee; provided, that Grantee grants preferential treatment to DEO with respect to products or services subjected to allocation; (2) purchase from other sources (without recourse to and by Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from this Agreement quantity; or (3) terminate this Agreement in whole or in part.

**33. ATTORNEYS' FEES; EXPENSES:** Except as set forth otherwise herein, each of the Parties shall pay its own attorneys' fees and costs in connection with the execution and delivery of this Agreement and the transactions contemplated hereby.

**34. ENTIRE AGREEMENT; AMENDMENT; WAIVER.** This Agreement embodies the entire agreement of the Parties with respect to the subject matter hereof. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement; and this Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the Parties. Excluding the specific provisions of Section 24, MODIFICATIONS, hereinabove allowing DEO in DEO's sole and absolute determination to make unilateral changes to this Agreement, no amendment will be effective unless reduced to writing and signed by an authorized officer of Grantee and the authorized agent of DEO. No waiver by a Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver

thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**35. AUTHORITY OF GRANTEE’S SIGNATORY:** Upon execution, Grantee shall return the executed copies of this Agreement in accordance with the instructions DEO provided along with documentation confirming and certifying that the below signatory has authority to bind Grantee to this Agreement as of the date of execution. Such documentation may be in the form of a legal opinion from Grantee’s attorney, Grantee’s Certificate of Status, Grantee’s resolutions specifically authorizing the below signatory to execute this Agreement, Grantee’s certificates of incumbency, and any other reliable documentation demonstrating such authority, which shall be incorporated by reference into this Agreement. DEO may, at its sole and absolute discretion, request additional documentation related to the below signatory’s authority to bind Grantee to this Agreement.

**36. COUNTERPARTS:** This Agreement and amendments to this Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

**37. 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 facsimile with confirmation of receipt or 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.

**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 this Agreement.

<b>Grantee’s Payee:</b>	<b>Grantee’s Agreement Manager:</b>
Orange County Board of County Commissioners	Eric Ushkowitz, Economic Development Administrator
201 S. Rosalind Ave., Fifth Floor	201 S. Rosalind Ave., Fifth Floor
Orlando Florida 32802-1393	Orlando Florida 32802-1393
Telephone: (407) 836-7370	Telephone: (407) 836-7370
	Email: Eric.Ushkowitz@ocfl.net

**DEO’s Agreement Manager:**

Traci Colson
107 E. Madison Street
Tallahassee Florida 32399 MSC-B-047
Telephone: 850-245-
Fax: 850-245-7474
Traci.Colson@deo.myflorida.com

*[The remainder of this page has been intentionally left blank.]*

IN WITNESS WHEREOF, and in consideration of the mutual covenants set forth above and in the exhibits attached hereto and incorporated herein, the Parties' duly-authorized officials sign this Agreement.

DEPARTMENT OF ECONOMIC OPPORTUNITY

ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS

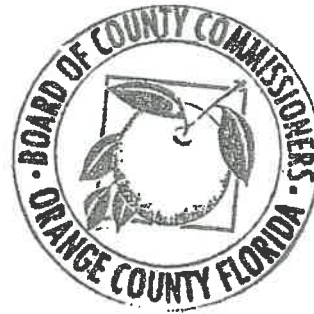
By: [Signature]  
Signature  
Brian McManus Sr  
Ken Lawson  
Title: Executive Director  
Date: 6/28/2019

By: [Signature]  
Signature  
JL  
Jerry L. Demings  
Title: Orange County Mayor  
Date: 18 June 2019

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

OFFICE OF GENERAL COUNSEL  
DEPARTMENT OF ECONOMIC OPPORTUNITY

By: [Signature]  
Approved Date: 6/26/19



ATTEST: Phil Diamond, CPA, County Comptroller  
as Clerk of the Board of County Commissioners.

By: [Signature]  
Print Name: Katie Smith  
Title: JUN 18 2019 Deputy Clerk  
Date: JUN 18 2019

**Exhibit A**  
**SCOPE OF WORK**

**1. PROJECT DESCRIPTION:** Section 288.101, Florida Statutes (“F.S.”), established the Florida Job Growth Grant Fund (the “Program”) to promote economic opportunity by improving public infrastructure and enhancing workforce training. Funds provided pursuant to this Agreement must be used to support State or local public infrastructure projects that promote economic recovery in specific regions of the state, economic diversification, or economic enhancement in a targeted industry.

Grantee has been awarded Sixteen Million Dollars (\$16,000,000.00) for the infrastructure expansion of the Kirkman Road Extension in Orange County, Florida. The Kirkman Road Extension is proposed to be six lanes with two dedicated bus lanes commencing at a new intersection with Universal Boulevard on the south and extending north to Carrier Drive, including a new single point urban interchange at Sand Lake Road and Kirkman Road (the “Kirkman Road Extension”). The Kirkman Road Extension will allow for another transportation artery in the congested corridor that feeds the Orange County Convention Center, Lockheed Martin, the UCF Rosen School of Hospitality and the future development of approximately 758 developable acres owned by Universal City Development Partners, Ltd. The Orange County Convention Center has an economic impact of \$2.3B to the Orange County area. Funding under the Agreement will be used for the construction of that portion of the Kirkman Road Extension that lies within the State of Florida Department of Transportation right-of-way jurisdictional boundary (the “Project”).

**2. GRANTEE’S RESPONSIBILITIES:**

**a. COMMENCEMENT AND TIMELINE.**

**1)** The Parties’ execution of this Agreement shall be deemed a Notice to Proceed to Grantee for the design phase of the Project which is further delineated in Paragraph b. immediately below.

DEO shall not reimburse Grantee for any work performed prior to the Effective Date unless DEO expressly agrees to do so in a separate writing.

**2)** Prior to commencing the construction work described in this Agreement, Grantee shall:

- Provide to DEO’s Agreement Manager one copy of the final signed and sealed design plans, signed and sealed specifications, and final bid documents; and

- Request from DEO’s Agreement Manager a Notice to Proceed.

DEO shall not reimburse Grantee for any construction work performed prior to the issuance of the Notice to Proceed unless DEO expressly agrees to do so in a separate writing.

**3)** Work on the Project shall commence on or before June 1, 2020 (the “Commencement Date”), and shall be completed on or before the fifth anniversary of the Effective Date (the “Completion Date”), unless terminated earlier. DEO shall have the immediate right to terminate this Agreement if Grantee fails to commence the construction of the Project by the Commencement Date or complete work by the Expiration Date and, in each case, provide evidence of the same to DEO upon DEO’s request to DEO’s satisfaction. If construction in connection with the Project does not commence within two (2) years of the date of the Effective Date, DEO may immediately terminate this Agreement.

**4)** Notwithstanding anything in this Agreement to the contrary, any funds not obligated under this Agreement by the fifth (5<sup>th</sup>) anniversary of the Effective Date shall be forfeited and shall revert back to DEO.

**b. DESIGN, PERMITS, APPROVALS, AND CONSTRUCTION STANDARDS.**

**1)** Grantee shall undertake the design, construction, and Consultant Construction Engineering Inspection (“CCEI”) of the Project in accordance with all applicable federal, state and local statutes, rules and regulations, including any other applicable standards and specifications. A professional engineer, registered in Florida, shall provide the certification that all design and construction for the Project meets the minimum construction standards established by Grantee.

**2)** Grantee shall certify to DEO that Grantee’s design consultant and/or construction contractor has secured the necessary permits, including but not limited to, building permits. Grantee shall

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provide to DEO certification and a copy of appropriate documentation substantiating that all required right-of-way necessary for the Project has either been obtained or is under a binding agreement to be conveyed to the applicable government agency, either in fee simple or by easement, as applicable. If Grantee fails to provide each required certification to DEO on or before the Commencement Date, DEO may, in its sole and absolute discretion, terminate this Agreement.

- 3) Grantee shall provide to DEO its written notification of either its intent to:
  - a) Award the construction of the Project to a Florida Department of Transportation ("FDOT") licensed contractor, competitively awarded from prequalified vendors in accordance with any applicable local, state and federal statutes, laws, rules, and regulations. Grantee shall then submit a copy of the bid tally sheet(s) and awarded bid contract; or
  - b) Construct the Project utilizing existing Grantee employees, whose qualifications have been reviewed and approved by DEO, if Grantee can complete said Project within the time frame delineated in Section 1 of this Agreement.
- 4) Grantee is responsible for the preparation of all design plans for the Project. Grantee shall hire a qualified consultant for the design phase of the Project using Grantee's normal procurement procedures to perform the design services for the Project.
- 5) Grantee shall hire a qualified CCEI to perform construction oversight including the obligation to assure that all verification testing is performed in accordance with, when applicable, the 2014 Standard Specifications for Road and Bridge Construction, as amended from time to time. DEO shall have the right, but not the obligation, to perform independent assurance testing during construction of the Project. The CCEI firm may not be the same firm as that of the Engineer of Record for the Project.
- 6) Grantee shall require Grantee's contractor to post a payment and performance bond in accordance with Section 337.18(1), Florida Statutes.
- 7) Grantee shall carry or require its contractor/subcontractor/consultant/subconsultant to carry and keep in force during the period of this Agreement a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$100,000 per person and \$300,000 for each occurrence, and property damage insurance of at least \$100,000 for each occurrence, for the services to be rendered in accordance with this Agreement. In addition to any other forms of insurance or bonds required under the terms of this Agreement, when it includes construction within the limits of a railroad right-of-way, Grantee must provide or cause its contractor to provide insurance coverage in accordance with Section 7-13 of DEO's Standard Specifications for Road and Bridge Construction (2014), as amended.
- 8) Grantee shall be responsible for ensuring that the construction work under this Agreement is performed in accordance with the approved construction documents, and that it meets any other applicable standards.
- 9) Grantee shall expend funds provided pursuant to this Agreement in a timely manner and solely for the purpose of the approved Project. Grantee shall not use the funds for the purchase or planting of any landscape, mitigation, the installation or relocation of utilities, for any legal action against the State or DEO, or costs associated with preparation of the Proposal.
- 10) Upon completion of the work authorized by this Agreement, Grantee shall notify 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 F. The certification shall state that work has been constructed in compliance with the Project design 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. All deviations shall have had prior written approval from DEO in advance of the deviation being constructed.
- 11) Upon completion of the Project, Grantee or other applicable government entity or agency, its assignee or designee shall be responsible for the perpetual maintenance of the facilities on its system that are constructed under this Agreement as agreed. However, in no way shall this provision

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prohibit Grantee from entering into maintenance agreement with a third party for maintenance of portions of the right of way. The terms of this provision shall survive the termination of this Agreement and may be enforced by DEO.

- c. **RETURN ON INVESTMENT.** Grantee's failure to meet the Return on Investment criteria set forth herein will result in the additional financial consequences set forth in Section 5, below.
- 1) Grantee shall certify that at least 2,534 New Jobs have been created as a result of the Kirkman Road Extension, calculated as set forth in Section 13 of this Scope of Work, after the Effective Date and on or before December 31<sup>st</sup> of the year on which the ten (10) year anniversary of the Completion Date falls (such date, the "Job Creation Date").
  - 2) Grantee shall certify that no Retained Jobs have been retained as a result of the Project, calculated as set forth in Section 13 of this Scope of Work
- d. Grantee shall complete the infrastructure expansion for the Project in Orange County, Florida. The Project may include some or all of the following tasks.
- i. General Conditions:
    - a. Contractor mobilization
    - b. Contractor Bonds and Insurance
    - c. Stakeout of construction zone and construction elements
    - d. Geotechnical testing
    - e. Environmental, Threatened and Endangered Species Investigations and Permitting
    - f. Stormwater monitoring
    - g. Maintenance of traffic/traffic control
    - h. Special detour (Temporary pavement)
  - ii. Sedimentation and Erosion Control
    - a. Construction/installation of sedimentation and erosion control measures
    - b. Silt fencing, inlet protection
    - c. Soil stabilization activities including seed and mulch
    - d. Mowing and litter removal
    - e. NPDES Permitting and Monitoring
  - iii. Earthwork:
    - a. Clearing, Grubbing, Discing, Demolition and Grading
    - b. Demolition of Existing Facilities
    - c. Root raking
    - d. Dewatering
    - e. Unsuitable Soil Removal and Disposal
    - f. General Cut and Fill
    - g. Import Fill/Backfill
    - h. Special Backfill Materials
    - i. Temporary Grassing
    - j. Surcharge Fill
  - iv. Stormwater: Design, engineering, permitting and construction of the stormwater conveyances and appurtenances within the project area, including, but not limited to:
    - a. Dewatering Systems
    - b. Excavation of Ponds and Ditches
    - c. Impermeable Pond Liners
    - d. Pond and Ditch Sodding and/or Armoring
    - e. Sheet Piling
    - f. Piping, Culverts and Conveyance Systems, Temporary and Permanent
    - g. Structures, Inlets, Manholes, End Walls, End Sections, Closures, Grates, Specials, etc.
    - h. Connections or Modifications to Existing Structures or Systems
    - i. Underdrain Systems

- ii. Utilities:
  - a. Relocation and/or burial of existing utilities (gas, water, electric and sewer) within the right-of-way
  - b. Jack and bore for utilities
  - c. Furnish and installation of conduits for future utilities
  - d. Adjusting the electrical poles to provide required clearances
  - e. Testing and inspection of all utility improvements
  - f. Roadway and Accent Lighting
- iii. Traffic Operations
  - a. Traffic Signal Interconnection Systems
  - b. Steel Mast Arms (Furnish & Install)
  - c. Intelligent transportation system
  - d. Dynamic Message Signs
  - e. Pedestrian Signal (Furnish & Install)
  - f. Sign Panel and Sign structure
  - g. Lighting Pole & Systems (Furnish & Install) (to Orange County Standards, or FDOT standards, as applicable)
  - h. Load Center (Furnish & Install)
- iv. Roadway
  - a. Coordination, planning, design, permitting, construction, inspection, acceptance and transfer of a Single Point Urban Interchange (SPUI) at Sand Lake Road and Kirkman Road to FDOT standard and specifications.
  - b. Rough and Fine Grading of Right-of-Way and Preparation of Subgrades
  - c. Curb & Gutter, Vertical Curb, Valley Curb, Sidewalks, Trails, and Other Concrete Work and Masonry Forming, Framing, and Adjustment
  - d. Bridges, Tunnels, Mechanically Stabilized Earth (MSE) Walls, Gravity and Retaining Walls, and all types of Structural Steel
  - e. Roadway Base and Pavement Systems, including Asphalt, Paving, and Concrete Paving
  - f. Specialty Paving, Brick Pavers, and Treatments
  - g. Grouting, Lining, Patching, Sealing and General Repairs
  - h. Pavement Marking, Striping, Regulatory and Wayfinding Signage
  - i. Guardrail, Handrail, Railings, Right-of-Way and Other Permanent Fencing / Protection
  - j. Roadway Sod, Landscape, Irrigation and Fencing
  - k. FDOT final acceptance
- v. Other:
  - a. Wetland or other Jurisdictional Mitigation
  - b. Site Clean-up and Restoration
  - c. As-Built Surveys and Right-of-Way Mapping
  - d. Construction Engineering and Inspection (C.E.I.)

**3. DEO’S RESPONSIBILITIES:** DEO shall monitor progress, review reports, conduct site visits, as DEO determines necessary at DEO’s sole and absolute discretion, and process payments to Grantee.

**4. DELIVERABLES:** Grantee shall provide the following services as specified:

<b>Deliverable No. 1: Construction</b>		
<b>Tasks</b>	<b>Minimum Level of Service</b>	<b>Financial Consequences</b>
Grantee shall complete the construction of the Project as specified in section 2.a., 2.b., and 2.d. of the Scope of Work	Grantee may be allowed reimbursement upon 10%, 20%, 30%, 40%, 50%, 60%, 70%, 80%, 90%, and 100% completion of the deliverable as	Failure to meet the minimum level of service shall result in non-payment.



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	evidenced by submission of the following:  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 the Scope of Work.	DEO shall withhold 10% of the total Agreement amount until Grantee provides DEO the FDOT final acceptance as evidence that the Project is 100% complete.
<b>TOTAL AMOUNT NOT TO EXCEED \$16,000,000.00</b>		

**5. Additional Financial Consequences:** The following financial consequences apply under the following circumstances:

- a. **RETURN ON INVESTMENT.** If Grantee does not satisfy the requirements set forth in Section 2(c) of this Scope of Work, then DEO may demand, and Grantee shall repay to the State, a prorated amount of one hundred percent (100%) of the total award under this Agreement. If Grantee 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 Grantee shall only be required to repay out of Grantee’s funds the difference thereon. DEO has the right, in its sole discretion, to demand repayment of all funds provided to Grantee under this Agreement if Grantee has not met all 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, Grantee shall 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 Grantee fails to remit such funds to DEO within twenty-four (24) months of such demand, then the amounts due from Grantee 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 based on the number of days elapsed after the 24th month and until the day Grantee makes repayment. Notwithstanding anything in Sections 4 and 5 of this Scope of Work to the contrary, in no event shall the aggregate sanctions imposed pursuant to Sections 4 and 5 of this Scope of Work exceed the total award under this Agreement plus interest, if any, as determined pursuant to this Section 5.
  
- b. Notwithstanding anything in this Scope of Work to the contrary, subject to the terms and conditions of this Section 5(c), DEO hereby grants to Grantee the one-time right, privilege, and option (the “Option”) to extend the Expiration Date, the Completion Date and the Job Creation Date by twelve (12) months. In the event that Grantee exercises the Option, within ten (10) business days of exercising the Option, Grantee shall pay to DEO a sanction equal to ten percent (10%) of the total award under this Agreement, unless otherwise approved by DEO in writing, in which case the sanction may be waived. The Option shall be exercisable in whole but not in part at any time from and after the Effective Date. Grantee may exercise the Option by delivering to DEO written notice of Grantee’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.

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- 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 of this Scope of Work, the actual damages suffered by DEO 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 Sections 4 and 5 of this Scope of Work. Each of the Parties further acknowledges and agrees that the liquidated damages provided in Sections 4 and 5 of this Scope of Work bear 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 will suffer or incur as a result of any such breach, and is not a penalty. Grantee 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 Sections 4 and 5 of this Scope of Work are an integral part of the transactions contemplated by this Agreement and that without these provisions DEO would not enter into this Agreement.

### 6. REPORTING:

- a. Quarterly: Grantee shall report on a quarterly basis all progress relating to the tasks identified in Section 4. 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 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, Grantee shall provide copies of all paid invoices to document completed work.
- c. Follow-up Reports: By no later than January 31<sup>st</sup> of the year immediately following the year on which the ten (10) year anniversary of the Completion Date falls, Grantee 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.

**7. INVOICE SUBMITTAL AND PAYMENT SCHEDULE:** DEO shall pay Grantee in accordance with the following schedule in the amount identified per deliverable in Section 4 above. The deliverable amount specified does not establish the value of the deliverable. In accordance with the Funding Requirements of s. 215.971(1), F.S. and Section 5 of this Agreement, Grantee and its subcontractors may only expend funding under this Agreement for allowable costs resulting from obligations incurred during this Agreement. 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 ([http://www.myfloridacfo.com/aadir/reference\\_guide/](http://www.myfloridacfo.com/aadir/reference_guide/)).

- a. Grantee shall provide one invoice per quarter for all services rendered during the applicable period of time.
- b. The following documents shall be submitted with the itemized invoice:
  - 1) A cover letter signed by Grantee's Agreement Manager certifying that the costs being claimed in the invoice package: (1) are specifically for the project represented to the State in the budget appropriation; (2) are for one or more of the components as stated in Section 4, DELIVERABLES, of this SCOPE OF WORK; (3) have been paid; and (4) were incurred during this Agreement.
  - 2) Grantee's invoices shall include the date, period in which work was performed, amount of reimbursement, and work completed to date;

**DEO Agreement No.: G0053**

- 3) A certification by a licensed engineer using AIA forms G702 and G703, or their substantive equivalents, certifying that the project, or a quantifiable portion of the project, is complete.
  - 4) Photographs of the project in progress and completed work;
  - 5) A copy of all supporting documentation for vendor payments;
  - 6) A copy of the cancelled check(s), or other evidence of electronic payment, specific to the Project; and
  - 7) A copy of the Grantee's bank statement for the account created pursuant to Section 11 (g) of the Agreement that includes the cancelled check.
- c. The State may require any other information from Grantee that the State deems necessary to verify that the services have been rendered under this Agreement.
- d. All documentation necessary to support payment requests must be submitted with Grantee's invoice for DEO's review.

**8. FINANCIAL CONSEQUENCES FOR FAILURE TO TIMELY AND SATISFACTORILY PERFORM:** Failure to complete the deliverables and/or tasks in accordance with the requirements of this Agreement, and in particular, as specified above in Section 4, DELIVERABLES, will result in DEO's assessment of the specified financial consequences. If appropriate, should the Parties agree in writing to a corrective action plan in lieu of the immediate imposition of financial consequences, the plan shall specify additional financial consequences to be applied after the effective date of the corrective action plan. This provision for financial consequences shall in no manner affect DEO's rights under this Agreement, at law, or in equity, including but not limited to, DEO's right to terminate this Agreement as provided elsewhere in this Agreement. Grantee's payment of imposed financial consequences shall be in accordance with applicable provisions of this Agreement, and this Scope of Work.

**9. NOTIFICATION OF INSTANCES OF FRAUD:** Upon discovery, Grantee shall report all known or suspected instances of Grantee, or Grantee's agents, contractors, or employees, operational fraud or criminal activities to DEO's Agreement Manager in writing within twenty-four (24) chronological hours.

**10. GRANTEE'S RESPONSIBILITIES UPON TERMINATION:** If DEO issues a Notice of Termination to Grantee, except as otherwise specified by DEO in that notice, Grantee shall: (1) stop work under this Agreement on the date and to the extent specified in the notice; (2) complete performance of such part of the work as shall not have been terminated by DEO; (3) take such action as may be necessary, or as DEO may specify, to protect and preserve any property which is in the possession of Grantee and in which DEO has or may acquire an interest; and (4) upon the effective date of termination of this Agreement, Grantee shall transfer, assign, and make available to the DEO all property and materials belonging to DEO. No extra compensation will be paid to Grantee for its services in connection with such transfer or assignment.

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

**12. DISPOSITION OF PROJECT PROPERTY:**

## DEO Agreement No.: G0053

- a. Pursuant to the NONEXPENDABLE PROPERTY Section of this Agreement, upon termination of this Agreement, Grantee is authorized to retain ownership of any nonexpendable property purchased under this Agreement; however, Grantee 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 Grantee, Grantee 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, Grantee 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 Grantee 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.
- b. Grantee shall provide advance written notification to DEO, if during the five-year period following the termination of this Agreement, Grantee proposes to take any action that will impact Grantee's ownership of this Agreement property or modify the use of this Agreement property from the purposes authorized herein. If either of these situations arise, DEO shall have the right, in DEO's sole discretion, to demand that Grantee reimburse DEO for part or all the funding provided to Grantee under this Agreement.
- c. Upon termination of this Agreement, Grantee shall be authorized to retain ownership of the improvements to real property set forth in this Agreement in accordance with the following:
  - 1) Grantee is authorized to retain ownership of the improvements to real property so long as: (1) Grantee is not sold, merged or acquired by an unaffiliated third party; (2) the real property subject to the improvements is owned by Grantee; and (3) the real property subject to the improvements is used for the purposes provided in this Agreement.
  - 2) If within five years of the termination of this Agreement, Grantee is unable to satisfy the requirements stated above, Grantee shall notify DEO in writing of the circumstances that will result in the deficiency upon learning of it, but no later than thirty (30) calendar days prior to the deficiency occurring. In such event, DEO shall have the right, within its sole discretion, to demand reimbursement of part or all the funding provided to Grantee under this Agreement.

### 13. 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.
  - 1) 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).
  - 2) 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 Grantee.

## DEO Agreement No.: G0053

- 3) Leased Employees – Leased employees may be counted toward Grantee’s jobs requirement if they are engaged to meet an on-going labor requirement directly resulting from the Project. Independent Contractors meeting the criteria of leased employees may also be counted towards Grantee’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.
- 1) 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.
  - 2) 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 Grantee uses pay periods of less than one month, total all 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.
  - 3) 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 Scope of Work 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.

- End of Exhibit A (SCOPE OF WORK) -

**Exhibit B****AUDIT REQUIREMENTS**

The administration of resources awarded by DEO to the recipient (herein otherwise referred to as “Grantee”) may be subject to audits and/or monitoring by DEO as described in this Exhibit B.

**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. If 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. If 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. Attachment 1 to this 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. If 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. If 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,

### DEO Agreement No.: G0053

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. Attachment 1 to this exhibit 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 non-state entity for Federal program matching requirements.

2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$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. If 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 non-state 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 Grantee 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](mailto:Audit@deo.myflorida.com)

or

Paper (hard copy):  
Department of 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 10<sup>th</sup> 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](mailto:Audit@deo.myflorida.com)

or

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

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

- A. DEO at each of the following addresses:

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

or

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

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

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

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

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

- A. DEO at each of the following addresses:

N/A

5. Any reports, management letter, or other information required to be submitted to DEO pursuant to this agreement shall be submitted timely in accordance with 2 CFR Part 200, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (non-profit 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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Attachment 1 to Exhibit B

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

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

State Project *DEPARTMENT OF ECONOMIC OPPORTUNITY, CSFA NUMBER 40.043,  
ECONOMIC DEVELOPMENT TAX REFUND, TAX CREDIT, AND GRANT PROGRAM -  
\$16,000,000.00*

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

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

*NOTE: List applicable compliance requirements*

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

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Exhibit C

AUDIT COMPLIANCE CERTIFICATION

Grantee Name: \_\_\_\_\_
FEIN: \_\_\_\_\_ Grantee's Fiscal Year: \_\_\_\_\_
Contact Person Name and Phone Number: \_\_\_\_\_
Contact Person Email Address: \_\_\_\_\_

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

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

Did Grantee expend \$750,000 or more of state financial assistance (from DEO and all other sources of state financial assistance combined) during its fiscal year? \_\_\_ Yes \_\_\_ No

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

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

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

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

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

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

Signature of Authorized Representative

Date

Printed Name of Authorized Representative

Title of Authorized Representative

**EXHIBIT D**

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**EXHIBIT E**

**GRANTEE'S RESOLUTION**

(See the attached two page Resolution)

**RESOLUTION**  
*of the*  
**ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS**  
*regarding the*  
**FLORIDA JOB GROWTH INFRASTRUCTURE  
GRANT AGREEMENT**  
*with the*  
**STATE OF FLORIDA DEPARTMENT OF  
ECONOMIC OPPORTUNITY**  
*for the*  
**KIRKMAN ROAD EXTENSION PROJECT**

Resolution No. 2019- M-24

**WHEREAS**, today, the Board of County Commissioners is approving a Florida Job Growth Infrastructure Grant Agreement with the State of Florida Department of Economic Opportunity ("DEO") for the Kirkman Road Extension Project ("Grant Agreement"); and

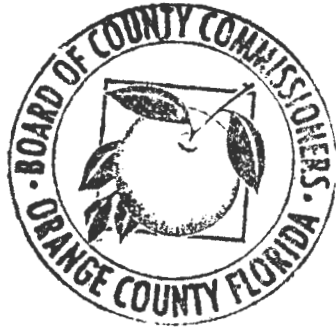
**WHEREAS**, the Grant Agreement requires that Orange County, the Grantee, show that it is authorizing its officials to execute the Grant Agreement on Orange County's behalf by Resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE ORANGE COUNTY  
BOARD OF COUNTY COMMISSIONERS:**

***Section 1. Authorization for County Mayor to Execute Grant Agreement.*** The County Mayor is hereby authorized to execute the above described Grant Agreement with the DEO (and any subsequent amendments) on behalf of the County.

**Section 2. Effective date.** This Resolution shall take effect on the date of its adoption.

ADOPTED this 18<sup>th</sup> day of June, 2019.



ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

By: *Jerry L. Demings*  
for Jerry L. Demings, County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller  
as Clerk of the Board of County Commissioners

By: *Katie Smith*  
Deputy Clerk

Print Name:           **Katie Smith**

EXHIBIT F

NOTICE OF COMPLETION AND ENGINEER'S CERTIFICATION OF COMPLIANCE

NOTICE OF COMPLETION

FLORIDA JOB GROWTH GRANT FUND AGREEMENT  
Between  
THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY  
and \_\_\_\_\_

PROJECT DESCRIPTION: \_\_\_\_\_

DEO Agreement No. \_\_\_\_\_

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ENGINEER'S CERTIFICATION OF COMPLIANCE

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

By: \_\_\_\_\_, P.E.

SEAL: Name: \_\_\_\_\_

Date: \_\_\_\_\_