

**ADDENDUM NO. 1  
TO THE AGREEMENT BETWEEN THE FLAGLER  
COUNTY BOARD OF COUNTY COMMISSIONERS AND  
AJAX BUILDING COMPANY, LLC, FOR THE FLAGLER  
COUNTY LIBRARY JOINT USE FACILITY**

THIS ADDENDUM NO. 1 ("Addendum") is entered into by the Flagler County Board of County Commissioners ("County") and the Ajax Building Company, LLC ("Contractor"), effective as of the date of the last party to execute below.

**WHEREAS**, the County and Contractor entered into that certain Construction Manager At Risk Contract 22-016P for the construction of the Flagler County Library Joint Use Facility located on Commerce Parkway in Bunnell, Florida, dated July 11, 2022 (the facility shall be referred to herein as the "NEXUS Center"; the contract shall be referred to herein as the "Agreement"); and

**WHEREAS**, subsequent to entering into the Agreement, the County secured a grant agreement from the Florida Department of Commerce ("FDOC") to help fund the construction of the NEXUS Center, which grant agreement requires the Contractor to indemnify FDOC; and

**WHEREAS**, the Contractor is willing to indemnify FDOC and execute the certification, attached hereto as Exhibit A, as required by the County's grant agreement contingent upon the County counter-indemnifying the Contractor on the terms specified herein.

**NOW THEREFORE**, in consideration of the mutual covenants herein, the County and Contractor agree to the supplement the Agreement as follows:

**SECTION ONE. RECITALS.** The foregoing recitals are incorporated as if set forth fully herein.

**SECTION TWO. ADDENDUM.** Addendum to general terms and conditions of the Contract 22-016p.

Article 13.1 (3) is hereby added to the Agreement as follows:

- (3) On July 11, 2022, Ajax Building Company LLC (Ajax) entered into a construction agreement (Agreement) with Flagler County Board of County Commissioners (County) to build the NEXUS Center in Flagler County Florida. Thereafter, on or about July 22, 2024, County entered into a funding agreement with State of Florida Department of Commerce (FDOC), specifically Commerce

Agreement No. BB205 (Funding Agreement), by the terms of which County undertook to secure indemnification of FDOC from all contractors performing work in connection with the Funding Agreement. County requested that Ajax execute an indemnification agreement indemnifying FDOC, which Ajax agreed to do in return for County's counter indemnity as herein contained.

Now therefore, for and in consideration of the covenants and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County, intending to be legally bound hereby, by and through its undersigned authorized agent, does hereby agree as follows:

To the fullest extent permitted by law, the County shall indemnify, defend and hold Ajax, its officers, directors, employees and agents, harmless of and from any and/or all liability, damage, loss, claim, demand, action, damages and expenses (including reasonable legal fees and disbursements) sustained or incurred by Ajax arising out of or in connection with Ajax's execution of the indemnification agreement in favor of FDOC, for the following provisions of the County's Capital Projects Fund Grant Agreement with the Florida Department of Commerce, No.: BB205, dated February 2, 2024. Notwithstanding the foregoing, the County's maximum financial liability under this indemnity shall be capped at, and in no event exceed, \$1,250,000.

- List of Provisions
  - 14 – Assignment of Subcontracts
    - 14.c: Background check of subcontractors
    - 14.f: MSDVB reporting and participation
  - 17 – Confidentiality and Safeguarding Information
    - 17.b & 17.c: Confidentiality requirements
  - 20 – Independent Contractor Status
    - 20.g: Reemployment Assistance contribution and reporting requirements in exceeding that required by Chapter 443 F.S.
  - Exhibit B – Capital Projects Fund Requirements for Contract Terms and Conditions
    - 1: Requiring any sub-agreements to include requirements
    - 8: Compliance with Contract Work Hours provisions
  - Attachment 1 to Exhibit B – Appendix II to Part 200
    - (C) – Equal Employment Opportunity contract clauses
    - (D).1: Prevailing wage requirements
    - (D). 2: Licensure requirements

**SECTION THREE. ADDENDUM.** The contract provisions for non-federal entity contracts under federal awards, attached hereto as Exhibit B, are incorporated into and made part of the Agreement.

**SECTION FOUR.** Upon approval and execution of this Addendum, the Contractor shall execute and furnish the County certifications in the form attached hereto as Exhibits A and B.

**SECTION FIVE.** Except as expressly supplemented herein, all other terms and conditions of the Contract are unmodified and remain in full force and effect.

**IN WITNESS WHEREOF,** the Parties have caused this Amendment to be executed by their duly authorized representatives on the dates indicated below.

**FLAGLER COUNTY BOARD OF  
COUNTY COMMISSIONERS**

ATTEST:

\_\_\_\_\_  
Tom Bexley, Clerk of the Circuit Court

\_\_\_\_\_  
Andrew S. Dance, Chair

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

RECOMMENDED BY:

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Hamid Tabassian, PE, County Engineer

\_\_\_\_\_  
Sean S. Moylan, Deputy County Attorney

[Signature Page to Follow.]

**AJAX BUILDING CONSTRUCTION, LLC**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name, Title

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

WITNESS:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

[Exhibits A and B to Follow.]

## EXHIBIT A

### **Grant Agreement Article 27.f.**

The contractor/subcontractor/consultant/subconsultant shall indemnify, defend, save and hold harmless the Florida Department of Commerce 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.

Contractor Name: Ajax Building Company, LLC

Contract Number: 22-016P

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Signature of Contractor's Authorized Official

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Name and Title of Contractor's Authorized Official

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Date

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Signature of Subrecipient's Authorized Official

Andrew S. Dance, Chair of the Flagler County Commission

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Name and Title of Subrecipient's Authorized Official

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Date

## EXHIBIT B

### ***Certification Regarding Contract Provisions for Non-Federal Entity Contracts Under Federal Awards***

#### **Appendix II of 2 CFR Part 200**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- (A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- (D) Labor. For projects with a total cost greater than \$10 million including all funding:
  - 1. The subrecipient may provide a certification that all laborers and mechanics employed by the contractors and subcontractors working on this project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (Davis-Bacon Act). If such certification is not provided, the subrecipient must provide a project employment and local impact report detailing:
    - a. The number of contractors and sub-contractors working on the project;
    - b. The number of employees on the project hired directly and hired through third party;
    - c. The wages and benefits of workers on the project by classification; and
    - d. Whether those wages are at the rates less than those prevailing,
  - 2. The subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the subrecipient does not provide such certification, the subrecipient must provide a project workforce continuity plan, detailing:
    - a. How the subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project, including a description of any required professional certifications and/or in-house training;
    - b. How the subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project;

- c. How the subrecipient will provide a safe and healthy workplace that avoids delays and costs
  - d. associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g., OSHA 10, OSHA 30);
  - e. Whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and
  - f. Whether the project has completed a project labor agreement.
  - g. Whether the project prioritizes local hires.
  - h. Whether the project has a Community Benefit Agreement, with a description of any such agreement.
- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity more than \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked more than 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- (G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) Procurement of recovered materials.

1. A recipient or subrecipient that is a State agency or agency of a political subdivision of a State and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
2. The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products.

(K) Prohibition on certain telecommunications and video surveillance services or equipment.

1. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
  - a. Procure or obtain;
  - b. Extend or renew a contract to procure or obtain; or
  - c. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services.
2. As described in section 889 of Public Law 115-232, "covered telecommunications equipment or services" means any of the following:
  - a. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
  - b. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
  - c. Telecommunications or video surveillance services provided by such entities or using such equipment;
  - d. Telecommunications or video surveillance equipment or services produced or provided by an



entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country;

3. For the purposes of this section, “covered telecommunications equipment or services” also include systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
4. In implementing the prohibition under section 889 of Public Law 115-232, heads of executive agencies administering loan, grant, or subsidy programs must prioritize available funding and technical support to assist affected businesses, institutions, and organizations as is reasonably necessary for those affected entities to transition from covered telecommunications equipment or services, to procure replacement equipment or services, and to ensure that communications service to users and customers is sustained.
5. When the recipient or subrecipient accepts a loan or grant, it is certifying that it will comply with the prohibition on covered telecommunications equipment and services in this section. The recipient or subrecipient is not required to certify that funds will not be expended on covered telecommunications equipment or services beyond the certification provided upon accepting the loan or grant and those provided upon submitting payment requests and financial reports.
6. For additional information, see section 889 of Public Law 115-232 and § 200.471.

(L) Domestic preferences for procurements.

1. The recipient or subrecipient should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, contracts, and purchase orders under Federal awards.
2. For purposes of this section:
  - a. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - b. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
3. Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

**Grant Agreement Article 27.f.**

The contractor/subcontractor/consultant/subconsultant shall indemnify, defend, save and hold harmless the Florida Department of Commerce 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.

Contractor Name: \_\_\_\_\_

Contract Number: \_\_\_\_\_

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Subrecipient's Authorized Official

\_\_\_\_\_  
Name and Title of Subrecipient's Authorized Official

\_\_\_\_\_  
Date

Commerce Agreement No.: BB205

**FLORIDA CAPITAL PROJECTS FUND GRANT AGREEMENT  
STATE OF FLORIDA  
DEPARTMENT OF COMMERCE**

**THIS FLORIDA CAPITAL PROJECTS FUND PROGRAM GRANT AGREEMENT** (this "Agreement") is made and entered into by and between the State of Florida, Department of Commerce, and Flagler County Board of County Commissioners ("Subrecipient"). The Florida Department of Commerce and Subrecipient are sometimes referred to herein individually as a "Party" and collectively as "the Parties."

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

**WHEREAS**, pursuant to Public Law 117-2 American Rescue Plan Act of 2021 ("ARPA"), Section 604 of the Social Security Act, as amended by Section 9901 of the American Rescue Plan Act of 2021, the U.S. Department of the Treasury (hereinafter referred to as "Treasury") has awarded Capital Projects Fund ("CPF") funds to the State of Florida (Federal Award Identification Number CPFFN0205, Assistance Listing Number 21.029) for support in responding to the economic and public health impacts of the pandemic to contain impacts on their communities, residents, and businesses, and consistent with the Appropriations Act;

**WHEREAS**, pursuant to section 187 of the Florida 2023-2024 General Appropriations Act, the Florida Legislature reappropriated nonrecurring funds to the Florida Department of Commerce for the Capital Projects Fund authorized under section 165 of Chapter 2022-156, Laws of Florida, to award grants for the expansion of broadband internet service to unserved and underserved areas of the state;

**WHEREAS**, on July 1, 2023, the Department of Economic Opportunity was renamed to the Florida Department of Commerce (hereinafter referred to as "Commerce")

**WHEREAS**, the Office of Broadband within Commerce accepted applications for proposed projects to construct/rehabilitate Multi-purpose Community Facilities to enable work, education, and health monitoring in a manner consistent with the provisions provided in the American Rescue Plan Act of 2021, Capital Projects Fund.;

**WHEREAS**, Subrecipient is an eligible applicant that submitted an application for CPF funding for a proposed Multi-purpose Community Facility project and was awarded funding;

**WHEREAS**, based on Subrecipient's submitted project proposal and any amendments and attachments thereto (collectively, the "Project"), Commerce has determined that the Project described in **Exhibit A, Scope of Work**, attached and incorporated in this Agreement, is necessary for the construction and /or rehabilitation of a Multi-purpose Community Facility which directly enables work, education and health monitoring;

**WHEREAS** funds made available for use by the Subrecipient under this Agreement constitute a subaward of the Federal award, the use of which must be in accordance with requirements imposed by Federal statutes, regulations, and the terms and conditions of Florida's Federal award;

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

- o Exhibit A: Scope of Work
- o Exhibit B: Capital Projects Fund Requirements for Contract Terms and Conditions
  - o Attachment 1 to Exhibit B: Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

## Commerce Agreement No.: BB205

- Exhibit C: Monitoring Requirements
- ⊖ Exhibit D: Notice of Completion and Engineer's Certificate of Compliance
- ⊖ Exhibit E: Audit Requirements

**NOW, THEREFORE**, for and in consideration of the 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 to perform the duties described herein in this Agreement as follows:

### AGREEMENT

The foregoing whereas clauses are hereby incorporated into this Agreement and made a part hereof.

**1. TERM.** This Agreement is effective as of February 2, 2024, the date on the Commerce Letter of Intent to Award (the "Effective Date") and shall continue until the Expiration Date. The Expiration Date is the earlier to occur of: (a) December 31, 2026, unless an extension of the time period is requested by Subrecipient and granted in writing by Commerce prior to the expiration of this Agreement; or (b) the date on which this Agreement is terminated pursuant to Section 25. Expiration of this Agreement will be considered termination of the Project. Notwithstanding the foregoing, in the event that Commerce determines that Subrecipient has fully satisfied its obligations prior to December 31, 2026, or other duly extended date, then the "Expiration Date" shall be the date of such determination.

**2. TYPE OF AGREEMENT:** This Agreement is a Cost Reimbursement agreement.

**3. FUNDING:** The total amount of awarded funds under this agreement shall not exceed the total amount of \$4,000,000.00 (*Four Million Dollars and Zero Cents*). Travel expenses are not authorized under this Agreement. Commerce shall not pay Subrecipient's costs related to this Agreement incurred outside of the Agreement Period. In accordance with section 287.0582, F.S., the State of Florida and Commerce's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. Commerce shall have final unchallengeable 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 Commerce. Subrecipient shall not expend Award Funds to pay any costs incurred in connection with any defense against any claim or appeal of the State of Florida or any agency or instrumentality thereof (including Commerce); or to pay any costs incurred in connection with the prosecution of any claim or appeal against the State of Florida or any agency or instrumentality thereof (including Commerce), which Subrecipient instituted or in which Subrecipient has joined as a claimant. Subrecipient shall either (i) maintain Award Funds in a separate bank account, or (ii) expressly designate in Subrecipient's business records and accounting system that the Award Funds originated from this Agreement. Subrecipient shall not commingle Award Funds with any other funds. Subrecipient's costs must be in compliance with all laws, rules, and regulations applicable to expenditures of State funds, including the Reference Guide for State Expenditures ([https://myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/state-agencies/reference-guide-for-state-expenditures.pdf?sfvrsn=b4cc3337\\_2](https://myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/state-agencies/reference-guide-for-state-expenditures.pdf?sfvrsn=b4cc3337_2)).

**4. PAYMENTS TO SUBRECIPIENT:**

a. Subrecipient shall submit invoices in support of allowable expenditures for the project at the milestone/task completion identified in Exhibit A, SCOPE OF WORK, through Commerce's Subrecipient Enterprise Resource Application (SERA). All invoices must comply with the requirements of the State of Florida Reference Guide for State Expenditures 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

**Commerce Agreement No.: BB205**

due under this Agreement until Commerce accepts and approves the invoiced deliverable(s) and any required report(s).

2) Invoices must contain Subrecipient's name, address, federal employer identification number or other applicable Subrecipient identification number, this Agreement number, the invoice number, and the invoice period. Commerce or the State may require any additional information from Subrecipient that Commerce 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. Payment shall be made in accordance with section 215.422, F.S., governing time limits for payment of invoices. The SCOPE OF WORK may specify conditions for retainage. Invoices returned to a Subrecipient due to preparation errors will result in a delay of payment. Commerce is responsible for all payments under this Agreement.

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

d. **VENDOR OMBUDSMAN:** In accordance with section 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.

5. **FINAL INVOICE:** Subrecipient shall submit the final invoice for payment to Commerce no later than 60 calendar days after completion of the project, Agreement end date or is terminated, whichever is earlier. If Subrecipient fails to do so, Commerce, in its sole and absolute discretion, may refuse to honor any requests submitted after this time and may consider Subrecipient to have forfeited any and all rights to payment under this Agreement.

**6. SPECIFIC AGREEMENT REQUIREMENTS:**

a. Subrecipient shall submit invoices for each milestone/task completion as specified within Exhibit A – SCOPE OF WORK. Eligible activities are identified in Section 5 of the SCOPE OF WORK. Subrecipient must retain bills for fees and other compensation for services and expenses in detail sufficient for monitoring and a proper pre-audit and post-audit thereof through the end of the Federal Interest period, December 31, 2034.

b. Travel expenses are not authorized under this Agreement.

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

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

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

Commerce Agreement No.: BB205

- f. Subrecipient shall comply with all criteria stated in Exhibit A, SCOPE OF WORK.
- g. This Agreement may not be renewed.
- h. If Subrecipient fails to perform in accordance with this Agreement, Commerce shall apply the financial consequences specified in Exhibit A, SCOPE OF WORK, of this Agreement.
- i. The Subrecipient shall conduct a single or program-specific audit in accordance with the provisions of 2 CFR Part 200 if it expends seven hundred fifty thousand dollars (\$750,000) or more in Federal awards from all sources during its fiscal year.
- j. Within sixty (60) calendar days of the close of Subrecipient's fiscal year, on an annual basis, the Subrecipient shall electronically submit a completed Audit Compliance Certification to [audit@commerce.fl.gov](mailto:audit@commerce.fl.gov), and Commerce's grant manager; a blank version of which is attached hereto as Attachment J. The Subrecipient's timely submittal of one completed Audit Compliance Certification for each applicable fiscal year will fulfill this requirement within all agreements (e.g., contracts, grants, memorandums of understanding, memorandums of agreement, economic incentive award agreements, etc.) between Commerce and the Subrecipient.
- k. In addition to the submission requirements listed in Exhibit E, Audit Requirements, the Subrecipient shall send an electronic copy of its audit report to Commerce's grant manager for this Agreement by June 30 following the end of each fiscal year in which it had an open Capital Projects Fund subgrant.
- l. Subrecipient shall also comply with the Federal Audit Clearinghouse rules and directives, including but not limited to the pertinent Report Submissions provisions of 2 CFR 200.512, when such provisions are applicable to this Agreement.

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

a. Subrecipient 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 Subrecipient. After Subrecipient's execution and delivery and upon Commerce's execution and delivery of this Agreement, this Agreement constitutes the legal, valid, and binding obligation of Subrecipient, enforceable against Subrecipient 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. Subrecipient's execution and delivery of this Agreement and Subrecipient's performance of the transactions contemplated hereby do not: (i) conflict with or result in a breach of any provision of Subrecipient'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 the termination, modification, cancellation or acceleration under the terms, conditions, or provisions of any of Subrecipient's indentures, material agreements or other material instruments; or (iii) violate any applicable law or regulation. Subrecipient has not been convicted of a "public entity crime" (as such term is defined in section 287.133, F.S.) nor has Subrecipient been placed on the "discriminatory vendor list" (as such term is defined in section 287.134, F.S.). None of Subrecipient's elected or appointed officers, agents, employees, or



**Commerce Agreement No.: BB205**

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 Subrecipient 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 Subrecipient, threatened by or against Subrecipient 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 Subrecipient, the Project, or Subrecipient'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.

d. Commerce shall be deemed to have relied upon the express representations and warranties set forth herein notwithstanding any knowledge on the part of Commerce of any untruth of any such representation or warranty of Subrecipient expressly set forth in this Agreement, regardless of whether such knowledge was obtained through Commerce'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 Subrecipient to Commerce 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. RECORDS AND INFORMATION RELEASE.**

a. **Records Compliance.** Commerce is subject to the provisions of chapter 119, F.S., relating to public records. Any document Subrecipient submits to Commerce under this Agreement may constitute public records under the Florida Statutes. Subrecipient shall cooperate with Commerce regarding Commerce's efforts to comply with the requirements of chapter 119, F.S. Subrecipient shall respond to requests to inspect or copy such records in accordance with chapter 119, F.S., for records made or received by Subrecipient in connection with this Agreement. Subrecipient shall immediately notify Commerce of the receipt and content of any request by sending an e-mail to [PRRequest@commerce.fl.gov](mailto:PRRequest@commerce.fl.gov) within one business day after receipt of such request. Subrecipient shall indemnify, defend, and hold Commerce harmless from any violation of Florida's public records laws wherein Commerce's disclosure or nondisclosure of any public record was predicated upon any act or omission of Subrecipient. As applicable, Subrecipient shall comply with section 501.171, F.S. Commerce may terminate this Agreement if Subrecipient fails to comply with Florida's public records laws. Subrecipient shall allow public access to all records made or received by Subrecipient in connection with this Agreement, unless the records are exempt from section 24(a) of Article I of the State Constitution or section 119.07(1), F.S.

b. **Identification of Records.** Subrecipient shall clearly and conspicuously mark all records submitted to Commerce if such records are confidential and exempt from public disclosure. Subrecipient's failure to clearly mark each record and identify the legal basis for each exemption from the requirements of chapter 119, F.S., prior to delivery of the record to Commerce serves as Subrecipient's waiver of a claim of exemption. Subrecipient 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 as long as those records are confidential and exempt pursuant to Florida law. If Commerce's claim of exemption asserted in response

**Commerce Agreement No.: BB205**

to Subrecipient's assertion of confidentiality is challenged in any court of law, Subrecipient shall defend, assume, and be responsible for all fees, costs, and expenses in connection with such challenge.

c. **Keeping and Providing Records.** Commerce and the State have an absolute right to view, inspect, or make or request copies of any records arising out of or related to this Agreement. Subrecipient has an absolute duty to keep and maintain all records arising out of or related to this Agreement. Commerce may request copies of any records made or received in connection with this Agreement, or arising out of Subrecipients use of Award Funds, and Subrecipient shall provide Commerce with copies of any records within 10 business days after Commerce's request at no cost to Commerce. Subrecipient shall maintain all books, records, and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of Award Funds through the end of the Federal Interest period, December 31, 2034. For avoidance of doubt, Subrecipient's duties to keep and provide records to Commerce includes all records generated in connection with or as a result of this Agreement. Upon expiration or termination of this Agreement, Subrecipient shall transfer, at no cost, to Commerce all public records in possession of Subrecipient or keep and maintain public records required by Commerce to perform the service. If Subrecipient keeps and maintains public records upon completion of this Agreement, Subrecipient shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Commerce, upon request from Commerce's custodian of records, in a format that is compatible with the information technology systems of Commerce.

d. **Reserved.**

e. **Ensure Compliance.** Subrecipient shall ensure that any entity which is paid from, or for which Subrecipient's expenditures will be reimbursed by, Award Funds, is aware of and will comply with the aforementioned audit and record keeping requirements.

**Contact Custodian of Public Records for Questions. IF THE SUBRECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUBRECIPIENT'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@Commerce.fl.gov](mailto:PRRequest@Commerce.fl.gov), or by mail at the Florida Department of Commerce, Public Records Coordinator, 107 East Madison Street, Caldwell Building, Tallahassee, Florida 32399-4128.**

**9. 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 convenient, 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,



**Commerce Agreement No.: BB205**

THE PARTIES HEREBY EXPRESSLY WAIVE TRIAL BY JURY TO THE FULLEST EXTENT PERMITTED BY LAW.

b. Subrecipient shall not expend any funds provided under this Agreement for the purpose of lobbying the Legislature, the judicial branch, or any state agency. Commerce shall ensure compliance with section 11.062, F.S., and section 216.347, F.S. Subrecipient shall not, in connection with this or any other agreement with the State, directly or indirectly: (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty; or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of Commerce's Inspector General, or other authorized State official, Subrecipient shall provide any type of information the Inspector General deems relevant to Subrecipient's integrity or responsibility, including Subrecipient's business or financial records, documents, or files of any type or form that refer to or relate to this Agreement. Subrecipient shall retain such records through the end of the Federal Interest period, December 31, 2034.

c. Subrecipient shall reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of Subrecipient's compliance with the terms of this or any other agreement between Subrecipient and the State which results in the suspension or debarment of Subrecipient. 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. Subrecipient shall not be responsible for any costs of investigations that do not result in Subrecipient's suspension or debarment. Subrecipient understands and will comply with the requirements of section 20.055(5), F.S., including but not necessarily limited to, the duty of Subrecipient and any of Subrecipient's subcontractors to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to section 20.055, F.S.

d. **Public Entity Crime:** Subrecipient is aware of and understands the provisions of section 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 Subrecipient, supplier, subcontractor or consultant under an agreement with any public entity and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, F.S., for Category Two (\$35,000 in 2017) for a period of 36 months from the date of being placed on the convicted vendor list. Subrecipient shall disclose to Commerce if Subrecipient, or any of Subrecipient's affiliates, as defined in section 287.133(1)(a), F.S., is on the convicted vendor list or on any similar list maintained by any other state or the federal government.

e. **Limitations on Advertising of Agreement:** Subject to chapter 119, F.S., Subrecipient shall not publicly disseminate any information concerning this Agreement without prior written approval from Commerce, including, but not limited to, mentioning this Agreement in a press release or other promotional material, identifying Commerce or the State as a reference, or otherwise linking Subrecipient's name and either a description of this Agreement or the name of Commerce 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.

f. **Disclosure of Sponsorship:** As required by section 286.25, F.S., if Subrecipient is a nongovernmental organization that sponsors a program financed wholly or in part by state funds, including any

**Commerce Agreement No.: BB205**

funds obtained through this Agreement, it shall, in publicizing, advertising, or describing the sponsorship of the program, state: "Sponsored by (Subrecipient's name) and the State of Florida, Department of Commerce. This project is being supported, in whole or in part, by federal award number SLFRP0125 awarded to Florida by the U.S. Department of the Treasury." If the sponsorship reference is in written material, the words "State of Florida, Department of Commerce and Treasury statement" shall appear in the same size letters or type as the name of the organization.

**g. Mandatory Disclosure Requirements:**

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

**2) Vendors on Scrutinized Companies Lists:** Subrecipient is aware of and understands the provisions of section 287.134(2)(a), F.S. As required by section 287.135(5), Subrecipient certifies that it is not: (1) listed on the Scrutinized Companies that Boycott Israel List, created pursuant to section 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 section 215.473, F.S.; and (4) engaged in business operations in Cuba or Syria.

**a)** Pursuant to section 287.135(5), F.S., Commerce may immediately terminate this Agreement if Subrecipient submits a false certification as to the above, or if Subrecipient 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 or Syria.

**b)** If Commerce determines that Subrecipient has submitted a false certification, Commerce will provide written notice to Subrecipient. Unless Subrecipient demonstrates in writing, within 90 calendar days of receipt of the notice, that Commerce's determination of false certification was made in error, Commerce shall bring a civil action against Subrecipient. If Commerce'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 Subrecipient, and Subrecipient will be ineligible to bid on any Agreement with any agency or local governmental entity for three years after the date of Commerce's determination of false certification by Subrecipient.

**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:** Subrecipient shall disclose to Commerce if it or any of its affiliates, as defined by section 287.134(1)(a), F.S., appears on the discriminatory vendor list. An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134, F.S., may not: (1) submit a bid, proposal, or reply on a contract or agreement to provide any goods or services to a public entity; (2) submit a bid, proposal, or reply on a contract or agreement with a public entity for the construction or repair of a public building or public work; (3) submit bids, proposals, or replies on leases of real property to a public entity; (4) be awarded or perform work as a contractor, subcontractor, Subrecipient, supplier, Subrecipient, 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 sections 39.201 and 415.1034, F.S., an employee of Subrecipient 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 <http://www.myflfamilies.com/services/abuse>, or via fax at 1-800-914-0004.

**5) Funding Requirements of section 215.971(1), F.S.:**

**Commerce Agreement No.: BB205**

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

**10. RECOUPMENT OF FUNDS:**

a. Subrecipient shall refund to Commerce any overpayment of funds due to unearned or disallowed funds under this Agreement as follows: (a) if Subrecipient or an independent auditor discovers an overpayment, Subrecipient shall repay to Commerce such overpayment no later than 30 calendar days after discovery or notification of each such overpayment; or (b) if Commerce first discovers an overpayment, Commerce shall notify Subrecipient in writing, and Subrecipient shall repay to Commerce each such overpayment no later than 30 calendar days after receiving Commerce's notification. Refunds should be sent to Commerce's Agreement Manager and made payable to the "Department of Commerce." Commerce 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. Commerce 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 Subrecipient is non-compliant with any provision of this Agreement or applicable law, or if Commerce imposes financial consequences on Subrecipient pursuant to the terms of this Agreement, Commerce has the right to recoup all resulting cost, monetary loss and/or funds owed to Commerce or the State of Florida, from monies owed to Subrecipient under this Agreement or any other Agreement between Subrecipient and any State entity. If the discovery of such noncompliance or imposition of financial consequences and resulting cost, loss, and/or debt to Commerce or the State of Florida arises when no monies are owed to Subrecipient under this Agreement or any other Agreement between Subrecipient and any State entity, Subrecipient shall pay Commerce in full such cost, loss, and/or funds owed to Commerce or the State of Florida with non-State funds within 30 calendar days of the date of notice of the amount owed, unless Commerce agrees, in writing, to an alternative timeframe. Commerce, in Commerce's sole and absolute discretion, shall determine the resulting cost, loss and/or funds owed to Commerce or the State of Florida under this Agreement.

**11. AUDITS AND RECORDS:**

a. Representatives of Commerce, 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 Subrecipient'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. Subrecipient shall maintain books, records, and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds Commerce provided under this Agreement.

c. **Reserved.**

d. Subrecipient shall comply with all applicable requirements of the Code of Federal Regulations Title 2, Subtitle A, Chapter II, Part 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." (2 CFR Part 200) The Subrecipient should also refer to the United States



**Commerce Agreement No.: BB205**

Treasury program guidance for the specific requirements of this program, as well as Exhibit C, MONITORING REQUIREMENTS, of this Agreement.

e. Subrecipient shall retain all Subrecipient's records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement through the end of the Federal Interest period, December 31, 2034. Upon Commerce's request, Subrecipient shall cooperate with Commerce to facilitate the duplication and transfer of such records or documents.

f. Subrecipient shall include the aforementioned record keeping requirements in all approved subrecipient subcontracts and assignments.

g. **Reserved.**

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

**12. EMPLOYMENT ELIGIBILITY VERIFICATION:**

- a. E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States. There is no charge to employers to use E-Verify. The Department of Homeland Security's E-Verify system can be found at:  
<https://www.e-verify.gov/>.
- b. In accordance with section 448.095, F.S., the State of Florida expressly requires the following:
  - i. Every public agency and its contractors, and subcontractors shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. A public agency or a contractor, or subcontractor thereof may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.
  - ii. An employer shall verify each new employee's employment eligibility within three (3) business days after the first day that the new employee begins working for pay as required under 8 C.F.R. 274a. Beginning July 1, 2023, a private employer with 25 or more employees shall use the E-Verify system to verify a new employee's employment eligibility.
- c. If an entity does not use E-Verify, the entity shall enroll in the E-Verify system prior to hiring any new employee or retaining any contract employee after the effective date of this Agreement.

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

a. Prior to execution of this Agreement, Subrecipient must disclose in a written statement to Commerce's Agreement Manager all on-going civil or criminal litigation, investigations, arbitration, or administrative proceedings involving Subrecipient, and each subcontractor of Subrecipient, that Subrecipient reasonably is aware of and that may impact Subrecipient's performance under this Agreement (collectively "Proceedings"). Thereafter, Subrecipient has a continuing duty to promptly disclose all such Proceedings upon occurrence.

b. This duty of disclosure applies to Subrecipient's or Subrecipient's subcontractor's officers and directors when any Proceeding relates to the officer or director's business or financial activities and may impact

**Commerce Agreement No.: BB205**

Subrecipient's performance under this Agreement. Details of settlements that are prevented from disclosure by the terms of the settlement may be annotated as such.

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

**14. ASSIGNMENTS AND SUBCONTRACTS:**

a. Subrecipient 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 Commerce, which consent may be withheld in Commerce's sole and absolute discretion. Any Subrecipient's attempted assignment of this Agreement or any of the rights hereunder in violation of this provision shall be void *ab initio*. Commerce 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 Subrecipient. Subrecipient need not seek prior written consent of Commerce for subcontracts issued hereunder if the subcontract requires the subcontractor to comply with the applicable terms and conditions of this Agreement and applicable state and federal law.

b. Subrecipient shall be responsible for all work performed and all expenses incurred in fulfilling the obligations of this Agreement. If Commerce permits Subrecipient to subcontract all or part of the work contemplated under this Agreement, including entering into subcontracts with vendors for services, Subrecipient 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. Subrecipient shall be solely liable to the subcontractor for all expenses and liabilities incurred under each subcontract. If the State of Florida approves transfer of Subrecipient's obligations, Subrecipient remains responsible for all work performed and all expenses incurred in connection with this Agreement. Subrecipient, at Subrecipient's expense, shall defend Commerce against all Subrecipient's subcontractors' claims of expenses or liabilities incurred under subcontracts.

c. Subrecipient 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, Subrecipient shall furnish a copy of technical certification or other proof of qualification. All Subrecipient's employees, subcontractors, or agents performing work under this Agreement shall comply with all Commerce security and administrative requirements detailed herein. Commerce may conduct, and Subrecipient shall cooperate with all security background checks or other assessments of Subrecipient's employees, subcontractors, or agents. Commerce may refuse access to or require replacement of any of Subrecipient'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 Commerce's security or administrative requirements. Such refusal shall not relieve Subrecipient of its obligation to perform all work in compliance with this Agreement. For cause, Commerce may reject and bar any of Subrecipient's employees, subcontractors, or agents from any facility.

d. This Agreement shall bind the successors, assigns, and legal representatives of Subrecipient 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 Subrecipient in the State of Florida.

**Commerce Agreement No.: BB205**

e. In accordance with section 287.0585, F.S., and unless otherwise agreed upon in writing between Subrecipient and subcontractor, Subrecipient shall pay each Subrecipient's subcontractor within seven working days of receiving Commerce's full or partial payments. Subrecipient's failure to comply with the immediately preceding sentence shall result in a penalty charged against Subrecipient 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. Subrecipient shall provide to Commerce a Minority and Service-Disabled Veteran Business Enterprise Report with each invoice 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 Commerce's Agreement Manager. The Office of Supplier Diversity at (850) 487-0915 is available to provide information re: qualified minorities. Commerce's Minority Coordinator can be reached at (850) 245-7472 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 section 273.02, F.S., (equipment, fixtures, and other tangible personal property of a non-consumable and nonexpendable nature.)

b. Subject to the terms of (c)(1)-(9), below, all nonexpendable property, purchased under this Agreement, shall be maintained in accordance with the provisions in Section 11 of Exhibit A, SCOPE OF WORK.

c. Title to all nonexpendable property vests in Subrecipient, subject to the condition that, for the duration of the Federal Interest Period (as defined in 2 C.F.R. Part 200) Subrecipient and any successors or transferees:

1) Must use the nonexpendable property for the authorized purposes of the project in the same manner as they use comparable real property and equipment within their networks in the ordinary course of their business, subject to the rights to disposition provided below,

2) Must continue to use the Multi-purpose Community Facility to enable work, education, and healthcare monitoring for a period of at least five (5) years following project completion at the standard initially agreed upon by Commerce and Subrecipient,

3) Must comply with the requirements of section 200.310 (Insurance), which may be satisfied by adequate self-insurance,

4) Must comply with the use and management requirements for equipment in sections 200.313(c)(4) and 313(d), which may be satisfied by applying the Subrecipient's commercial practices for meeting such requirements in the normal course of business (e.g., commercial inventory controls, loss prevention procedures, etc.), provided that such inventory controls indicate the applicable federal interest,

**Commerce Agreement No.: BB205**

5) Must maintain records of real property that includes, at minimum, identification information of the property and an indication of the applicable federal interest. Subrecipient shall annually report to Commerce on the status of such real property in accordance with 2 C.F.R. 200.330. Immediately upon discovery, Subrecipient shall notify Commerce, in writing, of any property loss with the date and reason(s) for the loss,

6) May, after obtaining written approval from Commerce, dispose of nonexpendable property in the ordinary course of business when no longer needed to operate the network, such as in order to upgrade equipment and improve facilities, provided that at least the same level of service provided by the network is maintained and there is no material interruption to service and that such upgraded property is subject to the same requirements provided in this guidance as other nonexpendable property,

7) May, subject to written approval by Commerce, otherwise sell or transfer nonexpendable property only after provision of notice to Treasury that identifies the successor or transferee and after securing the agreement of the successor or transferee to comply with these requirements and the acknowledgement of the successor or transferee of the federal property interest, and

8) Must notify Commerce and Treasury upon the filing of a petition under the Bankruptcy Code, whether voluntary or involuntary, with respect to the Subrecipient or its affiliates.

**16. INSURANCE:** During this Agreement, including the initial Agreement term, renewal(s), and extensions, Subrecipient, 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 Subrecipient, and failure to maintain such coverage may void this Agreement, at Commerce's sole and absolute discretion, after Commerce's review of Subrecipient's insurance coverage when Subrecipient is unable to comply with Commerce's requests re: additional appropriate and necessary insurance coverage. The limits of coverage under each policy maintained by Subrecipient shall not be interpreted as limiting Subrecipient's liability and obligations under this Agreement. All insurance policies shall be through insurers licensed and authorized to write policies in Florida.

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

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

1) **Commercial General Liability Insurance:** Unless Subrecipient is a state agency or subdivision as defined by section 768.28(2), F.S., Subrecipient 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:** Subrecipient, 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



**Commerce Agreement No.: BB205**

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, Subrecipient shall maintain any other insurance as required in Exhibit A, SCOPE OF WORK.

**17. 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. Subrecipient 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 Commerce, Subrecipient shall not divulge to third parties any confidential information obtained by Subrecipient 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 Commerce.

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

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

g. In the event of a breach of security concerning confidential personal information involved with this Agreement occurs, Subrecipient shall comply with section 501.171, F.S., as applicable. When notification to affected persons is required under this section of the statute, Subrecipient shall provide that notification, but only after receipt of Commerce's written approval of the contents of the notice. For purposes



**Commerce Agreement No.: BB205**

of this Agreement, "breach of security" or "breach" means the unauthorized access of data in electronic form containing personal information, as defined in section 501.171(1)(a), F.S. Good faith acquisition of personal information by an employee or agent of Subrecipient is not a breach, provided the information is not used for a purpose unrelated to Subrecipient's obligations under this Agreement or is not subject to further unauthorized use.

**18. WARRANTY OF ABILITY TO PERFORM:** Subrecipient 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 Subrecipient's ability to satisfy its Agreement obligations. Subrecipient shall immediately notify Commerce in writing if its ability to perform is compromised in any manner during the term of this Agreement.

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

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 Deliverables, as defined in Exhibit A, SCOPE OF WORK, developed or produced under or in connection with this Agreement, is the exclusive property of Commerce 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 Subrecipient or its employees, agents, or contractors to the creation of such Deliverables shall be considered works made for hire by Subrecipient for Commerce and, upon creation, shall be owned exclusively by Commerce. To the extent that any such Deliverables may not be considered works made for hire for Commerce under applicable law, Subrecipient agrees, upon creation of such Deliverables, to automatically assign to Commerce ownership, including copyright interests and any other intellectual property rights therein, without the necessity of any further consideration. For the avoidance of doubt, the provisions of this Section 19 shall not apply to any intellectual property of Subrecipient owned prior to the Effective Date or developed independent of the development or production of Deliverables under this Agreement.

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, Subrecipient shall refer the discovery or invention to Commerce 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 activities supported by this Agreement produce original writings, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of any similar nature, Commerce 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 Commerce to do so. Subrecipient shall give Commerce 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 section 1004.23, F.S., a state university is authorized in its own name to perform all things necessary to secure letters of patent, copyrights, and trademarks on any works it produces. 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 section 1004.23(6), F.S.

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

**Commerce Agreement No.: BB205**

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 Subrecipient is a state agency, Subrecipient, 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 Subrecipient represent to others that, as Subrecipient, it has the authority to bind Commerce unless specifically authorized to do so.

c. Except where Subrecipient is a state agency, neither Subrecipient, 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. Subrecipient 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 Subrecipient and agreed to by Commerce in Exhibit A, SCOPE OF WORK, Commerce will not furnish services of support (e.g., office space, office supplies, telephone service, secretarial, or clerical support) to Subrecipient or its subcontractor or assignee.

f. Commerce shall not be responsible for withholding taxes with respect to Subrecipient's compensation hereunder. Subrecipient shall have no claim against Commerce for vacation pay, sick leave, retirement benefits, social security, workers' compensation, health or disability benefits, reemployment assistance benefits, or employee benefits of any kind. Subrecipient 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, Subrecipient shall comply with the reporting and Reemployment Assistance contribution payment requirements of chapter 443, F.S.

**21. ELECTRONIC FUNDS TRANSFER:** Within 30 calendar days of the date the last Party has signed this Agreement, Subrecipient 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.

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

**23. TIME IS OF THE ESSENCE:** Time is of the essence regarding Subrecipient's performance of obligations set forth in this Agreement. Any additional deadlines for performance for Subrecipient'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.

**24. 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

**Commerce Agreement No.: BB205**

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 which 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. 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.

**25. TERMINATION AND FORCE MAJEURE:**

a. **Termination due to Lack of Funds:** In the event funds to finance this Agreement become unavailable or if federal or state funds upon which this Agreement is dependent are withdrawn or redirected, Commerce may terminate this Agreement upon no less than 24 hour written notice to Subrecipient. Commerce shall be the final authority as to the availability of funds and will not reallocate funds earmarked for this Agreement to another program thus causing "lack of funds." In the event of termination of this Agreement under this provision, Subrecipient will be paid for any work satisfactorily completed prior to notification of termination. The lack of funds shall not constitute Commerce's default under this Agreement.

b. **Termination for Cause:** Commerce may terminate the Agreement if Subrecipient fails to: (1) deliver the services within the time specified in the Agreement or any extension; (2) maintain adequate progress, thus endangering performance of the Agreement; (3) honor any term, condition, or warranty of the Agreement; or (4) abide by any applicable statutory, regulatory, or licensing requirement. Subrecipient shall be given 30 calendar days from the termination notification to cure any perceived defect to the satisfaction of Commerce. The rights and remedies of Commerce in this clause are in addition to any other rights and remedies provided by law or under the Agreement. Subrecipient shall not be entitled to recover any cancellation charges or lost profits.

c. **Termination for Convenience:** Commerce, by written notice to Subrecipient, may terminate this Agreement in whole or in part when Commerce determines in Commerce's sole and absolute discretion that it is in Commerce's interest to do so. Subrecipient shall not be reimbursed for performance of any deliverable pursuant to Exhibit A: SCOPE OF WORK after it receives the notice of termination, except as Commerce otherwise specifically instructs Subrecipient in writing, but may be paid for any work satisfactorily completed prior to notification of termination. Subrecipient shall not be entitled to recover any cancellation charges or lost profits.

d. **Subrecipient's Responsibilities Upon Termination:** If Commerce issues a notice of termination to Subrecipient, except as Commerce otherwise specifies in that notice, Subrecipient shall: (1) Stop work under this Agreement on the date of and to the extent specified in the notice; (2) complete performance of such part of the work Commerce does not terminate, if any; (3) take such action as may be necessary, or as Commerce may specify, to protect and preserve any property which is in the possession of Subrecipient and in



**Commerce Agreement No.: BB205**

which Commerce has or may acquire an interest; and (4) upon the effective date of termination, Subrecipient shall transfer, assign, and make available to Commerce all property and materials belonging to Commerce pursuant to the terms of this Agreement and all Attachments hereto. Subrecipient shall not receive additional compensation for Subrecipient's services in connection with such transfers or assignments. This provision shall not be interpreted to entitle Commerce to ownership of Subrecipient's network.

e. **Force Majeure and Notice of Delay from Force Majeure:** Neither Party shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party's control, or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting delay or disruption in the Party's performance obligation under this Agreement. If the delay is excusable under this FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE section, the delay will not result in any additional charge or cost under the Agreement to either Party. In the case of any delay Subrecipient believes is excusable under this FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE section, Subrecipient shall notify Commerce 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 Subrecipient could reasonably foresee that a delay could occur as a result; or (2) within five calendar days after the date Subrecipient first had reason to believe that a delay could result, if the delay is not reasonably foreseeable. THE FOREGOING SHALL CONSTITUTE SUBRECIPIENT'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. Commerce, 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 Subrecipient of its decision in writing. No claim for damages, other than for an extension of time, shall be asserted against Commerce. Subrecipient shall not be entitled to an increase in the Agreement price or payment of any kind from Commerce 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, Subrecipient shall perform at no increased cost, unless Commerce determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to Commerce or the State, in which case, Commerce may terminate the Agreement in whole or in part.

26. **DISPUTE RESOLUTION:** Commerce shall decide disputes concerning the performance of this Agreement, and Commerce shall serve written notice of same to Subrecipient. Commerce's decision shall be final and conclusive unless within 21 calendar days from the date of receipt, Subrecipient files with Commerce a petition for administrative hearing. Commerce's final order on the petition shall be final, subject to any right of Subrecipient to judicial review pursuant to chapter 120.68, F.S. Exhaustion of administrative remedies is an absolute condition precedent to Subrecipient'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.

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

a. Subrecipient shall be fully liable for the actions of its agents, employees, partners, and subcontractors and shall fully indemnify, defend, and hold harmless the State and Commerce, 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

**Commerce Agreement No.: BB205**

alleged to be caused in whole or in part by Subrecipient, its agents, employees, partners, or subcontractors; provided, however, that Subrecipient shall not indemnify, defend, and hold harmless the State and Commerce, and their officers, agents, and employees for that portion of any loss or damages the negligent act or omission of Commerce or the State proximately caused.

b. Further, Subrecipient shall fully indemnify, defend, and hold harmless the State and Commerce 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 Commerce's misuse or modification of Subrecipient's products or Commerce's operation or use of Subrecipient's products in a manner not contemplated by this Agreement. If any product is the subject of an infringement suit, or in Subrecipient's opinion is likely to become the subject of such a suit, Subrecipient may, at Subrecipient's sole expense, procure for Commerce the right to continue using the product or to modify it to become non-infringing. If Subrecipient is not reasonably able to modify or otherwise secure for Commerce the right to continue using the product, Subrecipient shall remove the product and refund Commerce the amounts paid in excess of a reasonable fee, as determined by Commerce in its sole and absolute discretion, for past use. Commerce shall not be liable for any royalties.

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

d. Subrecipient expressly assumes any and all liability for payment to its agents, employees, contractors, subcontractors, consultants, and subconsultants, as applicable, and shall indemnify and hold Commerce 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 Subrecipient to Commerce for costs under this Agreement where Commerce is imposing the financial consequences stated herein.

e. Subrecipient 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. Subrecipient 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 Commerce 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."

**28. 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. Commerce and the

**Commerce Agreement No.: BB205**

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 Subrecipient under this Agreement up to any amounts due and owing to Commerce with respect to this Agreement. 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.

**29. 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.

**30. ENTIRE AGREEMENT; AMENDMENT; WAIVER.** This Agreement, including all exhibits to 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, including all exhibits to this Agreement, supersedes all previous communications, representations, or agreements, either verbal or written, between the Parties. Excluding the specific provisions of Section 22, MODIFICATION, hereinabove allowing Commerce in Commerce'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 Subrecipient and the authorized agent of Commerce. 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. If there are conflicting provisions between the documents that make up this Agreement, the order of precedence for the documents is as follows:

1. Agreement
2. Exhibit A, Scope of Work
3. Exhibit B, Capital Projects Fund Requirements for Contract Terms and Conditions
4. Exhibit C, Monitoring Requirements
5. Exhibit D, Notice of Completion and Engineer's Certification of Compliance

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

**32. 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.

**33. 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

**Commerce Agreement No.: BB205**

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.

**Subrecipient's Payee:**

Flagler County Board of County Commissioners  
2500 Palm Coast Parkway NW  
Palm Coast, Florida 32137  
386-446-6764  
halanese@flaglercounty.gov

**Subrecipient's Agreement Manager:**

Holly Albanese  
2500 Palm Coast Parkway NW  
Palm Coast, Florida 32137  
386-446-6764  
halbanese@flaglercounty.gov

**Commerce's Agreement Manager:**

Aaron Allen  
107 East Madison Street  
Tallahassee, Florida 32399  
850-717-8481  
Aaron.Allen@Commerce.FL.Gov

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



Commerce Agreement No.: BB205

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.

FLORIDA DEPARTMENT OF  
COMMERCE

FLAGLER COUNTY BOARD OF  
COUNTY COMMISSIONERS

By J. Alex Kelly

By   
Signature  
Heidi Petito

J. Alex Kelly

Title Secretary

Title County Administrator

Date 7/22/2024

Date 7/15/24

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

*SSM*

OFFICE OF GENERAL COUNSEL  
FLORIDA DEPARTMENT OF COMMERCE

By Ashanti Breden

Approved Date: 7/17/2024



## Commerce Agreement No.: BB205

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

**1. CAPITAL PROJECTS FUND:** Section 604 of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021, established the Capital Projects Fund ("CPF") to allow for investment into the construction and/or rehabilitation of Multi-purpose Community Facilities for the purpose of jointly and directly enabling work, education, and health monitoring. Subrecipients must commit that buildings constructed or rehabilitated through the use of Capital Projects Fund will continue to provide activities that enable work, education and health monitoring activities for a minimum of five (5) years following completion of the project.

**2. PROJECT DESCRIPTION:** Through the competitive selection process, Flagler County Board of County Commissioners ("Subrecipient"), application number BA-000701 has been selected to receive CPF funds. The Subrecipient will use its CPF funds (\$4,000,000.00) and pledged leverage/private funding (\$12,000,000.00) to construct/rehabilitate a publicly accessible Multi-purpose Community Facility which jointly and directly enables work, education, and health monitoring activities.

**3. SUBRECIPIENT RESPONSIBILITIES:** The Subrecipient shall timely perform the Deliverables and Tasks described in Exhibit A, Scope of Work, herein, and in doing so, the Subrecipient shall comply with all the terms and conditions of this Agreement. Any advertisements, media coverage or notices regarding this project must contain the following statement: "This project is being supported, in whole or in part, by federal award number CPFFN0205 awarded to the State of Florida by the U.S. Department of the Treasury." Funding from this agreement cannot be used to serve locations already served by another Internet Service Provider.

**4. COMMERCE'S RESPONSIBILITIES:** Commerce shall receive and review the Project Deliverables and, upon Commerce acceptance of the Deliverables and receipt of Subrecipient's pertinent invoices in compliance with the invoice procedures of this Agreement, shall process payment to the Subrecipient in accordance with the terms and conditions of this Agreement.

**5. DELIVERABLES/PAYMENTS:** Subrecipients will be paid on a percentage completion milestone basis, as certified by an independent engineer. Reimbursement invoices will be submitted at 25%, 50%, 75%, and 100% completion, for eligible activities expenditures that directly relate to the project as described in section 2 PROJECT DESCRIPTION. Project must be completed no later than December 31, 2026.

The following activities/expenditures in relation to the broadband infrastructure project and deliverables are eligible for payment under the Capital Projects Fund:

**A. Deliverable 1**

**1. Construction Costs**

- a. Mobilization
- b. All costs associated with materials and labor essential to completing the project.

Deliverable No. 1:		
Tasks	Minimum Level of Service	Financial Consequences

## Commerce Agreement No.: BB205

Subrecipient shall complete all activities, as specified in Section 5.A, of this Scope of Work, which shall be completed no later than December 31, 2026.	Subrecipient may request reimbursement upon 25%, 50%, 75% and 100% completion of the deliverable as evidenced by submission of the following: 1. Completed AIA Forms G702 and G703, signed by a licensed professional certifying the percentage of project completion; 2. Photographs of the project in progress; and 3. Invoice package in accordance with the Scope of Work.	Failure to complete the Minimum Level of Service as specified shall result in \$500.00 reduction per day up to a maximum of \$10,000.00 or twenty percent (20%), whichever is lesser, for this Deliverable.
<b>Deliverable Cost Not To Exceed: \$4,000,000.00</b>		
<b>TOTAL COST NOT TO EXCEED: \$4,000,000.00</b>		

**6. REPORTING:**

- a. Monthly: Subrecipient shall report the information identified below through the Subrecipient Enterprise Resource Application (SERA), monthly, all progress relating to the tasks identified in Section 5, Scope of Work. Monthly reports are due to Commerce no later than 10 calendar days after the end of each month of the program year and shall be sent each month until submission of the close-out report. Reporting items are:
  - 1) Completion of any tasks and/or deliverables completed during the reporting period
  - 2) Percentage of project completion
  - 3) Any identified impediments to on-time project completion
- b. Minority and Service-Disabled Veteran Business Enterprise Report: Subrecipient shall provide a Minority and Service-Disabled Veteran Business Enterprise Report with each invoice summarizing the participation of certified and non-certified minority and service-disabled veteran subcontractors and material suppliers for that period and the project to date. Subrecipient shall include the names, addresses, and dollar amount of each certified and non-certified Minority Business Enterprise and Service-Disabled Veteran Enterprise participant. Commerce's Minority Coordinator can be reached at (850) 245-7472 to answer concerns and questions.
- c. Close-out Report: No later than 60 calendar days after project completion, or after this Agreement is terminated, Subrecipient shall provide copies of all remaining invoices, submit documentation of completed work and submit a final monthly report in accordance with this section.

7. **INVOICE SUBMITTAL AND PAYMENT SCHEDULE:** Commerce shall pay Subrecipient in accordance with the schedule and in the amount identified per milestone in Section 5 table above. The deliverable amount specified does not establish the value of the deliverable. In accordance with the Funding Requirements of section 215.971(1), F.S., Subrecipient and its subcontractors may only expend funding under this Agreement for allowable costs resulting from obligations incurred during this Agreement. To be eligible for payment, costs must be in compliance with laws, rules, and regulations applicable to expenditures of Federal and State funds, including, but not limited to, 2 C.F.R. Part 200 as relaxed under Treasury Guidance of May 17, 2023, and the Reference Guide for State Expenditures.
  - a. Subrecipient shall provide invoices in accordance with the Deliverables table above in Section 5 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 Subrecipient'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 5,

**Commerce Agreement No.: BB205**

DELIVERABLES, of this Attachment A; (3) have been paid; and (4) were incurred during this Agreement.

2. Subrecipient's invoices shall include the date, period in which work was performed, amount of reimbursement, and work completed to date;
  3. A certification by a licensed professional 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 bank statement that includes the cancelled check or evidence of electronic funds transfer. The State may require any other information from Subrecipient that the State deems necessary to verify that the services have been rendered under this Agreement.
  - c. The State may require any other information from Subrecipient 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 into Commerce's Subrecipient Enterprise Reporting Application (SERA) and retained by the Subrecipient through the end of the Federal Interest period, December 31, 2034, for Commerce's review. Further instruction on SERA invoicing and reporting, along with a copy of the invoice template, will be provided upon execution of the agreement.
  - e. If the Grantee is a county or municipality that is a rural community or rural area of opportunity as those terms are defined in s. 288.0656(2), the payment of submitted invoices may be issued for verified and eligible performance that has been completed in accordance with the terms and conditions set forth in the Agreement to the extent that federal or state law, rule, or other regulation allows such payments. Upon meeting either of the criteria set forth below, the Grantee may elect in writing to exercise this provision.
    - 1) A county or municipality that is a rural community or rural area of opportunity as those terms are defined in s. 288.0656(2), that demonstrates financial hardship; or
    - 2) A county or municipality that is a rural community or rural area of opportunity as those terms are defined in s. 288.0656(2), that is located in a fiscally constrained county, as defined in section 218.67(1), F.S. If the Grantee meets the criteria set forth in this paragraph, then the Grantee is deemed to have demonstrated a financial hardship.
8. **NOTIFICATION OF INSTANCES OF FRAUD:** Upon discovery, Subrecipient shall report all known or suspected instances of Subrecipient, or Subrecipient's agents, contractors, or employees, operational fraud, or criminal activities to Commerce's Agreement Manager in writing within 24 chronological hours.
9. **Reserved.**
10. **NON-DISCRIMINATION:** Subrecipient 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. Subrecipient shall provide a harassment-free workplace, with any allegation of harassment to be given priority attention and action.
11. **OWNERSHIP AND DISPOSITION OF PROJECT PROPERTY:**
- a. "Disposition" as used herein, shall include, but is not limited to, Subrecipient no longer using the nonexpendable property for the uses authorized herein; the sale, exchange, transfer, trade-in, or disposal of any such nonexpendable property.
  - b. "Nonexpendable property" (also: Agreement Property) means tangible property having a useful life of more than one year and an acquisition cost of \$5,000 or greater per unit.

## Commerce Agreement No.: BB205

- c. The Federal Interest Period lasts until December 31, 2034. Title to Agreement Property acquired or improved under the award, vests in the Subrecipient, subject to the condition that, for the duration of the Federal Interest Period, the Subrecipient:
- 1) Must use the Agreement Property for the authorized purpose(s) of the project in the same manner as comparable real property and equipment within their networks in the ordinary course of business, subject to the rights of disposition noted below;
  - 2) Must continue to provide internet service to the service areas and at the standard initially agreed upon by Commerce and Subrecipient;
  - 3) Must participate in federal programs that provide low-income consumers with subsidies on broadband internet access services, as required under Section 3 of this Agreement.
  - 4) Must comply with the requirements of section 2 CFR 200.310 (Insurance), which may be satisfied by adequate self-insurance;
  - 5) Must comply with the use and management requirements for equipment in sections 2 CFR 200.313(c)(4) and 313(d) as amended by Treasury Guidance of May 17, 2023 which may be satisfied by applying the Subrecipient's commercial practices for meeting such requirements in the normal course of business (*e.g.*, commercial inventory controls, loss prevention procedures, etc.), provided that such inventory controls indicate the applicable federal interest;
  - 6) Must maintain records of real property that include an indication of the applicable federal interest;
  - 7) May dispose of Agreement Property in the ordinary course of business when no longer needed to operate the network, such as in order to upgrade equipment and improve facilities, provided that at least the same level of service provided by the network is maintained and there is no material interruption to service and that such upgraded property is subject to the same requirements provided in this guidance as other Agreement Property.
  - 8) May otherwise sell or transfer Agreement Property only after provision of notice to Treasury that identifies the successor or transferee and after securing the agreement of the successor or transferee to comply with these requirements and acknowledgement of the successor or transferee of the federal property interest; and
  - 9) Must notify the Office and Treasury upon the filing of a petition under the Bankruptcy Code, whether voluntary or involuntary, with respect to the Subrecipient or any affiliates.
- d. Pursuant to 2 C.F.R. 200.316, for the duration of the Federal Interest Period, the Subrecipient must hold Agreement Property in trust for the beneficiaries of this broadband infrastructure project.
- e. Subrecipient shall provide advance written notification to Commerce, if during the Federal Interest Period, Subrecipient proposes to take any action that will impact Subrecipient'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, then the Subrecipient must follow the applicable disposition procedures as outlined within the SLFRF and CPF supplementary Broadband Guidance. **This first requires obtaining disposition instructions from Commerce prior to disposal.** Commerce will provide disposal instructions in alignment with the requirements under Treasury and Uniform Guidance.
- f. The provisions of this Section 11 shall expire upon termination of the Federal Interest Period, upon which time Subrecipient shall retain title to all Agreement Property acquired or improved with the Agreement's funds.

**- End of Exhibit A (SCOPE OF WORK) -**



## Commerce Agreement No.: BB205

## Exhibit B

**Capital Projects Fund Requirements  
For Contract Terms and Conditions**

1. Subrecipient agrees to comply with the requirements of section 602 of the Social Security Act (the Act), regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters with other parties relating to this award.
2. Costs must be reasonable and allocable as outlined in 2 C.F.R. 200.404 and 2 C.F.R. 200.405.
3. Maintenance of and access to records
  - a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 602(c), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
  - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient to conduct audits or other investigations.
4. Records shall be maintained by Subrecipient through the end of the Federal Interest Period, December 31, 2034. Pre-Award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
5. Conflicts of Interest. Subrecipient understands and agrees it must maintain a conflict-of-interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict-of-interest policy is applicable to each activity funded under this award. Subrecipient must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.
6. 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The following 2 C.F.R. Policy requirements do not apply to the SFRF program (in addition to any other provisions detailed as inapplicable under the Department of Treasury Guidance dated May 17, 2023, including any changes or amendments thereto, to for-profit subrecipients receiving fixed amount subawards):
  - 2 C.F.R. Part 200, Subpart C, Pre-Federal Award Requirements and Contents of Federal Awards
    - 2 C.F.R. § 200.204 (Notices of Funding Opportunities);
    - 2 C.F.R. § 200.205 (Federal awarding agency review of merit of proposal);
    - 2 C.F.R. § 200.210 (Pre-Award costs); and
    - 2 C.F.R. § 200.213 (Reporting a determination that a non-Federal entity is not qualified for a federal award).
  - 2 C.F.R. Part 200, Subpart D, Post Federal; Award Requirements
    - 2 C.F.R. § 200.305 (b)(8) and (9) (Federal Payment);
    - 2 C.F.R. § 200.307 (Program Income)
    - 2 C.F.R. § 200.308 (revision of budget or program plan);
    - 2 C.F.R. § 200.309 (modifications to period of performance); and
  - 2 C.F.R. 200, Subpart D, Property Standards (except as otherwise provided in the Agreement)
  - 2 C.F.R. 200, Subpart D, Procurement Standards
  - 2 C.F.R. Part 200, Subpart E, Cost Principles
  - Notwithstanding 2 C.F.R. 200.404 and 2 C.F.R. 200.405, 2 C.F.R. Part 200, Subpart E, Cost Principles
7. Single Audit Act requirements – 2 C.F.R. 200, Subpart F – Audit Requirements of the Uniform Guidance
  - For-profit subrecipients not subject to Subpart F will undergo Pre- and Post-Award risk assessments, monitoring throughout the project, and post-award closeout process. (See Treasury Guidance of May 17, 2023).

## Commerce Agreement No.: BB205

8. All contracts more than \$100,000 with respect to capital expenditures or infrastructure (i.e., EC 5) that involve employment of mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards.
9. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170 (Appendix A).
10. SAM.gov Requirements – All eligible subrecipients are required to have an active registration with the System for Award Management (“SAM”) (<https://www.sam.gov>) pursuant to 2 C.F.R. Part 25.
11. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
12. New Restrictions on Lobbying, 31 C.F.R. Part 21.
13. Subrecipient Integrity and Performance Matters, 2 C.F.R. Part 200, Appendix XII to Part 200.
14. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
15. Statutes and regulations prohibiting discrimination applicable to this award, without limitation, include:
  - a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury’s implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin.
  - b. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
  - c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination based on disability under any program or activity.
  - d. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury’s implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination based on age in programs or activities.
  - e. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination based on disability under programs, activities, and services.
16. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number SLFRP0125 awarded to the State of Florida by the U.S. Department of the Treasury.”
17. Hatch Act. (5 U.S.C. 1501-1508 and 7324-7328), as applicable, limits certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
18. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
19. Protections for Whistleblowers.
  - a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
  - b. The list of persons and entities referenced in the paragraph above includes the following:
    - i. A member of Congress or a representative of a committee of Congress;
    - ii. An Inspector General;
    - iii. The Government Accountability Office;
    - iv. A Treasury employee responsible for contract or grant oversight or management;
    - v. An authorized official of the Department of Justice or other law enforcement agency;
    - vi. A court or grand jury; or vii. A management official or other employee of Subrecipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

**Commerce Agreement No.: BB205**

- c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.
- 20. **Increasing Seat Belt Use in the United States.** Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
- 21. **Reducing Text Messaging While Driving.** Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.
- 22. Subrecipient must ensure that every contract includes the applicable contract clauses required by 2 C.F.R. section 200.327 (Appendix II to Part 200). *See Attachment 1.*

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

## Commerce Agreement No.: BB205

## Attachment 1 to Exhibit B

***Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards***

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

**(A)** Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**(B)** All contracts more than \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

**(C) Equal Employment Opportunity.** Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. Part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

**(D) Labor.** For projects with a total cost greater than \$10 million including all funding:

1. The subrecipient may provide a certification that all laborers and mechanics employed by the contractors and subcontractors working on this project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (Davis-Bacon Act). If such certification is not provided, the subrecipient must provide a project employment and local impact report detailing:

- a. The number of contractors and sub-contractors working on the project;
- b. The number of employees on the project hired directly and hired through third; party;
- c. The wages and benefits of workers on the project by classification; and
- d. Whether those wages are at the rates less than those prevailing,

Recipients must maintain sufficient records to substantiate this information upon request.

2. The subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the subrecipient does not provide such certification, the subrecipient must provide a project workforce continuity plan, detailing:

- a. How the subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project, including a description of any required professional certifications and/or in-house training;
- b. How the subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project;
- c. How the subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g., OSHA 10, OSHA 30);
- d. Whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and
- e. Whether the project has completed a project labor agreement.
- f. Whether the project prioritizes local hires.
- g. Whether the project has a Community Benefit Agreement, with a description of any such agreement.



## Commerce Agreement No.: BB205

**(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-Federal entity more than \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked more than 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**(F) Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of "funding agreement" under 37 C.F.R. § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

**(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended -** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**(H) Debarment and Suspension (Executive Orders 12549 and 12689) -** A contract award (see 2 C.F.R. 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) -** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

*(Note: see #8 for related new restrictions on lobbying under 31 C.F.R. Part 21.)*

**(J) See § 200.323.** (Procurement of recovered materials - EPA guidelines)

**(K) See § 200.216.** (Prohibitions on the use of federal financial assistance to procure or obtain certain telecommunications and video surveillance services or equipment provided or produced by designated entities, including certain entities owned or controlled by the People's Republic of China.) (NDAA)

*(Note: In addition, 2 C.F.R. 200.471 provides that certain telecommunications and video surveillance costs associated with 2 CFR 200.216 are unallowable.)*

**(L) See § 200.322.** (Domestic preferences for procurements) – encourage Federal award recipients, to the extent permitted by law, to maximize the use of goods, products, and materials produced in the United States when procuring goods and services under Federal awards following the Executive Order Buy American and Hire American.)

## Commerce Agreement No.: BB205

## Exhibit C

## MONITORING REQUIREMENTS

The administration of resources awarded by Commerce to the Subrecipient (herein otherwise referred to as “Subrecipient”) may be subject to audits and/or monitoring by Commerce as described below:

**MONITORING.** Monitoring procedures will be performed on a continuous basis, and will occur, at a minimum, in conjunction with the project completion milestones addressed within Section 5 of Exhibit A. Procedures may include, but not be limited to, programmatic walkthroughs, on-site visits by Commerce staff and/or contracted personnel, limited scope audits as defined by 2 C.F.R. §200.425, post payment compliance reviews, or other procedures. By entering into this agreement, the Subrecipient agrees to comply and cooperate in a timely manner with any monitoring procedures or processes deemed appropriate by Commerce. In the event Commerce determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by Commerce 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.

As previously stated in Exhibit B, for-profit subrecipients will undergo risk assessments, as well as post-award monitoring throughout the project, and post-award closeout process. (See Treasury Guidance of May 17, 2023). These efforts will be coordinated through Commerce and may include desk reviews, site visits, requests for documentation and walkthroughs, as well as other measure to evaluate compliance with the program requirements and federal and state rules.

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

<b>Federal Awarding Agency</b>	U.S. Treasury
<b>Catalog of Federal Domestic Assistance Title</b>	Coronavirus Capital Projects Fund
<b>Catalog of Federal Domestic Assistance Number</b>	21.029
<b>Award Amount</b>	<b>\$4,000,000.00</b>

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

1. The Subrecipient shall perform the obligations as set forth in this Agreement, including any attachments or exhibits thereto.
2. The Subrecipient shall comply with section 603 of the American Rescue Plan Act (March 11, 2021), regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding these funds.
3. Commerce will provide funds to the Subrecipient by issuing one or more Notice of Subgrant Award / Funds Availability (“NFA”) through Commerce’s Subrecipient Enterprise Resource Application

**Commerce Agreement No.: BB205**

("SERA"). Each NFA will include specific terms, conditions, assurances, restrictions, or other instructions applicable to the funds provided by the NFA. The Subrecipient shall be governed by all applicable laws, rules, and regulations, including, but not necessarily limited to, those identified in Award Terms & Conditions and Other Instructions of the Subrecipient's NFA. The Subrecipient shall comply with all terms contained within an NFA as a condition precedent to the receipt of funds and as an ongoing condition to the use and expenditure of the funds.

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

Commerce Agreement No.: BB205

Exhibit D

NOTICE OF COMPLETION AND ENGINEER'S CERTIFICATION OF COMPLIANCE

NOTICE OF COMPLETION

CAPITAL PROJECTS FUND AGREEMENT  
Between  
THE FLORIDA DEPARTMENT OF COMMERCE  
and  
\_\_\_\_\_

PROJECT DESCRIPTION:

Commerce Agreement  
No. \_\_\_\_\_

In accordance with the Terms and Conditions of the Broadband Opportunity Program 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 Capital Projects Fund Agreement, the undersigned certifies that all work which originally required certification by an independent Engineer has been completed in compliance with the Project construction plans and specifications.

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

SEAL:

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

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

Commerce Agreement No.: BB205

## Exhibit E

**Email a copy of this form within 60 days of the end of each fiscal year in which this subgrant was open to audit@commerce.fl.gov.**

Subrecipient:

FEIN:

Subrecipient's Fiscal  
Year:

Contact Name:

Contact's Phone:

Contact's Email:

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

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

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

**If yes, the Subrecipient 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 the Subrecipient expend federal awards during its fiscal year that it received under any agreement (e.g., contract, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between the Subrecipient and Commerce? ☐ Yes ☐ No

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

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

**If yes, the Subrecipient 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 the Subrecipient, 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

**Commerce Agreement No.: BB205**