

REQUEST FOR LEGAL SERVICES

To: County Attorney's Office Attention:

Noah Milov

From: Rob Williams

Drawer No. PW05

Date: 08/04/2025

Phone Ext. (863) 344-0661

Request details:

Review Grant Agreement MK001 with the Florida Department of Law Enforcement and Polk County.

Please indicate any time limits involved and attach all necessary documentation

For County Attorney Office use only:

Assign to: Noah

Date: County Attorney
AUG 05 2025

County Attorney Project No. 25-501

Logged Out: 8/6/2025

- 3 multi change on PJ.1

**Agreement for State Financial Assistance Between
Florida Department of Law Enforcement
and
Polk County Board of County Commissioners**

AWARD AGREEMENT

Award Number: MK001
Project Title: 10th Judicial Circuit Medical Examiner Facility Expansion & Renovation
Project Period: 07/01/2025-06/30/2026
Award Funds: \$3,000,000.00
FLAIR Vendor ID: 596000809
CSFA Number: TBD

THIS AWARD AGREEMENT ("Agreement") is made and entered into by and between the Florida Department of Law Enforcement ("Department" or "FDLE") and Polk County ~~Board of County Commissioners~~ ("Recipient"). The Department and the Recipient are sometimes referred to herein individually as a "Party" and collectively as "the Parties."

*a portion
subsumed
of the State
of funds*

WHEREAS, the Department has the authority pursuant to a single, nonrecurring appropriation in the General Appropriations Act, to provide state financial assistance funds ("Award Funds") to the Recipient; and

WHEREAS, the Recipient represents that it is fully qualified and eligible to receive Award Funds and to perform the tasks identified herein in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

In accordance with Line 1182B of the General Appropriations Act for the 2025-2026 State fiscal year, \$3,000,000.00 in nonrecurring fixed capital outlay funds from the General Revenue Fund shall be provided to Polk County Board of County Commissioners for the 10th Judicial Circuit Medical Examiner Facility Expansion & Renovation project, (HF2504) (SF1167), for allowable costs incurred during the project period.

Schedule of Appendices

This award is subject to the terms and conditions outlined in the following sections of the Agreement:

Appendix A – Special Conditions
Appendix B – Deliverables
Appendix C – Approved Budget
Appendix D – Audit Requirements for Awards of State and Federal Financial Assistance
Appendix E – Standard Terms and Conditions

Award Management

This state financial assistance award shall be managed in AmpliFund, FDLE's electronic grant management system. The Recipient Grant Manager shall be responsible for obtaining a login to AmpliFund by contacting the Lead Recipient for their agency. Contact the Department Grant Manager for assistance if your agency does not have an account with AmpliFund or if the Lead Recipient is unknown.

Scope of Work

Funding provided to the Recipient by Line 1182B of the 2025-2026 General Appropriations Act will be utilized for new construction and renovation of the existing Medical Examiner's Office in Polk County.

The Recipient will accomplish these goals by procuring a contractor to construct a new 12,000 square foot office addition, extend the existing breezeway and morgue, and renovate the existing 12,500 square foot office and morgue.

Specific tasks and activities related to this project are TBD until the third-party vendors have been selected. The Recipient will provide copies of executed agreements with each third-party vendor to the Department as the project proceeds in order to amend the Scope of Work.

Specific deliverables are outlined in **Appendix B**. Allowable costs are outlined in **Appendix C**.

Performance Reports

The Recipient shall be responsible for submitting monthly **SFA FCO Performance Reports** to the Department on the award record in AmpliFund, attesting to the progress made towards the completion of deliverables (**Appendix B**) during each calendar month of the project period (the "Reporting Period"). These reports are due no later than fifteen (15) days after the end of each reporting period as follows:

#	Reporting Period	Due Date	#	Reporting Period	Due Date
1	7/1/2025 – 7/31/2025	8/15/2025	7	1/1/2026 – 1/31/2026	2/15/2026
2	8/1/2025 – 8/31/2025	9/15/2025	8	2/1/2026 – 2/28/2026	3/15/2026
3	9/1/2025 – 9/30/2025	10/15/2025	9	3/1/2026 – 3/31/2026	4/15/2026
4	10/1/2025 – 10/31/2025	11/15/2025	10	4/1/2026 – 4/30/2026	5/15/2026
5	11/1/2025 – 11/30/2025	12/15/2025	11	5/1/2026 – 5/31/2026	6/15/2026
6	12/1/2025 – 12/31/2025	1/15/2026	12	6/1/2026 – 6/30/2026	7/15/2026

Failure to submit performance reports by the due date may result in a withholding of future payments. Performance information provided by the Recipient will be used by the Department to compile reports for the Florida Legislature. Documentation to support the successful completion of performance must be maintained by Recipient and made available to the Department upon request. Examples of supporting documentation include but are not limited to: timesheets, activity logs, agendas, itineraries, delivery confirmations, public announcements, sign-in rosters, lesson plans, PowerPoint presentations, etc.

Financial Reports

The Recipient shall be responsible for entering individual **Expenses** on the award record in AmpliFund throughout the project period as costs are incurred. Detailed instructions are available on CJG's website: [Expense Entry, Reporting Period, and Payment Request Guide](#). The description field for each expense must clearly identify: the name of the item or service, the quantity, the unit cost, the method of payment (check, EFT, or credit card), and the dates of service, if applicable. To submit a request for reimbursement in AmpliFund, the Recipient must complete the following three steps in order:

1. Enter Expenses on the award record.
2. Close out a Budget Reporting Period.
3. Submit a Payment Request.

Budget Reporting Periods (and **Payment Requests**** if applicable) are due on a monthly basis no later than thirty (30) days after the end of each reporting period as follows:

#	Reporting Period	Due Date	#	Reporting Period	Due Date
1	7/1/2025 – 7/31/2025	8/30/2025	7	1/1/2026 – 1/31/2026	2/28/2026
2	8/1/2025 – 8/31/2025	9/30/2025	8	2/1/2026 – 2/28/2026	3/30/2026
3	9/1/2025 – 9/30/2025	10/30/2025	9	3/1/2026 – 3/31/2026	4/30/2026
4	10/1/2025 – 10/31/2025	11/30/2025	10	4/1/2026 – 4/30/2026	5/30/2026
5	11/1/2025 – 11/30/2025	12/30/2025	11	5/1/2026 – 5/31/2026	6/30/2026
6	12/1/2025 – 12/31/2025	1/30/2026	12	6/1/2026 – 6/30/2026	7/31/2026

*****If no expenses were incurred during the reporting period, a payment request is not required. However, the Recipient should close out the associated Budget Reporting Period.***

Supporting documentation to substantiate costs charged to the award must be uploaded to AmpliFund and redacted to protect any PII as necessary. A list of the specific supporting documentation required for payment is listed in **Appendix C**. All Payment Requests shall be reviewed and audited to the satisfaction of the Department, and additional supporting documentation may be requested by the Department Grant Manager. Examples of additional supporting documentation include but are not limited to: requisitions, purchase orders, quotes, general ledgers, fee schedules, etc.

The final Payment Request shall be submitted to the Department no later than **July 31, 2026**. Any payment due under the terms of this agreement may be withheld until all required reports have been received, and necessary adjustments have been approved by the Department. Final reconciliation and closeout of the award must be completed by both parties within forty-five (45) days of the end of the grant period.

Failure to comply with the terms and conditions of the Agreement may result in financial consequences, including but not limited to: disallowances of payment, forfeiture of funds, and/or termination of the Agreement.

Payments

The State of Florida's performance and obligation to pay under this agreement is contingent upon an appropriation by the Legislature, availability of funds, and subject to any modification in accordance with Chapter 216, Florida Statutes, or the Florida Constitution. The Department will administer and disburse funds under this agreement in accordance with sections 215.97, 215.971, 215.981 and 215.985, F.S. The Department's determination of acceptable expenditures shall be conclusive.

This is a cost-reimbursement agreement. Award funds will be distributed to the Recipient in conjunction with the receipt and review of a Payment Request and all required supporting documentation. Payment Requests must be submitted in AmpliFund by the Recipient Grant Manager, Recipient CFO, or other authorized representative. By submitting a payment request, the Recipient certifies that all costs claimed for reimbursement have been incurred in accordance with the terms and conditions of the Agreement.

Payments will be disbursed in the form of paper check or warrant in accordance with section 215.422, F.S. Recipients may elect to receive direct deposit (EFT) payments by mailing a Direct Deposit Authorization Form to the Department of Financial Services (DFS). This form may be obtained on the DFS website at <https://www.myfloridacfo.com/division/aa/vendors>. Questions about enrolling in direct deposit shall be addressed to the Direct Deposit Section of the Division of Accounting and Auditing at (850) 413-5517 or DirectDeposit@MyFloridaCFO.com.

Recipients may review their payment history by searching the "Vendor Payment History" website maintained by DFS at <https://fs.fldfs.com/dispub2/cvnphst.htm>. Instructions for searching this website may be found at: <https://www.myfloridacfo.com/division/aa/training/vendors-providers> under "Job Aids".

Cash Advances

If cost-reimbursement would result in financial hardship for the Recipient, a cash advance for the immediate payment of an invoice or immediate procurement of equipment/supplies may be requested. Contact the Department Grant Manager for more information if an advancement of funds is necessary.

Limitations: Cash advance requests shall be limited to no more than 25% of the total award amount unless the need for additional funding is clearly justified on the request form. Multiple cash advances are allowed; however, the Department shall not issue more than one advance at a time. Cash advances must be utilized for the approved purpose within thirty (30) days of receipt of the funds via check/warrant or EFT. The Recipient shall obtain proof of payment and reconcile the advance with the Department within forty-five (45) days of receipt of the funds via check/warrant or EFT. Any amount of funds not utilized for the intended purpose must be refunded to the Department prior to the receipt of additional funding.

Amendments

The Department may amend or modify the Agreement at any time, provided the modifications are within the original scope and purpose of the project. Written notice of all such changes will be provided to the Recipient. The Recipient may request modifications to the Agreement by submitting a request in writing to the Department Grant Manager. The request shall include a detailed description of any change to project tasks, activities, outcomes, deliverables, services, and/or costs. Costs incurred prior to obtaining written pre-approval from the Department Grant Manager are incurred at the risk of the costs being determined as ineligible for reimbursement.

FCO awards may be extended on a case-by-case basis. Contact the Department Grant Manager if an extension is necessary.

Award Contacts

Changes to the following points of contact and/or chief officials below must be submitted to FDLE Office of Criminal Justice Grants in writing.

Recipient Grant Manager

Name: Keith R. Tate
Title: Facilities Management Director
Address: 2160 Marshall Edwards Drive
Bartow, FL 33830
Phone: 863-534-5511
Email: keithtate@polk-county.net

Recipient Chief Official

Name: T. R. Wilson
Title: Polk County Board of County Commissioners - Chair
Address: 330 West Church Street
Bartow, Florida 33830
Phone: 863-534-6434
Email: rickwilson@polk-county.net

Recipient Chief Financial Officer

Name: Stacy M. Butterfield, CPA
Title: Clerk of Court & Comptroller
Address: 255 North Broadway Avenue
Bartow, FL 33830
Phone: 863-534-5985
Email: stacybutterfield@polk-county.net

Florida Department of Law Enforcement (FDLE) Grant Manager

Name: Ryan Derrick
Title: Government Analyst II
Address: P.O. Box 1489
Tallahassee, FL 32302-1489
Phone: 850-617-1271
Email: ryanderrick@fdle.state.fl.us

Award Signatures

In witness thereof, the duly authorized representatives of both Parties sign this Agreement to affirm and warrant they understand the terms and conditions set forth in the Agreement, including all of the attached Appendices, as of the month, day, and year set out below.

Modifications to this page, including strikeouts or whiteout, are not permitted.

**Florida Department of Law Enforcement
Office of Criminal Justice Grants**

Signature: _____

Typed Name and Title: Cody Menacof, Bureau Chief

Date: _____

**Recipient
Polk County Board of County Commissioners**

Signature: _____

Typed Name and Title: T. R. Wilson, Polk County Board of County Commissioners - Chair

Date: _____

***** If using a designee, sign the Chief Official Designee section below*****

Recipient Chief Official Designee (if applicable)

Signature: _____

Typed Name and Title: _____

Date: _____

Additional Recipient Signatures (if applicable)

Signature: _____

Typed Name and Title: _____

Date: _____

Signature: _____

Typed Name and Title: _____

Date: _____

Appendix A - Special Conditions

Award Number: MK001
Recipient: Polk County Board of County Commissioners
Project Title: 10th Judicial Circuit Medical Examiner Facility Expansion & Renovation
Project Period: 07/01/2025-06/30/2026

This Agreement is subject to the Special Conditions set forth below, in addition to the Standard Terms and Conditions outlined in **Appendix E**.

Condition No.	Condition Language
W0001	WITHHOLDING OF FUNDS: Prior to the drawdown of funds for Construction, the Recipient must contact the Department to provide specific details about project activities and costs to amend the scope of work and budget.
W0002	WITHHOLDING OF FUNDS: Prior to the drawdown of funds for third-party services, the Recipient must submit (a) an executed copy of an agreement between the Recipient and the third-party; (b) a completed Form DFS-A2-NS (Recipient/ Subrecipient vs. Vendor Determination) for the third-party, signed by the Recipient; and (c) provide documentation confirming each third-party vendor contracted with during the project period is registered with and uses the E-Verify system in accordance with Section 448.095(5), F.S.

Appendix B – Deliverables

Award Number: MK001
Recipient: Polk County Board of County Commissioners
Project Title: 10th Judicial Circuit Medical Examiner Facility Expansion & Renovation
Project Period: 07/01/2025-06/30/2026

The total amount paid for these deliverables will not exceed the total amount of the award.

Deliverable 1	The Recipient will use funds to procure a contractor for new construction and renovation of the existing Medical Examiner's Office in Polk County.
Minimum Performance Criteria:	Minimum performance will be the completion of at least one project activity outlined in the agreement between the Recipient and the third-party. Documentation required for payment includes an attestation of activities completed through the submission of the payment request.
Financial Consequences:	Failure to meet minimum performance criteria will result in the disallowance of costs.
Deliverable Price:	Total payments for this deliverable will be approximately \$3,000,000.00

Appendix C – Approved Budget

Award Number: MK001
Recipient: Polk County Board of County Commissioners
Project Title: 10th Judicial Circuit Medical Examiner Facility Expansion & Renovation
Project Period: 07/01/2025-06/30/2026

Budget Category	Total
D. Equipment	\$0.00
E. Supplies	\$0.00
F. Consultants/Contracts	\$0.00
G. Construction	\$3,000,000.00
H. Other Costs	\$0.00
TOTAL	\$3,000,000.00

Standard Budget Terms

- (a) All expenditures of state financial assistance must be allowable in accordance with the approved budget, reasonably priced based on current market review, and necessary for the operations and success of the project. The Department's determination of allowability shall be conclusive.
- (b) The Department shall disallow payment of any costs with an uncleared "Withholding of Funds" condition (**Appendix A**). Payment shall be withheld until the requirements of the condition have been met and the condition has been cleared with an amendment.
- (c) This is a cost-reimbursement award. Proof of payment is required for all expenditures. Acceptable forms of proof of payment include: copies of processed checks, front and back; credit card statements showing a charge has posted to the account; or bank statements showing funds have been withdrawn from an account.
- (d) Invoices for goods must include, for each item: a name/description, number of units, and cost per unit. Invoices for services must contain the dates of service, description of services, number of units, and cost per unit.
- (e) Sensitive or personally identifying information (PII) such as home addresses and social security numbers must be redacted from supporting documentation.
- (f) All quantities, rates, and costs listed below are estimates based on the information available at the time of application or amendment.

Construction - \$3,000,000.00

All contractor invoices must comply with the requirements outlined in this section. Subcontracts must comply with the requirements of Appendix D, Section V.

\$3,000,000.00 is allocated to procure a contractor for new construction and renovation of the existing Medical Examiner's Office in Polk County.

****Specific activities and costs for these services are TBD until a vendor has been selected and a fully executed copy of the agreement has been provided to the Department.****

The following documentation shall be provided to the Department with each payment request to substantiate costs charged to the grant: itemized invoices, proof of payment, and copies of all documentation required by the Recipient to verify the minimum performance criteria has been met.

Appendix D – Audit Requirements for Awards of State and Federal Financial Assistance

The administration of resources awarded by the Department of Law Enforcement (“Department”) to the Recipient may be subject to audits and/or monitoring by the Department, as described in this section.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR 200, Subpart F - Audit Requirements, and section 215.97, Florida Statutes (F.S.), as revised (see AUDITS below), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by 2 CFR §200.425, or other procedures. By entering into this agreement, the Recipient agrees to comply and cooperate with any monitoring procedures or processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the Recipient is appropriate, the Recipient agrees to comply with any additional instructions provided by Department staff to the Recipient regarding such audit. The Recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the Recipient is a state or local government or a nonprofit organization as defined in 2 CFR §200.90, §200.64, and §200.70.

1. A recipient that expends \$750,000 or more in federal awards in its fiscal year must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. **EXHIBIT 1** to this form lists the federal resources awarded through the Department by this agreement. In determining the federal awards expended in its fiscal year, the Recipient shall consider all sources of federal awards, including federal resources received from the Department. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR §200.502-503. An audit of the Recipient conducted by the Auditor General in accordance with the provisions of 2 CFR §200.514 will meet the requirements of this Part.
2. For the audit requirements addressed in Part I, paragraph 1, the Recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR §200.508-512.
3. A recipient that expends less than \$750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. If the Recipient expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than federal entities).

PART II: STATE FUNDED

1. In the event that the Recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such Recipient (for fiscal years ending June 30, 2017, and thereafter), the Recipient must have a state single or project-specific audit for such fiscal year in accordance with section 215.97, F.S., Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. **EXHIBIT 1** to this form lists the state financial assistance awarded through the Department by this agreement. In determining the state financial assistance expended in its fiscal year, the Recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for federal program matching requirements.
2. For the audit requirements addressed in Part II, paragraph 1, the Recipient shall ensure that the audit complies with the requirements of section 215.97(8), F.S. This includes submission of a financial reporting package as defined by section 215.97(2), F.S., and Chapters 10.550 (local

governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

3. If the Recipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal years ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of section 215.97, F.S., is not required. If the Recipient expends less than \$750,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of section 215.97, F.S., the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the Recipient's resources obtained from other than state entities).

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the Department that are solely a matter of Department policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, the Department may conduct or arrange for audits of state financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the Department must arrange for funding the full cost of such additional audits.)

N/A

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR 200, Subpart F - Audit Requirements, and required by Part I of this form shall be submitted, when required by 2 CFR §200.512, by or on behalf of the Recipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR §200.36 and §200.512. The FAC's website (<https://www.fac.gov/>) provides a data entry system and required forms for submitting the single audit reporting package. Updates to the location of the FAC and data entry system may be found at the OMB website.
2. Copies of financial reporting packages required by Part II of this form shall be submitted by or on behalf of the Recipient directly to each of the following:
 - a. The Department at the following email address:
Electronic copy:
OCJGSFA@fdle.state.fl.us
 - b. The Auditor General's Office at each of the following addresses:

Electronic copy: The Auditor General's website (https://flauditor.gov/) provides instructions for filing an electronic copy of a financial reporting package.	and	Paper (hard copy): Auditor General Local Government Audits/342 Claude Pepper Building, Room 401 111 West Madison Street Tallahassee, Florida 32399-1450
---	-----	--
3. Documentation required by Part III of this form, if applicable, shall be submitted by or on behalf of the Recipient directly to the Department at OCJGSFA@fdle.state.fl.us.
4. Any reports, management letters, or other information required to be submitted to the Department pursuant to this agreement shall be submitted timely in accordance with 2 CFR §200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
5. Recipients, when submitting financial reporting packages to the Department for audits done in accordance with 2 CFR 200, Subpart F - Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The Recipient shall retain sufficient records demonstrating its compliance with the terms of the award(s) and this agreement for a period of five (5) from the date the audit report is issued, and shall allow the Department, or its designee, the CFO, or Auditor General access to such records upon request. The Recipient shall ensure that audit working papers are made available to the Department, or its designee, the CFO, or Auditor General upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by the Department.

EXHIBIT 1**FEDERAL RESOURCES: N/A****STATE RESOURCES:**

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:

1. **Matching Resources for Federal Programs: N/A**

2. **Subject to section 215.97, F.S:**

A. **State Project:**

State Awarding Agency	State of Florida, Department of Law Enforcement
State Project Title	10th Judicial Circuit Medical Examiner Facility Expansion & Renovation
CSFA Number	TBD
Award Number	MK001
Award Amount	\$3,000,000.00

3. **Compliance Requirements Applicable to State Resources Awarded Pursuant to this Agreement are as Follows:**

A. **State Project:** The compliance requirements for Award MK001 are outlined in the award agreement.

Appendix E – Standard Terms and Conditions

The following terms and conditions will be binding upon the execution of this Agreement between the Department and the Recipient. In the event that any of the information provided in this Appendix changes after the execution of this Agreement, the Department shall provide written notice of such changes to the Recipient. A formal amendment to the Agreement is not required.

SECTION I: GOVERNING LAWS OF THE STATE OF FLORIDA

This Agreement is entered into in the State of Florida, and shall be construed, performed, and enforced in all respects in accordance with the laws, rules, and regulations of the State. Each Party shall perform its obligations in accordance with the terms and conditions of this Agreement.

- A. Lobbying Prohibited:** The Recipient shall comply with the provisions of sections 11.062 and 216.347, F.S., which prohibit the expenditure of state funds for the purpose of lobbying the Legislature, judicial branch, or a state agency. No funds or other resources received in connection with this agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.
- B. Independent Contractor:** In performing its obligations under this agreement, the Recipient shall at all times act in the capacity of an independent contractor and not as an officer, employee, or agent of the State of Florida. Nothing in this Agreement may be understood to constitute a partnership or joint venture between the Parties. Neither the Recipient nor any of its agents, employees, subcontractors, or assignees shall represent to others that it is an agent of or has the authority to bind the Department by virtue of this agreement, unless specifically authorized in writing to do so.
- C. Limitations on Advertising:** The Department is prohibited from endorsing the project of any recipient of state financial assistance. The Recipient shall not publicly disseminate any information or documentation that implies the project described in this Agreement is endorsed by the Department, or that contains the name, logos, or emblems of the Department.
- D. Sponsorship:** If the Recipient is a nongovernmental organization (a nonprofit or for-profit) that sponsors a program that is financed wholly or in part by State funds, including funds obtained through this Agreement, it shall, in publicizing, advertising, or describing the sponsorship of the program, state: "Sponsored by (Recipient's name) and the State of Florida." If the sponsorship reference is in written material, the words "State of Florida" shall appear in the same size letters or type as the name of the Recipient. The Department's name, logos, or emblems shall not be utilized.
- E. Travel Costs:** The maximum amount of reimbursement for travel costs shall not exceed the rates established in the State of Florida Travel Guidelines, section 112.061, F.S.
- F. Civil Rights:** The Recipient agrees to comply with the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.) and shall not discriminate against any individual employed in the performance of this Agreement due to race, religion, color, sex, physical handicap unrelated to such a person's ability to engage in this work, national origin, ancestry, age, or marital status. These requirements shall apply to all contractors, subrecipients, or others with whom the Recipient arranges to provide services or benefits to clients or employees in connection with the award program and related activities.
- G. E-Verify:** The Recipient agrees to comply with section 448.095(5), F.S., requiring the Recipient and all third-party entities it enters into agreements with to register with and use the E-Verify system. The Recipient may not enter into a contract with any third-party entity without verifying compliance with this requirement, or without obtaining an affidavit from the third-party entity stating they do not employ, contract with, or subcontract with unauthorized aliens. If the Recipient or the Department has a good faith belief that a third-party entity is in violation of section 448.09(1), F.S., the Recipient must terminate their contract with the third-party entity. Third-party entities may file a cause of action with a circuit or

county court to challenge a termination no later than 20 calendar days after the date on which the contract was terminated.

- H. Background Check:** Whenever a background screening for employment or a background security check is required by law for employment, unless otherwise provided by law, the provisions of chapter 435, F.S., shall apply. All employees in positions designated by law as positions of trust or responsibility shall be required to undergo security background investigations as a condition of employment and continued employment. For the purposes of this subsection, security background investigations shall include, but not be limited to: employment history checks, fingerprinting for all purposes and checks in this subsection, statewide criminal and juvenile record checks through the Florida Department of Law Enforcement, and federal criminal record checks through the Federal Bureau of Investigation, and may include local criminal record checks through local law enforcement agencies.
- I. Non-Disclosure Agreements:** Recipients may not require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits, restricts or purports to prohibit or restrict, the reporting of waste, fraud, or abuse in accordance with law to an investigative or law enforcement representative of a state or federal department or agency authorized to receive such information. The Recipient certifies that if it is informed or notified that any subrecipient or vendor has been requiring their employees to execute agreements or statements that prohibit the reporting of fraud, waste, or abuse that it will immediately cease all further obligations of award funds to the entity and will immediately notify the Department. The Recipient will not resume obligations until expressly authorized to do so by the Department.
- J. Disputes and Appeals:** Unless otherwise stated in this Agreement, disputes concerning performance under the Agreement will be decided by the Department, who shall reduce the decision to writing and serve a copy to the Recipient. In the event a Party is dissatisfied with the dispute resolution decision, jurisdiction for any dispute arising under the terms of the Agreement will be in State courts, and the venue will be the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the Parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.
- K. Insurance:** The Recipient shall provide and maintain at all times during this Agreement adequate general liability insurance coverage of such types and with such terms and limits as may be reasonably associated with this Agreement, as required by law, and as otherwise necessary and prudent for the Recipient's performance of work under this Agreement. The limits of coverage shall not be interpreted as limiting the Recipient's liability and obligations under this Agreement. All insurance policies shall be through insurers licensed and authorized to write policies in the State of Florida, and such policies shall cover all employees engaged in any work performed under this Agreement. Documentation to support compliance with this provision shall be provided to the Department upon request. Failure to maintain adequate insurance coverage may, at the Department's sole discretion, result in termination of the Agreement.
- L. Intellectual Property Rights:** Where activities supported by this Agreement result in the creation of intellectual property rights, the Recipient shall notify the Department, and the Department will determine whether the Recipient will be required to grant the Department a perpetual, irrevocable, royalty-free, nonexclusive license to use, and to authorize others to use for State government purposes, any resulting patented, copyrighted, or trademarked work products developed under this Agreement. The Department will also determine whether the Recipient will be required to pay all or a portion of any royalties resulting from such patents, copyrights, or trademarks.
- M. Prohibited Vendor Lists:** The Recipient may not enter into an agreement with any organization named on a prohibited vendor list, pursuant to sections 287.133 – 287.137, F.S. In addition, if the Recipient is found to be included on any of these lists, the Department may unilaterally terminate this Agreement. These lists are maintained by the Department of Management Services on their website: https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists

1. The "Convicted Vendor List", pursuant to section 287.133, F.S.
2. The "Discriminatory Vendor List", pursuant to section 287.134, F.S.
3. The "Forced Labor Vendor List", pursuant to section 287.1346, F.S.
4. The "Scrutinized List of Prohibited Companies", pursuant to section 287.135, F.S.
5. The "Suspended Vendor List", pursuant to section 287.1351, F.S.
6. The "Antitrust Violator Vendor List", pursuant to section 287.137, F.S.

SECTION II: FUNDING AND PAYMENT CONSIDERATIONS

- A. Funding Requirements:** Pursuant to section 215.971(1), F.S.:
1. The Recipient may only expend funding under this Agreement for allowable costs resulting from obligations incurred during the project period.
 2. The Recipient shall refund to the Department any balance of unobligated funds that were advanced or paid to the Recipient.
 3. The Recipient shall refund to the Department all funds received in excess of the amount to which the Recipient or its subrecipients are entitled under the terms and conditions of this Agreement.
- B. Compensation:** This is a cost-reimbursement agreement. This Agreement shall not exceed the award amount, and payment shall only be issued by the Department after acceptance of the Recipient's performance as set forth by the terms and conditions of this Agreement. The State of Florida's obligation to pay under this agreement is contingent upon an appropriation by the Legislature.
- C. Payment Process:** Subject to the terms and conditions established in this Agreement, the Department agrees to pay the Recipient in accordance with section 215.422, F.S.
- D. EFT Payments:** Electronic Funds Transfer (EFT) payments are preferred by the State. While enrollment is not required, the Recipient may choose to enroll by submitting an authorization form to the Department of Financial Services. Copies of the authorization form and a sample blank enrollment letter may be obtained at: <https://www.myfloridacfo.com/division/aa/vendors>. Once enrolled, payments under this Agreement will be made by EFT. Questions about the enrollment process should be directed to the EFT section of the Department of Financial Services at (850) 413-5517.
- E. Financial Management:** The Recipient agrees to maintain all financial records and documents (including electronic files) in accordance with generally accepted accounting procedures and practices. The Recipient must be able to record and report on the receipt, obligation, and expenditure of grant funds for each award, project, and/or subrecipient. The Recipient must provide copies of their general ledgers and schedule of accounts to the Department upon request for monitoring purposes.
- F. Expenditures:** All expenditures must be in compliance with the laws, rules, and regulations applicable to the expenditure of State funds, including, but not limited to, the [Reference Guide for State Expenditures](#) maintained by the Department of Financial Services.
- G. Taxes:** The Department is exempt from the payment of State sales and use tax and Federal Excise Tax. Unless otherwise provided by law, the Recipient, however, shall not be exempted from paying State sales and use tax to the appropriate governmental agencies, nor shall the Recipient be exempted from paying its suppliers for any taxes on materials used to fulfill its contractual obligations under this Agreement. The Recipient shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this agreement.
- H. Invoices:** Invoices submitted to the Department as supporting documentation for payment must fulfill all of the requirements for invoices outlined in the Reference Guide for State Expenditures. These requirements are summarized in Appendix C of this Agreement.

- I. **Advance Payments:** While this is primarily a cost-reimbursement agreement, the Recipient may be eligible to receive an advancement of funds (a cash advance) for immediate payables. The Recipient shall provide written justification for imminent need of funding to the Department Grant Manager, accompanied by the invoice(s) to be paid. The Recipient will be notified of the Department's decision to approve or deny the request in writing. If approved, advanced funds must be utilized to pay the approved invoice(s) within thirty (30) days of receipt of the funds via check/warrant or EFT. The cash advance must be reconciled with the Department within forty-five (45) days of receipt of the funds. The Department may choose, at its sole discretion, to withhold all payments owed to the Recipient until an outstanding cash advance has been reconciled.
- J. **Final Payment Request:** If the Recipient fails to submit the final payment request to the Department by the deadline specified in the Scope of Work, or within 45 days of the end date of the Agreement, the Department may, at its sole discretion, consider the Recipient to have forfeited any and all rights to payment under this Agreement.

SECTION III: RETURN OR RECOUPMENT OF FUNDS

- A. **Refunds:** If the Recipient or its independent auditor discovers that an overpayment has been made, the Recipient shall contact the Department within seven (7) calendar days after the date of discovery. In the event that the Department first discovers an overpayment has been made, the Department will notify the Recipient in writing. The Department will provide a Refund Request Form to the Recipient to be completed and mailed to the Department with the refund check. Refunds must be submitted to the Department within thirty (30) calendar days after the date of discovery. Checks shall be made payable to the "Department of Law Enforcement" and shall be mailed with a copy of the Refund Request Form to:

*FDLE – Cash Receipts
Post Office Box 1489
Tallahassee, FL 32302-1489*

Should repayment not be made in a timely manner, the Department shall be entitled to charge interest at the lawful rate of interest on the outstanding balance beginning forty (40) calendar days after the date of notification or discovery. If an overpayment is discovered while the Agreement is still active, the Department may choose to recoup the overpayment from monies owed to the Recipient under this Agreement.

- B. **Recoupment of Funds:** If the Recipient's noncompliance with any provision of this Agreement results in additional costs or monetary loss to the Department or the State, the Department may recoup the costs or losses from monies owed to the Recipient under this Agreement. In the event that the discovery of additional costs or losses arises when no monies are available under this Agreement, the Recipient shall repay such costs or losses to the Department in full within thirty (30) days from the date of discovery or notification, unless the Department agrees, in writing, to an alternative timeframe.

SECTION IV: DUTY OF DISCLOSURE OF LEGAL PROCEEDINGS AND INSTANCES OF FRAUD

- A. **Legal Proceedings:** Prior to the execution of this Agreement, the Recipient shall disclose in writing all prior or on-going civil or criminal litigation, investigations, arbitration, or administrative proceedings (collectively "Proceedings") involving this Agreement, including any Proceedings that involve subrecipients or contractors performing work under this Agreement. Thereafter, the Recipient has a continuing duty to promptly disclose all Proceedings upon occurrence.
- B. **Duty of Disclosure:** This duty of disclosure applies to each officer and director of the Recipient, as well as to each officer and director of subrecipients or contractors performing work under this Agreement, for any Proceeding that relates to an officer's or director's business or financial activities. Details of settlements that are prevented from disclosure by the terms of the settlement must be annotated as such. If the existence of such Proceeding causes the Department concern about Recipient's ability or willingness to perform work under the Agreement, then upon the Department's request, the Recipient shall provide to the Department Grant Manager all reasonable assurances that: (a) the Recipient will be

able to perform work under the Agreement in accordance with its terms and conditions; and (b) the Recipient and/or its employees, agents, subrecipients, or contractors have not and will not engage in conduct which is similar in nature to the conduct alleged in such Proceeding while performing work under this Agreement.

- C. Notification of Instances of Fraud:** Upon discovery, the Recipient shall report all known or suspected instances of operational fraud, criminal activities, or mismanagement of award funds committed by the Recipient, or an agent, contractor, or employee of the Recipient, to the Department Grant Manager in writing within 24 chronological hours.

SECTION V: MANDATORY DISCLOSURE REQUIREMENTS

- A. Conflict of Interest:** This Agreement is subject to chapter 112, F.S. . The Recipient shall disclose the name of any officer, director, employee, or other agent who is also an employee of the State. The Recipient shall also disclose the name of any State employee who owns, directly or indirectly, more than a five percent (5%) interest in the Recipient or its affiliates.
- B. Foreign Gifts and Contracts:** The Recipient shall comply with any applicable disclosure requirements in section 286.101, F.S.. Pursuant to section 286.101(7), F.S., "In addition to any fine assessed under section 286.101(7)(a), a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

SECTION VI: PUBLIC RECORDS REQUIREMENTS

Recipients who fail to provide Public Records to the Department within a reasonable amount of time may be subject to penalties under section 119.10, F.S.

- A. Public Records Law:** The Recipient must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by the Recipient in conjunction with the Agreement ("Public Records"), unless the Public Records are exempt from public access pursuant to chapter 119, F.S., section 24(a) of Article I of the Florida Constitution, or other applicable state or federal law ("Public Records Law"). For the purposes of this Agreement, the Recipient is responsible for becoming familiar with Florida's Public Records Law. The Recipient must provide copies of all requested documentation to the Department within ten (10) business days of the date of the request. The Department may unilaterally terminate the Agreement if the Recipient refuses to allow public access to Public Records as required by Public Records Law.
- B. Public Records Requests:** All requests to inspect or copy Public Records relating to the Agreement must be made directly to the Department. Notwithstanding any provisions to the contrary, disclosure of any records made or received by the State in conjunction with the Agreement is governed by Public Records Law.
- C. Exemption from Public Records:** If the Recipient has a reasonable, legal basis to assert that any portion of any records submitted to the Department is confidential, proprietary, trade secret, or otherwise not subject to disclosure ("Confidential" or "Trade Secret") under Public Records Law or other legal authority, the Recipient must simultaneously provide the Department with a separate redacted copy of the records the Recipient claims as Confidential or Trade Secret and briefly describe in writing the grounds for claiming exemption from the Public Records Law, including the specific statutory citation for such exemption. Only the portions of the records that the Recipient claims are Confidential or Trade Secret shall be redacted. If the Recipient fails to submit a redacted copy of records it claims are Confidential or Trade Secret, such action may constitute a waiver of any claim of confidentiality.
- D. Requests for Redacted Records:** If the Department receives a Public Records request for records that include those marked as "Confidential" or "Trade Secret", the Department will provide the Recipient-

redacted copies to the requester. If a requester asserts a right to the portions of records claimed as Confidential or Trade Secret, the Department will notify the Recipient that such an assertion has been made. It is the Recipient's responsibility to assert that the portions of records in question are exempt from disclosure under Public Records Law or other legal authority. If the Department becomes subject to a demand for discovery or disclosure of the portions of records the Recipient claims as Confidential or Trade Secret in a legal proceeding, the Department will give the Recipient prompt notice of the demand, when possible, prior to releasing the portions of records the Recipient claims as Confidential or Trade Secret (unless disclosure is otherwise prohibited by applicable law). The Recipient shall be responsible for defending its determination that the redacted portions of its records are Confidential or Trade Secret. No right or remedy for damages against the Department arises from any disclosure made by the Department based on the Recipient's failure to promptly, legally protect its claim of exemption and commence such protective actions within ten (10) days of receipt of such notice from the Department. If the Recipient claims that the records are Trade Secret pursuant to section 624.4213, F.S., and if all the requirements of section 624.4213(1), F.S., are met, the Department will respond to the Public Records Request in accordance with the provisions specified in that statute.

- E. Records Transfer:** If the Recipient's record retention requirements terminate prior to the requirements stated herein, the Recipient may meet the Department's record retention requirements for this Agreement by transferring its records to the Department at that time, and by destroying duplicate records in accordance with section 501.171, F.S., and if applicable, section 119.0701, F.S. The Recipient shall adhere to established information destruction standards such as those established by the National Institute of Standards and Technology Special Publication 800-88, "Guidelines for Media Sanitization" (2014). See:

<https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-88r1.pdf>

IF THE RECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE RECIPIENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT PUBLIC RECORDS AT:

Telephone: (850) 410-7676

Email: publicrecords@fdle.state.fl.us

Mailing Address: Florida Department of Law Enforcement,
Office of Open Government, Public Records Section
P.O. Box 1489
Tallahassee, FL 32302-1489

SECTION VII: NONEXPENDABLE PROPERTY

For the purposes of this section, "property" means equipment, fixtures, and other tangible personal property of a nonconsumable and nonexpendable nature.

- A. Compliance:** The requirements of this section apply to property owned by governmental units as defined by section 274.01, F.S., and not to for-profit or nonprofit organizations. However, these organizations are encouraged to establish and administer a property management system to protect, preserve, use, maintain, and dispose of any property furnished to it by the Department or purchased pursuant to this agreement.
- B. Property Supervision and Control:** Pursuant to section 273.03, F.S., the Recipient is the custodian of all nonexpendable property, and shall be primarily responsible for the supervision, control, and disposition of the property in his or her custody (but may delegate its use and immediate control to a person under his or her supervision and may require custody receipts).
- C. Maintenance of Property:** The Recipient shall be responsible for the correct use of all nonexpendable property obtained using funds provided by this Agreement, and for the implementation of adequate maintenance procedures to keep the nonexpendable property in good operating condition.

- D. Property Records:** All nonexpendable property purchased under this Agreement shall be listed on the property records of the Recipient. The Recipient shall inventory annually and maintain accounting records for all nonexpendable property purchased. The records shall include, at a minimum, the following information: property tag identification number, description of the item(s), physical location, name, make or manufacturer, year, and/or model, manufacturer's serial number(s), dates of acquisition, and the current condition of the item.

SECTION VIII: PURCHASE OF, OR IMPROVEMENTS TO, REAL PROPERTY

- A. Security Interest:** In accordance with section 287.05805, F.S., if funding provided under this Agreement is used for the purchase of or improvements to real property, the Recipient shall grant the Department a security interest in the property in the amount of the funding provided by this Agreement for the purchase of improvements to the real property for five (5) years from the date of purchase or the completion of improvements or as further required by law.
- B. Expiration of Security Interest:** Upon the expiration date of the Agreement, the Recipient shall be authorized to retain ownership of the improvements to real property set forth in this Agreement in accordance with the following: (a) the Recipient is not sold, merged, or acquired; (b) the real property subject to the improvements is owned by the Recipient; and (c) the real property subject to the improvements is used for the purposes provided in this Agreement. If within five years of expiration of this Agreement, the Recipient is unable to satisfy these requirements, the Recipient shall notify the Department in writing of the circumstances that will result in the deficiency upon learning of it, but no later than thirty (30) calendar days prior to the deficiency occurring. In such event, the Department shall have the right, within its sole discretion, to demand reimbursement of part or all of the funding provided to the Recipient under this Agreement.

SECTION IX: SUBAWARDS, CONTRACTS, AND ASSIGNMENTS

- A. Allowability:** Unless otherwise specified in this Agreement or through prior written approval of the Department, the Recipient may not: (a) Subgrant any of the funds provided to the Recipient by the Department under this Agreement; (b) contract its duties or responsibilities under this Agreement out to a third party; or (c) assign any of the Recipient's rights or responsibilities herein, unless specifically permitted by law to do so.
- B. Recipient Responsibilities:** The Recipient agrees to be responsible for all work performed and all expenses incurred in fulfilling the obligations of this Agreement. If the Department approves the Recipient's request to subgrant, contract, or assign any or all of the work to be performed under this Agreement, it is understood by the Recipient that all such arrangements shall be evidenced by a written contract containing all provisions necessary to ensure the vendor's compliance with applicable state and federal laws. The Recipient agrees that all subrecipients performing work under this award shall be properly trained individuals who meet or exceed any specified training qualifications. The Recipient further agrees that the Department shall not be liable to the vendor for all expenses and liabilities incurred under the contract and that the Recipient shall be solely liable to the vendor for all expenses and liabilities incurred under the contract. The Recipient, at its expense, will defend the Department against such claims.
- C. Subrecipient Responsibilities:** Subrecipients of state financial assistance are obligated to comply with the requirements outlined in this Agreement for monitoring, auditing, records retention, and financial reporting outlined in the attached Appendix to this Agreement. The Recipient shall include the aforementioned requirements in all approved subrecipient contracts and assignments.
- D. Subrecipient Agreements:** Pursuant to section 215.971, F.S., agreements with subrecipients performing work under this award shall include, or be amended to include:
- A scope of work that clearly establishes the tasks/activities the subrecipient will perform.
 - Specific deliverables related to the tasks/activities outlined in the scope of work.
 - The minimum level of performance required for each deliverable and the criteria that will be used to determine successful performance. This may include: documentation supporting delivery of an

item such as receipts or paid invoices, documentation supporting the successful completion of an activity such as a dated, itemized invoice, activity logs, timesheets, or participant sign-in sheets.

- d) The financial consequences that will apply if the minimum level of service is not attained.
- e) The financial consequences that will apply if the subrecipient fails to perform in accordance with the contract.

- E. Required Documentation:** The Recipient shall provide to the Department copies of all subcontracts executed with entities performing work under this award and a completed Form DFS-A2-NS (Recipient/Subrecipient vs. Vendor Determination form) with each subcontract. This form is required by the Florida Department of Financial Services and determines (1) the applicability of the Florida Single Audit Act and (2) whether the subcontractor is a vendor or a subrecipient.
- F. Certificate of Subaward:** When a subrecipient relationship is determined to exist, the Recipient must ensure the subrecipient is aware of, and agrees to follow, all audit, monitoring, and compliance requirements for the use of state funds referenced in Form DFS-A2-CL ("Audit Requirements for Awards of State and Federal Financial Assistance"). To assist with this requirement, the Department created a "Certificate of Subaward" to be completed by the Recipient and signed by the subrecipient. A copy of this form must be provided to the Department and maintained on file by all parties.
- G. Invoice Requirements:** Invoices submitted by a subcontractor must clearly identify the: the dates of service (the invoice period); a description of the specific deliverables provided during the invoice period; the quantity provided; and the payment amount specified in the contract for the completion of the deliverables provided.
- H. Timely Payment of Subcontractors:** If the Recipient receives advanced funding to pay an invoice for a subrecipient or contractor, the Recipient agrees to make payments to pay the invoice within seven (7) working days of receipt of the advance via check/warrant or EFT, unless otherwise stated in the agreement between the Recipient and the subrecipient or contractor. The Recipient's failure to pay its subrecipients or contractors within seven (7) working days will result in a statutory penalty charged against the Recipient and paid to the subrecipient or contractor in the amount of one-half of one (1) percent of the amount due per day from the expiration date of the period allowed herein for payment. Such statutory penalty shall be in addition to actual payments owed and shall not exceed fifteen (15) percent of the outstanding balance due, pursuant to section 287.0585, F.S.

SECTION X: INDEMNIFICATION

- A. Limitations of Liability:** The Recipient shall be fully liable for the actions of its agents, employees, partners, subrecipients, or contractors and shall fully indemnify, defend, and hold harmless the State and the Department, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by the Recipient, its agents, employees, partners, subrecipients, or contractors provided, however, that the Recipient shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or the Department.

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

The Recipient's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or the Department giving the Recipient: (a) written notice of any action or threatened action; (b) the opportunity to take over and settle or defend any such action at the Recipient's sole expense; and (c) assistance in defending the action at the Recipient's sole expense.

The Recipient shall not be liable for any cost, expense, or compromise incurred or made by the State or the Department in any legal action without the Recipient's prior written consent, which shall not be unreasonably withheld.

SECTION XI: NONPROFIT RECIPIENTS

- A. Allocations for Remuneration Form:** Pursuant to §216.1366(3), and Executive Order 22-44, nonprofit Recipients are required to provide documentation indicating the amount of state financial assistance allocated for remuneration to any member of the board of directors or an executive officer of the Recipient's organization. This requirement is met by submitting a "Non-Profit State Fund Allocations for Remuneration" form to the Department. A copy of this form must be posted to the Recipient's website, if the Recipient maintains a website. For the purposes of this section, "remuneration" means all compensation earned by or awarded to personnel, whether paid or accrued, regardless of contingency, including bonuses, accrued paid time off, severance payments, incentive payments, contributions to a retirement plan or in-kind payments, reimbursements, or allowances for moving expenses, vehicles and other transportation, telephone services, medical services, housing, and meals.
- B. Compensation Paid Using State Funds Form:** If the Recipient indicates funding has been allocated for remuneration to any member of the board of directors or an executive officer of the Recipient's organization, a "Non-Profit Total Compensation Paid Using State Funds" form must be submitted to the Department with each payment request for each individual receiving compensation. A copy of this form (or forms) must be posted to the Recipient's website, if the Recipient maintains a website.
- C. IRS Form 990:** Pursuant to Executive Order 22-44, nonprofit recipients who receive 50% or more of their annual funding from the state must submit a copy of their IRS Form 990 to the Department at the time it is filed. Any subsequent changes or corrections that are made to Form 990 during the project period must be submitted to the Department within thirty (30) days of the change or correction.

SECTION XII: TERMINATION AND FORCE MAJEURE

- A. Corrective Action:** The Department will notify the Recipient in writing if corrective action is required for noncompliance, nonperformance, or unacceptable performance of work under this Agreement. Failure to implement or improve performance of work in accordance with the corrective action plan may result in termination of the Agreement.
- B. Termination for Cause:** The Department may, at its sole discretion and upon providing written notice to the Recipient, terminate the Agreement if the Recipient fails to a) satisfactorily complete the deliverables within the project period of the Agreement; b) maintain adequate progress, thus endangering performance of the Agreement; c) honor any term of the Agreement; or d) above by any statutory, regulatory, or licensing requirement of the Agreement.
- C. Termination Due to Lack of Funds:** If funding for this Agreement is withdrawn or redirected by the Legislature, the Department shall provide written notice to the Recipient at the earliest possible time. The lack of funds shall not constitute a default by the Department or the State.
- D. Termination for Convenience:** The Department may terminate this Agreement, in whole or in part, by providing written notice to the Recipient that it is in the Department's or the State's best interest to do so. The Recipient shall not provide any deliverable pursuant to Appendix B after it receives the Department's notice of termination, except as the Department otherwise specifically instructs the Recipient in writing. The Recipient will not be entitled to recover any cancellation charges or lost profits.

- E. Recipient's Responsibilities upon Termination:** If the Department issues a notice of termination to the Recipient, except as otherwise specified by the Department in that notice, the Recipient shall: (a) Stop work under this Agreement on the date and to the extent specified in the notice; (b) complete performance of such part of the work the Department does not terminate, if any; (c) take such action as may be necessary, or as the Department may specify, to protect and preserve any property which is in the possession of the Recipient and in which the Department has or may acquire an interest; and (d) transfer, assign, and make available to the Department all property and materials belonging to the Department upon the effective date of termination of this Agreement. No extra compensation will be paid to the Recipient for its services in connection with such transfer or assignment.
- F. Severability:** If any provision of this Agreement, in whole or in part, is held to be void or unenforceable by a court of competent jurisdiction, that provision will be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable, and all other provisions remain in full force and effect.
- G. Survival:** Any right or obligation of the Parties in this Agreement which, by its express terms or nature and context, is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration.
- H. 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 caused by 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 subrecipients, contractors, or suppliers if no alternate source of supply is available. However, in the event a delay arises from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting damages, costs, delays, or disruptions to the Party's performance requirements under this Agreement.
- I. Notice of Delay from Force Majeure:** In the case of any delay the Recipient believes is excusable under subsection G, the Recipient shall notify the Department in writing of the delay or potential delay and the cause of the delay either: (a) within ten (10) calendar days after the cause that creates or will create the delay first arose, if the Recipient could reasonably foresee that a delay could occur as a result; or (b) within five (5) calendar days after the date the Recipient first had reason to believe that a delay could result, if the delay is not reasonably foreseeable. **THE FOREGOING SHALL CONSTITUTE THE RECIPIENT'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this subsection is a condition precedent to such remedy. The Department, in its sole discretion, will determine if the delay is excusable under this Section and will notify the Recipient of its decision in writing. No claim for damages, other than for an extension of time, shall be asserted against the Department. The Recipient will not be entitled to an increase in the Agreement price or payment of any kind from the Department for any reason. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this subsection, after the causes have ceased to exist, the Recipient shall resume performance, unless the Department determines, in its sole discretion, that the delay will significantly impair the ability of the Recipient to timely complete its obligations under this Agreement, in which case the Department may terminate the Agreement in whole or in part. If the delay is excusable under this section, the delay will not result in any additional charge or cost under the Agreement to either Party.