

RECIPIENT/SUBRECIPIENT AGREEMENT

STATE OF FLORIDA

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION

FWC Agreement No. #XXXX

Federal Grant Information	
CFDA Title(s): N/A	CFDA No(s): N/A
Name of Federal Agency(s): N/A	
Federal Award No(s): N/A	Federal Award Year(s): N/A
Federal Award Name(s): N/A	
State Grant Information	
CSFA Title(s): Derelict Vessel Removal Grant	CSFA No(s): 77.005:
State Award No(s):	State Award Year(s): 2022-2023
State Award Name(s):	

This Agreement is entered into by and between the Florida Fish and Wildlife Conservation Commission, whose address is 620 South Meridian Street, Tallahassee, Florida 32399-1600, hereafter “Commission” or “FWC,” and XX XXX BOCC, EIN, whose address is , Florida, the Recipient/Subrecipient, hereinafter “Recipient”, collectively, “Parties”.

INTRODUCTORY CLAUSES

WHEREAS, Commission and Recipient intend to partner together to remove derelict vessels from the waters of the State; and,

WHEREAS, such benefits are for the ultimate good of the State of Florida, its resources, wildlife, and public welfare.

TERMS OF THE AGREEMENT

The Commission and the Recipient, for the considerations stated in this Agreement, agree as follows:

Section 1. PROJECT DESCRIPTION.

The Recipient shall provide the services and perform the specific responsibilities and obligations, as set forth in the Scope of Work, attached hereto as Attachment A, which specifically identifies project tasks and accompanying deliverables. These deliverables must be submitted and approved by the Commission prior to any payment. The Commission will not accept any deliverable that does not comply with the specified required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable. If this

agreement is the result of Recipient responses to the Commission's request for competitive or other grant proposals, the Recipient's response is hereby incorporated by reference.

Section 2. PERFORMANCE.

The Recipient shall perform the activities described in Attachment A in a proper and satisfactory manner. Unless otherwise provided for in Attachment A, any and all equipment, products or materials necessary or appropriate to perform under this Agreement shall be supplied by the Recipient. The Recipient shall obtain all necessary local, state, and federal authorizations necessary to complete this project, and the Recipient shall be licensed as necessary to perform under this Agreement as may be required by law, rule, or regulation; the Recipient shall provide evidence of such compliance to the Commission upon request. The Recipient shall procure all supplies and pay all charges, fees, taxes and incidentals that may be required for the completion of this Agreement. By acceptance of this Agreement, the Recipient warrants that it has the capability in all respects to fully perform the requirements and the integrity and reliability that will assure good-faith performance as a responsible Recipient. The Recipient shall immediately notify the Commission's Grant Manager in writing if its ability to perform under the Agreement is compromised in any manner during the term of the Agreement. The Commission shall take appropriate action, including potential termination of this Agreement, in the event the Recipient's ability to perform under this Agreement becomes compromised.

Section 3. AGREEMENT PERIOD.

Agreement Period and Commission's Limited Obligation to Pay. The Agreement shall be effective upon execution by the last Party to sign and shall remain in effect through DATE.

However, if this Agreement is made pursuant to a grant award as authorized by Rule 68-1.003, F.A.C., the referenced grant programs may execute Agreements with a retroactive start date of no more than sixty (60) days, provided that approval is granted from the Executive Director or his/her designee and that it is in the best interest of the Commission and State to do so. For this Agreement, the retroactive start date was not approved. The Commission's Grant Manager shall confirm the specific start date of the Agreement by written notice to the Recipient. The Recipient shall not be eligible for reimbursement or compensation for grant activities performed prior to the start date of this Agreement nor after the end date of the Agreement. For this Agreement, pre-award costs are not eligible for reimbursement. If necessary, by mutual agreement as evidenced in writing and lawfully executed by the Parties, an Amendment to this Agreement may be executed to lengthen the Agreement period.

Section 4. COMPENSATION AND PAYMENTS.

A. Compensation.

As consideration for the services rendered by the Contractor under the terms of this Agreement, the Commission shall pay the Recipient on a cost reimbursement basis in an amount not to exceed \$.

B. Payments.

The Commission shall pay the Recipient for satisfactory performance of the tasks identified in Attachment A as evidenced by the completed deliverables, upon submission of invoices, accompanied by supporting documentation sufficient to justify invoiced expenses or fees, and after acceptance of services and deliverables in writing by the Commission's Grant Manager. Unless otherwise specified in Attachment A, invoices shall be due monthly, commencing from the start date of this Agreement. Invoices must be legible and must clearly reflect the Deliverables that were provided in accordance with the terms of the Agreement for the invoice period. Unless otherwise specified in Attachment A, a final invoice shall be submitted to the

Commission no later than forty-five (45) days following the expiration date of this Agreement to assure the availability of funds for payment. Further, pursuant to Section 215.971(1)(d), F.S., the Commission may only pay the Recipient for allowable costs resulting from obligations incurred during the agreement period.

C. Invoices.

Each invoice shall include the Commission Agreement Number and the Recipient's Federal Employer Identification (FEID) Number. Invoices, with supporting documentation, may be submitted electronically to the attention of the Commission's Grant Manager. If submitting hard copies, an original and two (2) copies of the invoice, plus all supporting documentation, shall be submitted. All bills for amounts due under this Agreement shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Recipient acknowledges that the Commission's Grant Manager shall reject invoices lacking documentation necessary to justify invoiced expenses.

D. Match

If this Agreement is made pursuant to a grant award as authorized by Rule 68-1.003, F.A.C., the Recipient is not required to contribute non-federal match towards this Agreement. If applicable, details regarding specific match requirements are included in Attachment A.

E. State Obligation to Pay.

The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation and authorization to spend by the Legislature. The Parties hereto understand that this Agreement is not a commitment to future appropriations but is subject to appropriation and authority to spend provided by the Legislature. The Commission shall be the final authority as to the availability of funds for this Agreement, and as to what constitutes an "annual appropriation" of funds to complete this Agreement. If such funds are not appropriated or available for the Agreement purpose, such event will not constitute a default on behalf of the Commission or the State. The Commission's Grant Manager shall notify the Recipient in writing at the earliest possible time if funds are not appropriated or available.

F. Non-Competitive Procurement and Rate of Payment.

Section 216.3475, F.S., requires that under non-competitive procurements, a Recipient may not receive a rate of payment in excess of the competitive prevailing rate for those services unless expressly authorized in the General Appropriations Act. If applicable, Recipient warrants, by execution of this Agreement, that the amount of non-competitive compensation provided in this Agreement is in compliance with Section 216.3475, F.S.

G. Cost Reimbursement

If the Compensation section indicates this is a cost reimbursement Agreement, the Recipient shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in Attachment A. To be eligible for reimbursement, costs must follow the requirements of Section 215.971, F.S. and must also be in compliance with other laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the [Reference Guide for State Expenditures](#).

Invoices submitted for cost reimbursement must be itemized by expenditure category as outlined in the approved Agreement budget. Additionally, the invoice must evidence the completion of all tasks required to be performed for the deliverable and must show that the Recipient met the minimum performance standards established in the Agreement. The Commission is required to maintain detailed supporting documentation and to make it available for audit purposes. By submission of the payment request, the Commission is

certifying that the detailed documentation to support each item on the itemized invoice is on file at the agency and is available for audit.

Documentation for each amount for which reimbursement is being claimed must indicate that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for the categories in the approved Agreement budget may be reimbursed. These expenditures must be allowable (pursuant to law) and directly related to the services being provided. The Commission may require more detailed documentation as deemed appropriate to satisfy that the terms of the Agreement have been met.

Listed below are types and examples of their supporting documentation:

- i. **Salaries:** Timesheets that support the hours worked on the project or activity must be kept. A payroll register or similar documentation should be submitted and maintained. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.
- ii. **Tuition:** If the Commission determines tuition, stipends, and/or waivers are allowable costs, the payments must result from obligations incurred during the specified agreement period. Documentation must be provided to show compliance with 215.971, F.S. Examples include but are not limited to keeping timesheets/time and effort reports/logs that support the hours worked on the project or activity. If an individual for whom tuition, stipends and/or waivers are being claimed are paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.
- iii. **Fringe Benefits:** Supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the Agreement specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.
 - a. Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.
- iv. **Travel:** To the extent the Commission determines travel is an allowable cost, reimbursement for travel must be in accordance with Section 112.061, Florida Statutes, which includes submission of the claim on the approved State travel voucher along with supporting receipts and invoices.
- v. **Other Direct Costs:** To the extent the Commission determines other direct costs are allowable, reimbursement will be made based on paid invoices/receipts and proof of payment processing (cancelled/processed checks and bank statements).
- vi. **In-House Charges:** Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units times the rate being charged. The rates must be reasonable.
- vii. **Indirect Costs:** To the extent the Commission determines that indirect costs are allowable, and the Agreement specifies that indirect costs will be paid based on a specified rate, then the calculation should be provided in the Agreement's budget breakdown. Indirect costs must be in the approved Agreement budget and the Recipient must be able to demonstrate that the costs are not duplicated elsewhere as direct costs. All indirect cost rates must be evaluated for reasonableness and for allowability and must be allocated consistently.

For cost reimbursement Agreements with another State agency (including State universities):

In lieu of the detailed documentation described above, alternative documentation may be submitted to substantiate the costs requested to be reimbursed. This alternative documentation may be in the form of FLAIR reports or other reports containing sufficient detail.

H. Time Limits for Payment of Invoices.

Payments shall be made in accordance with Sections 215.422 and 287.0585, F.S., which govern time limits for payment of invoices. Section 215.422, F.S. provides that agencies have five (5) working days to inspect and approve Deliverables, unless Attachment A specifies otherwise. If payment is not available within forty (40) days, measured from the latter of the date the invoice is received or the Deliverables are received, inspected and approved, a separate interest penalty set by the Department of Financial Services pursuant to Section 55.03(1), F.S., will be due and payable in addition to the invoice amount. Invoices returned to a Recipient due to preparation errors will result in a payment delay. Invoice payment requirements do not start until a properly completed invoice is provided to the agency.

I. Electronic Funds Transfer.

Recipient agrees to enroll in Electronic Funds Transfer (EFT), offered by the State's Chief Financial Officer, within thirty (30) days of the date the last Party has signed this Agreement. 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/default.htm>. Questions should be directed to the State of Florida's EFT Section at (850) 413-5517. Once enrolled, invoice payments will be made by EFT.

J. Vendor Ombudsman.

A Vendor Ombudsman, whose duties include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a State agency, may be contacted at (850) 413-5516 or by calling the Chief Financial Officer's Hotline, (800) 342-2762.

Section 5. RETURN OR RECOUPMENT OF FUNDS

A. Unobligated Funds.

Pursuant to Section 215.971(1)(d)-(e), F.S., the Commission may only pay the Recipient for allowable costs resulting from obligations incurred during the agreement period, and any balance of unobligated funds that has been advanced or paid must be refunded to the Commission. Any funds paid in excess of the amount to which the Recipient is entitled under the terms and conditions of the Agreement must be refunded to the Commission as well. To be eligible for payment, costs must be in compliance with laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the above referenced laws and the [Reference Guide for State Expenditures](#).

B. Overpayments to Recipient.

Pursuant to Section 215.971(1)(f), F.S., any funds paid in excess of the amount to which the Recipient is entitled under the terms and conditions of the Agreement must be refunded to the Commission. In the event the Recipient or its independent auditor discovers that overpayment has been made, the Recipient shall repay said overpayment within forty (40) calendar days without prior notification from the Commission. In the event the Commission first discovers an overpayment has been made, the Commission will notify the Recipient in writing. Should repayment not be made in a timely manner, the Commission shall be entitled to charge interest at the lawful rate of interest established pursuant to Section 55.03(1), F.S., on the outstanding

balance beginning forty (40) calendar days after the date of notification or discovery. Refunds should be sent to the Commission's Grant Manager and made payable to the "Florida Fish and Wildlife Conservation Commission."

C. Additional Costs or Monetary Loss Resulting from Recipient Non-Compliance.

If the Recipient's non-compliance with any provision of the Agreement results in additional cost or monetary loss to the Commission or the State of Florida to the extent allowed by Florida Law, the Commission can recoup that cost or loss from monies owed to the Recipient under this Agreement or any other agreement between Recipient and the Commission. In the event the discovery of this cost or loss arises when no monies are available under this Agreement or any other agreement between the Recipient and the Commission, the Recipient will repay such cost or loss in full to the Commission within thirty (30) days of the date of notice of the amount owed, unless the Commission agrees, in writing, to an alternative timeframe. If the Recipient is unable to repay any cost or loss to the Commission, the Commission shall notify the State of Florida, Department of Financial Services, for resolution pursuant to Section 17.0415, F.S.

Section 6. COMMISSION EXEMPT FROM TAXES, PROPERTY EXEMPT FROM LIEN.

A. Commission Exempt from Taxes.

The Recipient recognizes that the State of Florida, by virtue of its sovereignty, is not required to pay any taxes on the services or goods purchased under the terms of this Agreement. The Recipient is placed on notice that this exemption generally does not apply to nongovernmental entity recipients, subrecipients, contractors, or subcontractors. Any questions regarding this tax exemption should be addressed to the Commission's Grant Manager.

B. Property Exempt from Lien.

If the Agreement involves the improvement of real property titled to the State of Florida, then the following paragraph applies:

The Recipient acknowledges that Property being improved is titled to the State of Florida and is not subject to lien of any kind for any reason. The Recipient shall include notice of such exemptions in any subcontracts and purchase orders issued hereunder.

Section 7. MONITORING.

The Commission's Grant Manager shall actively monitor the Recipient's performance and compliance with the terms of this Agreement. The Commission reserves the right for any Commission staff to make scheduled or unscheduled, announced or unannounced monitoring visits. Specific State and Federal monitoring terms and conditions are found in the Requirements of the Federal and Florida Single Audit Acts, Attachment B. Monitoring terms, conditions, and schedules may be included in Attachment A.

Section 8. TERMINATION.

A. Commission Unilateral Termination.

The Commission may unilaterally terminate this Agreement for convenience by providing the Recipient with thirty (30) calendar days of written notice of its intent to terminate. The Recipient shall not be entitled to recover any cancellation charges or lost profits. The Recipient may request termination of the Agreement for convenience.

B. Termination – Fraud or Willful Misconduct.

This Agreement shall terminate immediately in the event of fraud or willful misconduct. In the event of such termination, the Commission shall provide the Recipient with written notice of termination.

C. Termination - Funds Unavailability.

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, the Commission may terminate this Agreement upon no less than twenty-four (24) hours' notice in writing to the Recipient. Said notice shall be delivered by certified mail, return receipt requested or in person with proof of delivery. The Commission shall be the final authority as to the availability of funds and will not reallocate funds appropriated for this Agreement to another program thus causing "lack of funds." In the event of termination of this Agreement under this provision, the Recipient will be compensated for any work satisfactorily completed and any non-cancellable obligations properly incurred prior to notification of termination.

D. Termination – Other.

The Commission may terminate this Agreement if the Recipient fails to: 1.) comply with all terms and conditions of this Agreement; 2.) produce each deliverable within the time specified by the Agreement or extension; 3.) maintain adequate progress, thus endangering the performance of the Agreement; or, 4.) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences for default. The rights and remedies of the Commission in this clause are in addition to any other rights and remedies provided by law or under the Agreement. The Recipient shall not be entitled to recover any cancellation charges or lost profits.

E. Recipient Discontinuation of Activities upon Termination Notice.

Upon receipt of notice of termination, the Recipient shall, unless the notice directs otherwise, immediately discontinue all activities authorized hereunder. Upon termination of this Agreement, the Recipient shall promptly render to the Commission all property belonging to the Commission. For the purposes of this section, property belonging to the Commission shall include, but shall not be limited to, all books and records kept on behalf of the Commission.

Section 9. REMEDIES.**A. Financial Consequences.**

In accordance with Sections 215.971(1)(a) & (b), F.S., Attachment A contains clearly established tasks in quantifiable units of deliverables that must be received and accepted in writing by the agency before payment. Each deliverable specifies the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable. If the Recipient fails to produce each deliverable within the time frame specified by Attachment A, the budget amount allocated for that deliverable will be deducted from the Recipient's payment. In addition, pursuant to Section 215.971(1)(c), the Commission shall apply any additional financial consequences, identified in Attachment A.

B. Cumulative Remedies.

The rights and remedies of the Commission during the agreement period are in addition to any other rights and remedies provided by law or under the Contract.

Section 10. NOTICES AND CORRESPONDENCE.

Any and all notices shall be delivered to the individuals identified below. In the event that either Party designates a different Grant Manager after the execution of this Agreement, the Party will provide written notice of the name, address, zip code, telephone, and email address of the newest Grant Manager, or an individual authorized to receive notice on behalf of that Party, to all other Parties as soon as possible, but not later than five (5) business days after the new Grant Manager has been named. Designating a new Grant Manager shall not require a formal amendment to the Agreement.

FOR THE COMMISSION:

Grant Manager
Jennifer Tyler
Derelict Vessel Program Contract Manager
Fish and Wildlife Conservation Commission
620 S. Meridian Street, Room #235I
Tallahassee, Florida 32399
(850) 617-9527 Direct
Jennifer.Tyler@MyFWC.com

FOR THE GRANTEE:

Section 11. AMENDMENT.

A. Waiver or Modification.

No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and lawfully executed by the Parties.

B. Change Orders.

The Commission may, at any time, by written order, make a change to this Agreement. Such changes are subject to the mutual agreement of both Parties as evidenced in writing. Any change which causes an increase or decrease in the Recipient's cost or time shall require an Amendment. Minor changes, such as those updating a Party's contact information, may be accomplished by a Modification.

C. Renegotiation upon Change in Law or Regulations.

The Parties agree to renegotiate this Agreement if federal and/or state revisions of any applicable laws or regulations make changes in the Agreement necessary.

Section 12. PROPERTY RIGHTS.

If this Agreement includes Federal funds, the provisions of Sections 200.310-200.316, Office of Management and Budget (OMB) Uniform Guidance (2 CFR 200), and any language addressing Federal rights, apply.

A. Intellectual and Other Intangible Property.

- i. **Recipient's Preexisting Intellectual Property (Proprietary) Rights.** Unless specifically addressed in Attachment A, intellectual and other intangible property rights to the Recipient's preexisting property will remain with the Recipient.
- ii. **Proceeds Related to Intellectual Property Rights.** Proceeds derived from the sale, licensing, marketing or other authorization related to any intellectual and other intangible property right created or otherwise developed by the Recipient under this Agreement for the Commission shall be handled in the manner specified by the applicable Florida State Statute and/or Federal program requirements.
- iii. **Commission Intellectual Property Rights.** Where activities supported by this Agreement produce original writing, sound recordings, pictorial reproductions, drawings or other graphic representations and works of any similar nature, the Commission and the State of Florida have the unlimited, royalty-free, nonexclusive, irrevocable right to use, duplicate and disclose such materials in whole or in part, in any manner, for any purpose whatsoever and to have others acting on behalf of the Commission to do so. If this Agreement is supported by Federal funds, the Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes, and to authorize others to do so.

B. Purchase or Improvement of Real Property.

This Agreement is not for the purchase or improvement of real property, therefore, the following terms and conditions do not apply.

- i. **Federal Funds.** Any Federal funds provided for the purchase of or improvements to real property are subject to the Property Standards of Sections 200.310 - 200.316, and 200.329, OMB Uniform Guidance (2 CFR 200), as amended.
- ii. **Title.** If this Agreement is supported by state funds, the Recipient shall comply with Section 287.05805, F.S. This section requires the Recipient to grant a security interest in the property to the State of Florida, the type and details of which are provided for in Attachment A. Title to state-owned real property remains vested in the state. Title to federally owned real property remains vested in the Federal government in accordance with the provisions of Section 200.312, OMB Uniform Guidance (2 CFR 200), as amended.
- iii. **Use.** Federally owned real property will be used for the originally authorized purpose as long as needed for that purpose in accordance with Section 200.311, OMB Uniform Guidance (2 CFR 200). State-owned real property will be used as provided in Attachment A.

C. Non-Expendable Property.

- i. **Non-Expendable Property Defined.** For the requirements of this section of the Agreement, "non-expendable 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 non-expendable nature, with a value or cost of **\$5,000.00** or more, and a normal expected life of one (1) year or more; hardback-covered bound books that are circulated to students or the general public, with a value or cost of **\$25.00** or more; and uncirculated hardback-covered bound books, with a value or cost of **\$250.00** or more).
- ii. **Title to Non-Expendable Property.** Title (ownership) to all non-expendable property acquired with funds from this Agreement shall be vested in the Commission and said property shall be transferred

to the Commission upon completion or termination of the Agreement unless otherwise authorized in writing by the Commission or unless otherwise specifically provided for in Attachment A.

D. Equipment and Supplies

- i. **Title - Equipment.** Title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity in accordance with Sections 200.313 and 200.314, OMB Uniform Guidance (2 CFR 200).
- ii. **Title – Supplies.** Title to supplies will vest in the non-Federal entity upon acquisition. Unused supplies exceeding **\$5,000.00** in total aggregate value upon termination or completion of the project or program are subject to Section 200.314, OMB Uniform Guidance.
- iii. **Use – Equipment.** Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed.

Section 13. RELATIONSHIP OF THE PARTIES.

A. Independent Recipients.

The Recipient shall perform as an independent Recipient and not as an agent, representative, or employee of the Commission. The Recipient covenants that it presently has no interest and shall not acquire any interest that would conflict in any manner or degree with the performance of services required. Each Party hereto covenants that there is no conflict of interest or any other prohibited relationship between the Recipient and the Commission.

B. Recipient Training Qualifications.

The Recipient agrees that all Recipient employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Recipient shall furnish a copy of technical certification or other proof of qualification.

C. Commission Security.

All employees, subcontractors, or agents performing work under the Agreement must comply with all security and administrative requirements of the Commission. The Commission may conduct, and the Recipient shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Recipient. The Commission may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with the Commission's other requirements. Such refusal shall not relieve Recipient of its obligation to perform all work in compliance with the Agreement. The Commission, in coordination with the Recipient, may reject and bar from any facility for cause any of Recipient's employees, subcontractors, or agents.

D. Commission Rights to Assign or Transfer.

The Recipient agrees that the State of Florida shall at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental agency in the State of Florida, upon giving prior written notice to the Recipient.

E. Commission Rights to Undertake or Award Supplemental Contracts.

The Recipient agrees that the Commission may undertake or award supplemental agreements for work related to the Agreement. The Recipient and its subcontractors shall cooperate with such other Recipients and the Commission in all such cases.

Section 14. SUBCONTRACTS.

The Recipient is permitted to subcontract work under this Agreement, therefore, the following terms and conditions apply.

A. Authority.

The Recipient shall ensure, and provide assurances to the Commission upon request, that any subcontractor selected for work under this Agreement has the necessary qualifications and abilities to perform in accordance with the terms and conditions of this Agreement. The Recipient must provide the Commission with the names of any subcontractor considered for work under this Agreement; the Commission reserves the right to reject any subcontractor. The Recipient agrees to be responsible for all work performed and all expenses incurred with the project. Any subcontract arrangements must be evidenced by a written document available to the Commission upon request. The Recipient further agrees that the Commission shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract. The Recipient, at its expense, will defend the Commission against such claims. The following provisions apply in addition to any terms and conditions included in Attachment A.

B. Recipient Payments to Subcontractor.

If subcontracting is permitted pursuant to Paragraph A, above, Recipient agrees to make payments to the subcontractor within seven (7) working days after receipt of full or partial payments from the Commission in accordance with Section 287.0585, F.S., unless otherwise stated in the agreement between the Recipient and subcontractor. Recipient's failure to pay its subcontractors within seven (7) working days will result in a penalty charged against the Recipient and paid to the subcontractor in the amount of one-half of one percent (0.50%) 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 fifteen percent (15%) of the outstanding balance due.

C. Commission Right to Reject Subcontractor Employees.

The Commission shall retain the right to reject any of the Recipient's or subcontractor's employees whose qualifications or performance, in the Commission's judgment, are insufficient.

D. Subcontractor as Independent Contractor.

If subcontracting is permitted pursuant to Paragraph A above, the Recipient agrees to 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, servant, joint venturer, or partner of the State of Florida.

Section 15. MANDATORY DISCLOSURE.

These disclosures are required by State law, as indicated, and apply when this Agreement includes State funding; and by Federal law, as indicated, and apply when the Agreement includes a Federal award.

A. Disclosure of Interested State Employees.

This Agreement is subject to Chapter 112, F.S. Recipient shall provide the name of any officer, director, employee, or other agent who is affiliated with this project and an employee of the State of Florida. If the Agreement includes a Federal award, then the Agreement is also subject to Section 200.112, OMB Uniform Guidance (2 CFR 200). Recipient must disclose, in writing, any potential conflict of interest to the Commission in accordance with applicable Federal awarding agency policy.

B. Convicted Vendors.

The Recipient hereby certifies that neither it, nor any person or affiliate of Recipient, has been convicted of a Public Entity Crime as defined in section 287.133, F.S., nor placed on the convicted vendor list. Recipient shall have a continuing obligation to disclose, to the Commission, in writing, if it, its principals, recipient, subrecipient, contractor, or subcontractor, are on the convicted vendors list maintained by the Florida Department of Management Services pursuant to Section 287.133(3)(d), F.S.

- i. **Convicted Vendor List.** Pursuant to Subsection 287.133(2)(a), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not be awarded or perform work as a Recipient, supplier, subcontractor or consultant under a contract with any public entity and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. The State of Florida, Department of Management Services, Division of State Purchasing provides listings for convicted, suspended, discriminatory and federal excluded parties, as well as the vendor complaint list at: https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists
- ii. **Notice of Conviction of Public Entity Crime.** Any person must notify the Department of Management Services and the Commission, in writing, within thirty (30) days after conviction of a public entity crime applicable to that person or an affiliate of that person as defined in Section 287.133, F.S.
- iii. **Vendors on Scrutinized Companies List.** The Recipient certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, F.S. In addition, the Recipient agrees to observe the requirements of Section 287.135, F.S., for applicable sub-agreements entered into for the performance of work under this Agreement. Pursuant to Section 287.135, F.S., the Commission may immediately terminate this Agreement for cause if the Recipient, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Recipient, its affiliates, or its subcontractors are placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of the Agreement. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions, then they shall become inoperative.

C. Discriminatory Vendors.

The Recipient shall disclose to the Commission, in writing, if they, their subrecipient, contractor, or subcontractor, are on the Discriminatory Vendor List maintained by the Florida Department of Management Services pursuant to Section 287.134(3)(d), F.S. “An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract 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 contractor, supplier,

subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.” Section 287.134(2)(a), F.S. Recipient has a continuing duty to disclose to the Commission whether they appear on the discriminatory vendor list.

D. Prompt Disclosure of Litigation, Investigations, Arbitration, or Administrative Proceedings.

Throughout the term of the Agreement, the Recipient has a continuing duty to promptly disclose to the Commission’s Grant Manager, in writing, upon occurrence, all civil or criminal litigation, investigations, arbitration, or administrative proceedings (Proceedings) relating to or affecting the Recipient’s ability to perform under this agreement. If the existence of such Proceeding causes the Commission concern that the Recipient’s ability or willingness to perform the Agreement is jeopardized, the Recipient may be required to provide the Commission with reasonable assurances to demonstrate that: a.) the Recipient will be able to perform the Agreement in accordance with its terms and conditions; and, b.) Recipient and/or its employees or agents have not and will not engage in conduct in performing services for the Commission which is similar in nature to the conduct alleged in such Proceeding.

E. Certain Violations of Federal Criminal Law.

If this agreement includes a Federal award, then in accordance with Section 200.113, OMB Uniform Guidance (2 CFR 200), Recipient must disclose, in a timely manner, in writing to the Commission all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Section 16. INSURANCE.

If the Recipient is a state or federal agency with self-insurance, Recipient warrants and represents that it is insured, or self-insured for liability insurance, in accordance with applicable state or federal law and that such insurance or self-insurance offers protection applicable to the Recipient’s officers, employees, servants and agents while acting within the scope of their employment with the Recipient.

If the Recipient is not a state or federal agency with self-insurance, then the following applies:

A. Reasonably Associated Insurance.

During the term of the Agreement, the Recipient, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits as may be reasonably associated with the Agreement. Providing and maintaining adequate insurance coverage is a material obligation of the Recipient, and failure to maintain such coverage may void the Agreement. The limits of coverage under each policy maintained by the Recipient shall not be interpreted as limiting the Recipient’s liability and obligations under the Agreement. All insurance policies shall be through insurers licensed and authorized to write policies in Florida.

B. Workers Compensation.

To the extent required by Chapter 440, F.S., the Recipient will either be self-insured for Worker’s Compensation claims or will secure and maintain during the life of this Agreement, Worker’s Compensation Insurance for all of its employees connected with the work of this project, with minimum employers’ liability limits of \$100,000.00 per accident, \$100,000.00 per person, and \$500,000.00 policy aggregate. Such policy shall cover all employees engaged in any contract work. If any work is subcontracted, the Recipient shall require the subcontractor similarly to provide Workers’ Compensation Insurance for all of the latter’s employees unless such employees are covered by the protection afforded by the Recipient. Such self-insurance program or insurance coverage shall comply fully with the Florida Workers’ Compensation Law (Chapter 440, F.S.). In case any class of employees engaged in hazardous work under this Agreement is not

protected under Workers' Compensation statutes, the Recipient shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to the Recipient, for the protection of its employees not otherwise protected. Employers who have employees who are engaged in work in Florida must use Florida rates, rules, and classifications for those employees.

C. General Liability Insurance.

By execution of this Agreement, unless Recipient is a state agency or subdivision as defined by Subsection 768.28(2), F.S. or unless otherwise provided for in Attachment A, the Recipient shall provide reasonable and adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Agreement. A self-insurance program established and operating under the laws of the State of Florida may provide such coverage.

D. Insurance Required for Performance.

During the Agreement term, the Recipient shall maintain any other types and forms of insurance required for the performance of this Agreement as required in Attachment A.

E. Written Verification of Insurance.

Upon execution of this Agreement, the Recipient shall provide the Commission written verification of the existence and amount for each type of applicable insurance coverage. Within thirty (30) days of the effective date of the Agreement, Recipient shall furnish proof of applicable insurance coverage to the Commission's Grant Manager by standard Association for Cooperative Operations Research and Development (ACORD) form certificates of insurance. In the event that any applicable coverage is cancelled by the insurer for any reason, Recipient shall immediately notify the Commission's Grant Manager in writing of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within fifteen (15) business days after the cancellation of coverage.

F. Commission Not Responsible for Insurance Deductible.

The Commission shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of Recipient providing such insurance.

Section 17. SPONSORSHIP.

As required by Section 286.25, F.S., if the Recipient is a nongovernmental organization which sponsors a program financed wholly or in part by state funds, including any funds obtained through this Agreement, it shall, in publicizing, advertising, or describing the sponsorship of the program, state: "Sponsored by (Recipient's name) and the State of Florida, Fish and Wildlife Conservation Commission." If the sponsorship reference is in written material, the words "State of Florida, Fish and Wildlife Conservation Commission" shall appear in the same size letters or type as the name of the Recipient's organization. Additional sponsorship requirements may be specified in Attachment A.

Section 18. PUBLIC RECORDS.

- A. All records in conjunction with this Agreement shall be public records and shall be treated in the same manner as other public records that are under Chapter 119, F.S.

- B. This Agreement may be unilaterally canceled by the Commission for refusal by the Recipient to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, F.S., and made or received by the Recipient in conjunction with this Agreement, unless exemption for such records is allowable under Florida law.
- C. If the Recipient meets the definition of “Contractor” in Section 119.0701(1)(a) F.S., the Recipient shall comply with the following:
 - i. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF THE CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: 850-488-6553, RecordsCustodian@myfwc.com, and 620 South Meridian Street, Tallahassee FL 32399**
 - ii. Keep and maintain public records required by the Commission to perform the service.
 - iii. Upon request from the Commission’s custodian of public records, provide the Commission with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law.
 - iv. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the Commission.
 - v. Upon completion of the contract transfer, at no cost, to the Commission all public records in possession of the Contractor or keep and maintain public records required by the Commission to perform the service. If the Contractor transfers all public records to the Commission upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Commission, upon request from the Commission’s custodian of public records, in a format that is compatible with the information technology systems of the Commission.

Section 19. COOPERATION WITH INSPECTOR GENERAL.

Pursuant to subsection 20.055(5), F.S., Recipient, and any subcontractor to the Recipient, understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Recipient shall provide any type of information the Inspector General deems relevant to the Recipient's integrity or responsibility. Such information may include, but shall not be limited to, the Recipient's business or financial records, documents, or files of any type or form that refer to or relate to the Agreement. The Recipient agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Recipient's compliance with the terms of this or any other agreement between the Recipient

and the State which results in the suspension or debarment of the Recipient. Such costs shall include but not be limited to salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees.

Section 20. SECURITY AND CONFIDENTIALITY.

The Recipient shall maintain the security of any information created under this Agreement that is identified or defined as “confidential” in Attachment A. The Recipient shall not divulge to third Parties any confidential information obtained by the Recipient or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Agreement work. To ensure confidentiality, the Recipient shall take appropriate steps regarding its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Agreement.

Section 21. RECORD KEEPING REQUIREMENTS.

A. Recipient Responsibilities.

The Recipient shall maintain accurate books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement, in accordance with generally accepted accounting principles.

B. State Access to Contractor Books, Documents, Papers, and Records.

The Recipient shall allow the Commission, 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 authorized representatives of the state or federal government to have access to any of the Recipient’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..

C. Recipient Records Retention.

Unless otherwise specified in Attachment A, these records shall be maintained for five (5) fiscal years following the close of this Contract, or the period required for this particular type of project by the General Records Schedules maintained by the Florida Department of State (<https://dos.myflorida.com/library-archives/records-management/general-records-schedules/>), whichever is longer. Recipient shall cooperate with the Commission to facilitate the duplication and transfer of such records upon the Commission’s request.

D. Recipient Responsibility to Include Records Requirements – Subcontractors.

In the event any work is subcontracted under this Agreement, the Recipient shall include the aforementioned audit and record keeping requirements in all subsequent contracts.

E. Compliance with Federal Funding Accountability and Transparency.

Any federal funds awarded under this Agreement must comply with the Federal Funding Accountability and Transparency Act (FFATA) of 2006. The intent of the FFATA is to empower every American with the ability to hold the government accountable for each spending decision. The result is to reduce wasteful spending in the government. The FFATA legislation requires that information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website: www.USASpending.gov. Grant recipients awarded a new Federal grant greater than or equal to **\$25,000.00** awarded on or after October 1, 2010, are subject to the FFATA. The Recipient agrees to provide the information necessary, over the life of this Agreement, for the Commission to comply with this requirement.

Section 22. FEDERAL AND FLORIDA SINGLE AUDIT ACT (FSAA) REQUIREMENTS.

Pursuant to the FSAA (or Federal) Vendor / Recipient Determination Checklist, the Recipient has been determined to be a recipient of state financial assistance and/or a subrecipient of a federal award. Therefore, pursuant to Section 215.97, F.S. and/or OMB Uniform Guidance (2 CFR 200), the Recipient may be subject to the audit requirements of the Florida and/or Federal Single Audit Acts. If applicable, the Recipient shall comply with the audit requirements outlined in Attachment B, attached hereto and made a part of the Agreement, as applicable.

Section 23. FEDERAL COMPLIANCE.

As applicable, Recipient shall comply with all federal laws, rules, and regulations, including but not limited to:

A. Clean Air Act and Water Pollution Control Act.

All applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401-7671q), and the Water Pollution Control Act (33 U.S.C. 1251-1387, as amended).

B. Lacey Act, 16 U.S.C 3371-3378.

This Act prohibits trade in wildlife, fish and plants have been illegally taken, possessed, transported or sold.

C. Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801-1884.

This Act governs marine fisheries in Federal waters.

D. Migratory Bird Treaty Act, 16 U.S.C. 703-712.

The Act prohibits anyone, unless permitted, to pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry or cause to be carried by any means whatsoever, receive for shipment, transport of carriage, or export, at any time, or in any manner, any migratory bird, or any part, nest, or egg of such bird.

E. Endangered Species Act, 16 U.S.C. 1531, et seq.

The Act provides a program for the conservation of threatened and endangered plants and animals and the habitat in which they are found. The Act also prohibits any action that cause a “taking” of any listed species of endangered fish or wildlife. Also, generally prohibited are the import, export, interstate, and foreign commerce of listed species.

Section 24. FEDERAL FUNDS.

No Federal Funds are applied to this Agreement, therefore, the following terms and conditions do not apply.

A. Prior Approval to Expend Federal Funds to Federal Agency or Employee.

It is understood and agreed that the Recipient is not authorized to expend any federal funds under this Agreement to a federal agency or employee without the prior written approval of the awarding federal agency.

B. Equal Employment Opportunity.

Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), is applicable, except as otherwise provide under 41 CFR Part 60, to any grant, contract, loan, insurance, or guarantee involving Federal assisted construction.

C. Davis-Bacon Act.

Unless exempt, the Davis-Bacon Act, 40 U.S.C. 3141-3148, as supplemented by Department of Labor regulations at 29 CFR Part 5 is applicable to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000.00 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Under this Act, contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. Davis-Bacon Act does not apply if federal funding is solely provided by the American Rescue Plan Act (ARPA).

D. Copeland “Anti-Kickback Act”.

The Copeland “Anti-Kickback” Act, 40 U.S.C. 3141-3148, and 3146-3148, as supplemented by Department of Labor regulations (29 CFR Part 5), is applicable to contracts awarded by a non-Federal entity in excess of \$100,000.00 that involve employment of mechanics or laborers. Under this Act, contractors and subrecipients are prohibited from inducing, by any mean, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

E. Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Agreement Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5), are applicable to construction contracts awarded by Contractors and subcontractors in excess of \$2,000.00, and in excess of \$2,500.00 for other contracts which involve the employment of mechanics or laborers. Under this Act, contractors and subcontractors must compute wages of mechanics and laborers (workers) on the basis of a standard forty (40) hour work week; provide workers no less than time and a half for hours worked in excess of the forty (40) hour work week; and not require workers to work in surroundings or work conditions that are unsanitary, hazardous, or dangerous.

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 the “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. Energy Efficiency.

Mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871) applies.

H. Debarment and Suspension Contractor Federal Certification.

In accordance with Federal Executive Order 12549 and 2 CFR Part 1400 regarding Debarment and Suspension, the Contractor certifies that neither it, nor its principals, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency; and, that the Contractor shall not knowingly enter into any lower tier

contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction.

I. Prohibition against Lobbying.

- i. **Recipient Certification – Payments to Influence.** The Recipient certifies that no Federal appropriated funds have been paid or will be paid, on or after December 22, 1989, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding, renewal, amending or modifying of any Federal contract, grant, or cooperative agreement. The Recipient also certifies that they have not engaged any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of the Recipient with respect to this Contract and its related federal contract, grant, loan, or cooperative agreement; or, if the Recipient has engaged any registrant with respect to this Contract and its related Federal contract, grant, loan, or cooperative agreement, the Recipient shall, prior to or upon execution of this Contract, provide the Commission Contract Manager a signed declaration listing the name of any said registrant. During the term of this Contract, and at the end of each Calendar quarter in which any event occurs that materially affects the accuracy of this certification or declaration, the Recipient shall file an updated declaration with the Commission’s Contract Manager. If any non-federal funds are used for lobbying activities as described above in connection with this Contract, the Recipient shall submit Standard Form-LLL, “Disclosure Form to Report Lobbying”, and shall file quarterly updates of any material changes. The Recipient shall require the language of this certification to be included in all subcontracts, and all subcontractors shall certify and disclose accordingly.
- ii. **Recipient – Refrain from Subcontracting with Certain Organizations.** Pursuant to the Lobbying Disclosure Act of 1995, the Recipient agrees to refrain from entering into any subcontracts under this Contract with any organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, unless such organization warrants that it does not, and will not, engage in lobbying activities prohibited by the Act as a special condition of the subcontract.

J. Compliance with Office of Management and Budget Circulars.

As applicable, Recipient shall comply with the Office of Management and Budget (OMB) Uniform Guidance (2 CFR 200).

K. Drug Free Workplace.

Pursuant to the Drug-Free Workplace Act of 1988, the Recipient attests and certifies that the Recipient will provide a drug-free workplace compliant with 41 U.S.C. 81.

L. American Rescue Plan Act of 2021 (ARPA).

If this Agreement relies on ARPA federal funds, then the following shall apply:

- i. For Contracts executed prior to April 3, 2022, Contractors shall provide a Data Universal Number System (DUNS) number to the Commission within two weeks of Contract execution or prior to payment, whichever comes first.
- ii. For Contracts executed on or after April 4, 2022, Contractors shall provide a [Unique Entity Identifier \(UEI\)](#) to the Commission within two weeks of Contract execution or prior to payment, whichever comes first.

- iii. Public Law 117-2, American Rescue Plan Act of 2021, Title XI-Committee of Finance Subtitle M; Section 9901.
- iv. Coronavirus State Fiscal Recovery Fund (SFRF) (31 CFR Part 35).
- v. US Department of Treasury, Compliance and Reporting Guidance State and Local Recovery Funds, as amended.

M. Build America, Buy America (BABA) provision of the Infrastructure Investment and Jobs Act (IIJA) of 2021. (117 P.L. 58)

If federal funds are awarded to be used in this Contract for any project involving construction, alteration, maintenance, or repair of infrastructure in the United States, and if the project involves infrastructure as defined by §70912(5) of BABA, which includes, but is not limited to:

- roads, highways, and bridges;
- public transportation;
- dams, ports, harbors, and other maritime facilities;
- intercity passenger and freight railroads;
- freight and intermodal facilities;
- airports;
- water systems, including drinking water and wastewater systems;
- electrical transmission facilities and systems;
- utilities;
- broadband infrastructure; and
- buildings and real property; then

- i. All iron and steel, manufactured products, and construction materials used in the project must be produced in the United States;
- ii. The BABA provision applies to all articles, materials, and supplies consumed in, incorporated into, or affixed to an infrastructure project for federal awards on or after May 14, 2022.
- iii. All subcontractors, successors, or assignees to this Contract will be held to the same requirements as the original parties to this Contract.
- iv. The BABA provision does not apply to tools, equipment, and supplies brought to the construction site and removed at or before completion of the infrastructure project. Nor does the BABA provision apply to equipment and furnishings used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

Section 25. AGREEMENT-RELATED PROCUREMENT.

A. PRIDE.

In accordance with Section 946.515(6), F.S., if a product or service required for the performance of this Contract is certified by or is available from Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) and has been approved in accordance with Subsection 946.515(2), F.S., the following statement applies:

It is expressly understood and agreed that any articles which are the subject of, or required to carry out, this contract shall be purchased from [PRIDE] in the same manner and under the same procedures set forth in Subsections 946.515(2) and (4), F.S.; and for purposes of this contract the person, firm or other business entity carrying out the provisions of this contract shall be deemed to be substituted for this agency insofar as dealings with such corporation are concerned.

The above clause is not applicable to subcontractors unless otherwise required by law. Additional information about PRIDE and the products it offers is available at <http://www.pride-enterprises.org>.

B. Respect of Florida.

In accordance with Subsection 413.036(3), F.S., if a product or service required for the performance of this Contract is on the procurement list established pursuant to Subsection 413.035(2), F.S., the following statement applies:

It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, F.S., in the same manner and under the same procedures set forth in Subsections 413.036(1) and (2), F.S.; and for purposes of this contract, the person, firm or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the state agency insofar as dealings with such qualified nonprofit agency are concerned.

Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.

C. Procurement of Recycled Products or Materials.

Contractor agrees to procure any recycled products or materials which are the subject of or are required to carry out this Contract in accordance with Section 403.7065, F.S.

Section 26. PROFESSIONAL SERVICES.

A. Architectural, Engineering, Landscape Architectural, or Survey and Mapping.

If this Agreement is for the acquisition of professional architectural, engineering, landscape architectural, or registered surveying and mapping services, and is therefore subject to Section 287.055, F.S., the following provision applies:

The architect (or registered surveyor and mapper or professional engineer, as applicable) warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure this contract and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or

registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

B. Termination for Breach.

For the breach or violation of this provision, the Commission shall have the right to terminate the Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

Section 27. INDEMNIFICATION.

If the Recipient is a state agency or subdivision, as defined in Subsection 768.28(2), F.S., or as a governmental entity as defined in Subsection 287.012(14), F.S., neither Party indemnifies nor insures the other Party for the other Party's negligence. If Recipient is not a state agency or subdivision as defined above, Recipient shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and the Commission, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Recipient, its agents, employees, partners, or subcontractors, provided, however, that 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 Commission. If this is a Professional Services Agreement as defined in Subsection 725.08 F.S., then notwithstanding the provisions of Subsection 725.06 F.S., the design professional shall only be liable for, and fully indemnify, defend, and hold harmless the State, the Commission, and their officers, agents, and employees, for actions caused in whole or in part, by the negligence, recklessness, or intentionally wrongful conduct of the design professional and other persons employed or utilized by the design professional in the performance of the Agreement.

Section 28. NON-DISCRIMINATION.

No person, on the grounds of race, color, religion, gender, pregnancy, national origin, age, handicap, or marital status, shall be excluded from participation in, be denied the proceeds or benefits of, or be otherwise subjected to discrimination in performance of this Agreement.

Section 29. MEDIATION.

In the event of any claim or dispute arising by or between the Commission and the Recipient, each party shall continue to perform as required under the Agreement, notwithstanding the existence of such claim or dispute, it being acknowledged that time is of the essence. This provision includes, but is not limited to, the obligation to continue to perform under the Agreement notwithstanding disputes as to amounts due for payment hereunder.

Except for any claim, dispute, or matter in question that has been waived by the acceptance of final payment, or that is otherwise barred by the applicable statute of limitations or other provision of law, any claim, dispute, or other matter in question arising out of, or relating to, the Work or the Agreement or the breach thereof, shall be first submitted to non-binding mediation by a single mediator in Tallahassee, Florida

The party making a claim or dispute shall notify the other in writing of its claim or dispute within ten working days of the event giving rise to the claim or dispute.

- i. Such notice shall give the other party ten working days from receipt of the notice to respond in writing.

- ii. If the party initiating such notice is not satisfied with the response, then it shall invoke this clause initiating non-binding mediation by sending a demand for mediation in writing to the other party within seven (7) days.
- iii. The parties have two weeks after notice to agree in writing upon a mediator.
- iv. If the parties cannot agree upon a Florida Supreme Court certified mediator, then the parties shall request the Chief Judge of the Second Judicial Circuit in Leon County, Florida, to appoint a Florida Supreme Court certified mediator.
 - a. The mediator's fees shall be born equally by the parties involved in the mediation and shall pay all of its own attorneys' fees and expenses related to the mediation unless otherwise agreed.
 - b. Unless otherwise agreed by the parties in writing, such mediation shall take place within forty-five (45) days of the appointment of, or agreement to, the mediator if the mediator's schedule so allows.
 - c. The terms of this Agreement and any dispute relating thereto will be governed by the laws of the State of Florida, any litigation will be brought in the state or federal court in and for Tallahassee, Florida, and you agree to submit to the exclusive jurisdiction of the state and federal courts located in and for the Leon County, State of Florida.
 - d. All parties agree to negotiate in good faith in an effort to settle any dispute. All parties shall have a representative present at mediation with the authority to settle the case.
- v. Any resolution achieved at mediation shall be set forth in a written settlement agreement.
- vi. The Recipient shall require all the dispute resolution provisions and requirements set out in this Section in each contract it makes with any Subcontractor, material supplier, equipment supplier, or fabricator.
- vii. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations, or otherwise.

Unless otherwise agreed in writing, the Recipient shall carry on the Work and maintain its performance of this Agreement during any claim, dispute, or mediation.

If any matter sought to be mediated by the Commission or the Recipient involves a claim or other matter by or against the Consultant, any Subcontractor, any Separate Contractor, or any other third party, or any such entity is reasonably necessary to be joined in the mediation to permit a full and complete disposition of the dispute submitted hereunder, then the Consultant, Subcontractor, Separate Contractor or third party shall be joined by personal service of the notice demanding mediation.

Such termination of the mediation shall not preclude any party from commencing any judicial proceeding in a court of competent jurisdiction in Leon County, Florida, providing the claims sought to be decided are not otherwise barred.

Any demand for mediation and any answer to such demand must contain a written statement of each claim alleged and the dollar amount in controversy sought in each claim.

Should mediation fail to resolve the claim submitted, the parties may then proceed to seek applicable remedies at law.

The agreement to mediate set forth in this Section shall apply to, and become part of, any Subcontract, any contract into which these General Conditions are incorporated by reference or otherwise, and the parties to such contract shall mediate all disputes arising out of, or in any way relating to, that contract or the Project in accordance with the provisions of this Section.

Section 30. SEVERABILITY, CHOICE OF LAW, AND CHOICE OF VENUE.

This Agreement has been delivered in the State of Florida. Florida law governs this Agreement, all agreements arising under or out of this Agreement, and any legal action or other proceeding of any kind designed to resolve a dispute that arises out of or relates to this Agreement. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If a court or other tribunal finds any provision of this Agreement unenforceable as written, the unenforceable provision(s) shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision and the remaining provisions of this Agreement. The parties have selected the Second Judicial Circuit in Leon County, Florida, as the mandatory and exclusive forum for resolving any dispute, in law or equity, that arises out of or relates to the parties' transactions. By signing this Agreement, Recipient affirms that Recipient considers the Second Judicial Circuit to be a fair and convenient forum for any legal action or other proceeding of any kind designed to resolve such a dispute. The Recipient will not initiate in any other forum a legal action or other proceeding to which this provision applies.

Section 31. JURY TRIAL WAIVER.

As part of the consideration for this Agreement, the Parties hereby waive trial by jury in any action or proceeding brought by any party against any other party pertaining to any matter whatsoever arising out of or in any way connected with this Agreement, or with the products or services provided under this Agreement, including but not limited to any claim by the Recipient of *quantum meruit*.

Section 32. NO THIRD-PARTY RIGHTS.

The Parties hereto do not intend, nor shall this Agreement be construed, to grant any rights, privileges or interest to any person not a party to this Agreement.

Section 33. PROHIBITION OF UNAUTHORIZED ALIENS.

In accordance with Federal Executive Order 96-236, the Commission shall consider the employment by the Recipient of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this Agreement if the Recipient knowingly employs unauthorized aliens.

Section 34. EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY).

A. Requirement to Use E-Verify.

Section 448.095(2) Florida Statute requires the Contractor to: 1.) utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the Contract term; and 2.) include in all subcontracts under this Contract, the requirement that subcontractors performing work or providing services pursuant to this Contract utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of the subcontract.

B. E-Verify Online.

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. The Department of Homeland Security's E-Verify system can be found online at <https://www.e-verify.gov>.

C. Enrollment in E-Verify.

As a condition precedent to entering a Contract with the Commission, Contractors and Subcontractors shall register with and use the E-Verify system. Failure to do so shall result in the Contract not being issued, or if discovered after issuance, termination of the Contract.

D. E-Verify Recordkeeping.

The Contractor further agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the Commission or other authorized state entity consistent with the terms of the Contractor's enrollment in the program. This includes maintaining a copy of proof of the Contractor's and subcontractors' enrollment in the E-Verify Program. If a contractor enters into a contract with a subcontractor, the subcontractor must provide the contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The contractor shall maintain a copy of such affidavit for the duration of the contract.

E. Employment Eligibility Verification & Compliance.

Compliance with the terms of the Employment Eligibility Verification provision is made an express condition of this Contract and the Commission may treat a failure to comply as a material breach of the agreement. If the Commission terminates the Contract pursuant to Section 448.095(2)(c) Florida Statute, the contractor may not be awarded a public contract for at least 1 year after the date on which the contract was terminated and the Contractor is liable for any additional costs incurred by The Commission as a result of the termination of this Contract.

Section 35. 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 paragraph, the delay will not result in any additional charge or cost under the Agreement to either Party. In the case of any delay Recipient believes is excusable under this paragraph, Recipient shall notify the Commission's Grant Manager in writing of the delay or potential delay and describe the cause of the delay either: (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if Recipient could reasonably foresee that a delay could occur as a result; or (2) within five (5) calendar days after the date 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 paragraph is a condition precedent to such remedy. The Commission, in its sole discretion, will determine if the delay is excusable under this paragraph and will notify Recipient of its decision in writing. No claim for damages, other than for an extension of time, shall be

asserted against the Commission. Recipient shall not be entitled to an increase in the Agreement price or payment of any kind from the Commission 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 paragraph, after the causes have ceased to exist, Recipient shall perform at no increased cost, unless the Commission determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to the Commission or the State, in which case, the Commission may do any or all of the following: (1) accept allocated performance or deliveries from Recipient, provided that Recipient grants preferential treatment to the Commission with respect to products or services subjected to allocation; (2) purchase from other sources (without recourse to and by Recipient for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity; or (3) terminate the Agreement in whole or in part.

Section 36. TIME IS OF THE ESSENCE.

Time is of the essence regarding the performance obligations set forth in this Agreement. Any additional deadlines for performance for Recipient's obligation to timely provide deliverables under this Agreement including but not limited to timely submittal of reports, are contained in Attachment A.

Section 37. MEDIA REQUESTS.

Recipients shall refer all requests by the media or public relations personnel to the Commission's Grant Manager. Recipients must submit a written request for permission before consulting with the media and the Commission will provide consultation and talking points. Recipients will not issue news releases, respond to questions, or make statements on behalf of the Commission or its partners without prior direction and the Commission's written approval. Production and filming requests related to this Agreement shall be processed through the Commission only.

Section 38. ENTIRE AGREEMENT.

This Agreement with all incorporated attachments and exhibits represents the entire Agreement of the Parties. Any alterations, variations, changes, modifications or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, and duly signed by each of the Parties hereto, unless otherwise provided herein. In the event of conflict, the following order of precedence shall prevail: this Agreement and its attachments, the terms of the solicitation and the Recipient's response to the solicitation.

REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGE TO FOLLOW

SIGNATURES

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed through their duly authorized signatories on the day and year last written below.

RECIPIENT EXECUTION SIGNATURE	COMMISSION EXECUTION SIGNATURE
Entity Name	Florida Fish and Wildlife Conservation Commission
Recipient Signature	Executive Director (or Designee) Signature
Print Name	Print Name
Title	Title
Date	Date

ATTACHMENTS

Attachments in this Agreement include the following:

- Attachment A, Scope of Work
- Attachment B, Requirements of the Federal and Florida Single Audit Acts - Exhibit 1, Federal and State Funding Detail
- Attachment C, Derelict Vessel Removal Best Management Practices
- Attachment D, Letter of Return on Investment for the State
- Attachment E, Sample Invoice Form
- Attachment F, Monthly Progress Report
- Attachment G, Certificate of Completion
- Attachment H, Grantee's Required Documentation Submission List
- Attachment I, DV Grant Monitoring Guidelines