

## County Administrator

## **II. FISCAL IMPACT ANALYSIS**

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures					
Operating Costs	67,200				
External Revenues		-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL	67,200	-0-	-0-	-0-	-0-

**# ADDITIONAL FTE POSITIONS (Cumulative)** \_\_\_\_\_

Is Item Included in Current Budget? Yes XX No     
 Budget Account No.: Fund 1229 Department 380 Unit 3057 Object 3401  
 Program 3057ex

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**  
FDEP Contract LP6046

### C. Department Fiscal Review:

### III. REVIEW COMMENTS

**A. OFMB Fiscal and /or Contract Dev. and Control Comments:**

OFMB 2/13/08 2/12/08 2/22/08 Contract Development and Control

**B. Legal Sufficiency:**

  
Assistant County Attorney

**This Contract complies with our contract review requirements.**

**C. Other Department Review:**

**Department Director**

**Background and Justification (continued from Page 1):**

The eastern oyster is abundant throughout much of the Atlantic and Gulf of Mexico coasts. This commercially valuable species prefers shallow, moderate salinity waters, and attaches to both hard and soft substrata. It has been the subject of farming and aquaculture since the 1800's and, more recently, the focus of restoration.

In south Florida, restoration of oyster populations is an important component and metric of the northern estuaries CERP (Comprehensive Everglades Restoration Program) and is matter of prime importance for local governments, environmental organizations, educational institutions, and the general public. Because of its wide distribution, historical context, and essential habitat value, the Eastern Oyster has been selected as a target species for monitoring within the LWL.

This is a one (1)+ year contract between the County and FAU/HBOI for the collection, analysis and summary of oyster data from three sites within the LWL. Changes in health and abundance will be monitored at the sites listed below:

- 1: Snook Island
- 2: Ibis Island
- 3: John D. MacArthur Beach State Park

Analysis of data generated from samples collected under this contract will be used to guide management decisions affecting restoration projects described in the revised LWLMP 2007. Funding for this monitoring effort will be provided through the Lake Worth Lagoon Partnership Program, contract no. LP6046. This pass-through grant program from FDEP and South Florida Water Management District provides funds to the County for construction and monitoring projects to benefit water quality and habitat in the LWL.

### **CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES**

This Contract is made as of the \_\_\_\_ day of \_\_\_\_\_, 2008, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY, and Harbor Branch Oceanographic Institute at Florida Atlantic University, a state university authorized to do business in the State of Florida, hereinafter referred to as the CONSULTANT, whose Federal I.D. is 65-0385507.

In consideration of the mutual promises contained herein, the COUNTY and the CONSULTANT agree as follows:

#### **ARTICLE 1 - SERVICES**

The CONSULTANT'S responsibility under this Contract is to provide research and consultation services in the area of oyster monitoring, as more specifically set forth in the Scope of Work detailed in Exhibit A.

The COUNTY'S representative/liaison during the performance of this Contract shall be Richard E. Walesky, telephone no. 561-233-2400.

The CONSULTANT'S representative/liaison during the performance of this Contract shall be as specified in Article 26.

#### **ARTICLE 2 - SCHEDULE**

The CONSULTANT shall commence services upon receipt of the COUNTY's written Notice to Proceed and complete all services by June 30<sup>th</sup>, 2009.

Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in Exhibits A.

#### **ARTICLE 3 - PAYMENTS TO CONSULTANT**

- A. The total amount to be paid by the COUNTY under this Contract for all services and materials including, if applicable, "out of pocket" expenses (specified in paragraph C below) shall not exceed a total contract amount of Sixty-seven thousand, two hundred, Dollars (\$67,200). The CONSULTANT shall bill the County quarterly in accordance with Exhibit A.
- B. Invoices received from the CONSULTANT pursuant to this Contract will be reviewed and approved by the COUNTY's representative, to verify that services have been rendered in conformity with the Contract. Approved invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the COUNTY representative's approval.

4

- C. "Out-of-pocket" expenses including, but not limited to, mailing charges, copying fees, telephone charges and miscellaneous supplies will not be reimbursed under this Contract.
- D. Final Invoice: In order for both parties herein to close their books and records, the CONSULTANT will clearly state "final invoice" on the CONSULTANT'S final/last billing to the COUNTY. This shall constitute CONSULTANT'S certification that all services have been properly performed and all charges and costs have been invoiced to Palm Beach County. Any other charges not properly included on this final invoice are waived by the CONSULTANT.

#### **ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE**

Signature of this Contract by the CONSULTANT shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONSULTANT'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The COUNTY shall exercise its rights under this Article 4 within three (3) years following final payment.

#### **ARTICLE 5 - TERMINATION**

This Contract may be terminated by the CONSULTANT upon sixty (60) days' prior written notice to the COUNTY's representative in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Contract through no fault of the CONSULTANT. It may also be terminated, in whole or in part, by the COUNTY, with or without cause, immediately upon written notice to the CONSULTANT. Unless the CONSULTANT is in breach of this Contract, the CONSULTANT shall be paid for services rendered to the COUNTY'S satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the COUNTY the CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
  - B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
  - C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
  - D. Continue and complete all parts of the work that have not been terminated.
- 5

## **ARTICLE 6 - PERSONNEL**

The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required hereinunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONSULTANT'S key personnel, as may be listed in Exhibit A, must be made known to the COUNTY'S representative and written approval must be granted by the COUNTY's representative before said change or substitution can become effective.

The CONSULTANT warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

All of the CONSULTANT'S personnel (and all Subcontractors) while on County premises will comply with all COUNTY requirements governing conduct, safety and security.

## **ARTICLE 7 - SUBCONTRACTING**

The COUNTY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract.

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.

The CONSULTANT is encouraged to seek small business enterprises (SBE) for participation in subcontracting opportunities. The Palm Beach County Board of County Commissioners has established a minimum goal for SBE participation of 15% on all County solicitations. There is no required participation percentage for this Contract.

If the CONSULTANT uses any SBE subcontractors on this project the following provisions shall apply:

6

The CONSULTANT agrees to abide by all provisions of the Palm Beach County Code establishing the SBE Program, as amended, and understands that failure to comply with any of the requirements will be considered a breach of contract.

The CONSULTANT understands that each SBE firm utilized on this Contract must be certified by Palm Beach County in order to be counted toward the SBE participation goal.

The CONSULTANT shall provide the COUNTY with a copy of the CONSULTANT's contract with any SBE subcontractor or any other related documentation upon request.

The CONSULTANT understands the requirements to comply with the tasks and proportionate dollar amounts throughout the term of this Contract as it relates to the use of SBE firms.

The CONSULTANT agrees to maintain all relevant records and information necessary to document compliance pursuant to Palm Beach County Code, Chapter 2, Article III, Sections 2-71 through 2-80.13 and any revisions thereto, and will allow the COUNTY to inspect such records.

#### **ARTICLE 8 - FEDERAL AND STATE TAX**

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CONSULTANT unless the CONSULTANT is itself exempt. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONSULTANT authorized to use the COUNTY'S Tax Exemption Number in securing such materials.

The CONSULTANT shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this contract.

#### **ARTICLE 9 - AVAILABILITY OF FUNDS**

The COUNTY'S performance and obligation to pay under this contract for subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners.

#### **ARTICLE 10 – INSURANCE BY [MUNICIPALITY/AGENCY]:**

Without waiving the right to sovereign immunity as provided by s.768.28 f.s., the CONSULTANT acknowledges to be self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature.

17

In the event the CONSULTANT maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance of self-insurance under s. 768.28 f.s., The CONSULTANT shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage

The CONSULTANT agrees to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute 440.

When requested, the CONSULTANT shall agree to provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which COUNTY agrees to recognize as acceptable for the above mentioned coverages.

Compliance with the foregoing requirements shall not relieve the CONSULTANT of its liability and obligations under this Agreement.

#### **ARTICLE 11 - INDEMNIFICATION**

The CONSULTANT shall be responsible for the acts of its officers, agents and employees, arising during and as a result of their performance of the terms of this Contract or due to the acts or omissions of CONSULTANT.

#### **ARTICLE 12 - SUCCESSORS AND ASSIGNS**

The COUNTY and the CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the CONSULTANT shall assign, sublet, convey or transfer its interest in this Contract without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and the CONSULTANT.

#### **ARTICLE 13 - REMEDIES**

This Contract shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Contract will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

8



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#### **ARTICLE 14 - CONFLICT OF INTEREST**

The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes. The CONSULTANT further represents that no person having any such conflict of interest shall be employed for said performance of services.

The CONSULTANT shall promptly notify the COUNTY's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONSULTANT. The COUNTY agrees to notify the CONSULTANT of its opinion by certified mail within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the COUNTY shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONSULTANT under the terms of this Contract.

#### **ARTICLE 15 - EXCUSABLE DELAYS**

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONSULTANT or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.

Upon the CONSULTANT'S request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the CONSULTANT'S failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly, subject to the COUNTY'S rights to change, terminate, or stop any or all of the work at any time.

#### **ARTICLE 16 - ARREARS**

The CONSULTANT shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONSULTANT further warrants and represents that it has no

9

obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

#### **ARTICLE 17 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

The CONSULTANT shall deliver to the COUNTY's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Contract.

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent unless required by a lawful court order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the COUNTY'S expense shall be and remain the COUNTY'S property and may be reproduced and reused at the discretion of the COUNTY.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

#### **ARTICLE 18 - INDEPENDENT CONTRACTOR RELATIONSHIP**

The CONSULTANT is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONSULTANT'S sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The CONSULTANT does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

#### **ARTICLE 19 - CONTINGENT FEES**

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the

10

CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

#### **ARTICLE 20 - ACCESS AND AUDITS**

The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Contract. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONSULTANT'S place of business.

#### **ARTICLE 21 - NONDISCRIMINATION**

The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

#### **ARTICLE 22 - AUTHORITY TO PRACTICE**

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY's representative upon request.

#### **ARTICLE 23 - SEVERABILITY**

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

#### **ARTICLE 24- PUBLIC ENTITY CRIMES**

As provided in F.S. 287.132-133, by entering into this contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

#### **ARTICLE 25 - MODIFICATIONS OF WORK**

The COUNTY reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONSULTANT //

of the COUNTY'S notification of a contemplated change, the CONSULTANT shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the COUNTY of any estimated change in the completion date, and (3) advise the COUNTY if the contemplated change shall affect the CONSULTANT'S ability to meet the completion dates or schedules of this Contract.

If the COUNTY so instructs in writing, the CONSULTANT shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the COUNTY'S decision to proceed with the change.

If the COUNTY elects to make the change, the COUNTY shall initiate a Contract Amendment and the CONSULTANT shall not commence work on any such change until such written amendment is signed by the CONSULTANT and approved and executed on behalf of Palm Beach County.

#### **ARTICLE 26 - NOTICE**

All notices required in this Contract shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Richard E. Walesky, Director  
Department of Environmental Resources Management  
2300 N Jog Road, 4<sup>th</sup> Floor  
West Palm Beach, FL 33411

With copy to:

Palm Beach County  
Attn: County Attorney for ERM  
301 North Olive Avenue, Suite 601  
West Palm Beach, FL 33401

If sent to the CONSULTANT, notices shall be addressed to:

Pam Keen  
Harbor Branch Oceanographic Institute at Florida Atlantic University, Inc.  
5600 U.S. 1 North  
Fort Pierce, FL 34946

With copy to:

Gerald N. Goldberger, Ph.D., Assistant Vice President for Research &  
Director, Sponsored Research  
Florida Atlantic University, Division of Research  
777 Glades Road, AD 236  
Boca Raton, FL, 33437

12

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**ARTICLE 27 - ENTIRETY OF CONTRACTUAL AGREEMENT**

The COUNTY and the CONSULTANT agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 25- Modifications of Work.

**ARTICLE 28 - CRIMINAL HISTORY RECORDS CHECK**

The CONSULTANT shall comply with the provisions of Ordinance 2003-030, the Criminal History Records Check Ordinance ("Ordinance"), if CONSULTANT'S employees or subcontractors are required under this contract to enter a "critical facility" as identified in Resolution R-2003-1274. The CONSULTANT acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the CONSULTANT shall be solely responsible for the financial, schedule, and staffing implications associated in complying with Ordinance 2003-030.

**ARTICLE 29 - REGULATIONS: LICENSING REQUIREMENTS:**

The CONSULTANT shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. The CONSULTANT is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

Remainder of page intentionally left blank.

13

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Contract on behalf of the COUNTY and CONSULTANT has hereunto set its hand the day and year above written.

ATTEST:  
Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS:

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Addie L. Greene, Chairperson

WITNESS:

CONSULTANT:

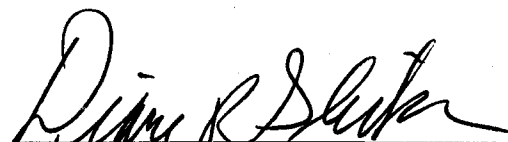
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Signature

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Name (type or print)

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Signature

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Name (type or print)

Harbor Branch Institute at  
Florida Atlantic University

  
Signature

\_\_\_\_\_  
Typed Name **Diane R. Glickman**  
**Associate Director**  
**Sponsored Research, DOR**

\_\_\_\_\_  
Title

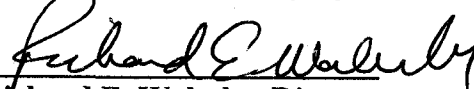
APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By \_\_\_\_\_  
County Attorney

APPROVED AS TO FORM  
AND LEGALITY  
General Counsel  
Florida Atlantic University  
*JRF 1/29/08*

(corp. seal)

APPROVED AS TO  
TERMS AND CONDITIONS

By   
Richard E. Walesky, Director  
Department of Environmental Resources Management

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**EXHIBIT A**  
**SCOPE OF WORK**  
**Oyster monitoring in Lake Worth Lagoon**

**1.0 BACKGROUND**

The eastern oyster, *Crassostrea virginica* (Gmelin, 1791), is abundant throughout much of the Atlantic and Gulf of Mexico coasts of the U.S. (Carriker and Gafney 1996). This commercially valuable species prefers shallow, moderate salinity waters, and attaches to both hard and soft substrata (Shumway 1996). It has been the subject of farming and aquaculture since the 1800's and, more recently, the focus of restoration.

In south Florida, restoration of oyster populations is an important component and metric of the northern estuaries CERP (Comprehensive Everglades Restoration Program) and is matter of prime importance for local governments, environmental organizations, educational institutions, and the general public. Because of its wide distribution, historical context, and essential habitat value, the Eastern Oyster has been selected as a target species for monitoring. Changes in health and abundance will be monitored within the Lake Worth Lagoon (LWL).

This is 1 year contract between the Palm Beach County and selected consultant (Consultant) for the collection, analysis and summary of oyster data from three sites within the LWL. Analysis of data generated from samples collected under this scope of work (SOW) will be used to guide management decisions affecting oyster restoration projects. Oyster monitoring sites are listed below:

- 1: Snook Island
- 2: Ibis Island
- 3: John D. MacArthur Beach State Park

The County reserves the right to either proceed with subsequent phases of work or conclude work for this SOW. This decision to be communicated in writing will be based on performance of the Consultant.

**2.0 OBJECTIVES**

In order to fulfill the objectives required by this SOW, the Consultant shall:

- a) Assemble and manage staff ensuring capacity to complete all tasks in this SOW
- b) Provide all transportation required to access all monitoring stations in this SOW;
- c) Provide sampling equipment and supplies required to complete monitoring;
- d) Perform field collection and;
- e) Deliver verified data on the specified due dates.

**3.0 POINT OF CONTACT**

All communication associated with this work order shall be through Palm Beach County Environmental Resources Management Department (ERM) **Contract Manager,**

**Alessandra Medri telephone: (561) 233-2512, Email: [amedri@co.palm-beach.fl.us](mailto:amedri@co.palm-beach.fl.us) .** In the event Ms. Medri is unavailable, Julie Bishop (561-233- 2446) will act as an alternate contact.

All communication between ERM and the Consultant shall be done through the contract manager unless directed otherwise by the contract manager for project specific issues. The role of the contract manager is to ensure that communication between ERM and the Consultant is frequent, consistent, and documented. This includes gathering and disseminating documentation and deliverables, schedule review, and invoice review and approval.

#### **4.0 SCOPE OF WORK**

This SOW is for the collection, analysis and summary of oyster data from three sites within the LWL. All tasks associated with this SOW shall be conducted by the Consultant in accordance with established techniques outlined within this SOW.

The primary goal of this study is to determine recruitment, survival, growth rate, reproduction, and condition index of established oysters at three locations in the LWL. Oyster vitality will also be related to incidence of the diseases dermo and MSX.

#### **5.0 WORK BREAKDOWN STRUCTURE**

##### **Task 1: Adult Oyster Sampling**

At each site, 15 1/4-m<sup>2</sup> quadrats will be randomly deployed on the reef. All oysters within each quadrat will be harvested for determination of the number of live and dead oysters with articulated shells. Shell height will be measured from a maximum of 30 random live oyster (SH = shell height, which is the maximum linear distance from umbo to ventral shell margin) for each quadrat (max n=450 oyster measured/site). Quadrat location on the reef will be noted as low, intermediate or top. Adult sampling will be conducted twice per year: Spring (April) and Autumn (October). Water quality parameters of temperature, salinity, dissolved oxygen, pH and turbidity will be taken at each sampling period using a Yellow Springs Instruments meter and secchi disk. Weather conditions (air temp, wind direction, approx wind speed, and cloud cover) will be noted.

##### **Task 2: Spat Recruitment**

Oyster recruitment will be monitored at each site by using axenic adult oyster shells collected from relict oyster reefs or from other appropriate sources. At each site, three replicate spat monitoring arrays will be deployed vertically along the edge of the reef facing open water and within 2-3 m of the reef depending upon local conditions and security. Each array will consist of two sets of 6 oyster shells (5.5 – 7.5 cm SH) strung together on a nylon cord or galvanized wire. Shells will be oriented with their inner surface facing down when suspended off the bottom, and oyster recruitment will be estimated by counting the number of settled spat on both the top and bottom for each strung shell. Each monitoring array will be deployed and recovered monthly for the duration of the study.



### Task 3: Reproductive and Disease Monitoring

Oysters will be collected on a monthly basis for analysis of condition index, reproductive stage, and prevalence and intensity of the oyster diseases *Perkinsus marinus* ("dermo") and *Haplosporidium nelsoni* (MSX) (Wilson et al. 2005). A sample of 10 oysters from each site will be transported live to HBOI for processing. Each individual will be measured (SH), shucked, and the tissues processed for reproductive stage, disease status, and physiological condition according to the methods described below.

For condition index, five (5) oysters from each site will be processed by thoroughly cleaning each individual, measuring the shell height, weighing the whole animal, then shucking each oyster and obtaining wet and dry weight of the tissues and shells. Condition index is calculated as the ratio of tissue dry weight to shell dry weight. The remaining five (5) animals collected from each site will be processed for reproductive and disease analyses.

For reproductive analysis, a 3-10 mm thick band of tissue will be cut transversely with a razor blade from the oyster. The tissue will be fixed in Davidson's fixative for 48-72 hr before being transferred to 70% ethanol for subsequent histological preparation (Wilson et al. 2005). Histological preparation will consist of dehydrating each gonad in 95% ethanol for a minimum of three hours, then embedding the gonad in paraffin. At least two 3.5 micrometer sections will be cut from each embedded sample using a microtome mounted with a glass knife, maintaining a minimum separation of 60 micrometers (the approximate maximum diameter of an oocyte) between sections. Thin sections will be stained with hematoxylin and eosin, then mounted on pre-labeled glass slides for analysis. Resultant slides will be examined at 200-400x on a compound microscope and each sample assigned to a reproductive stage following a classification scheme (Table 1) modified from the work of Fisher et al. (1996). Qualitative reproductive data will be plotted and the patterns of gonad development and spawning compared among sites.

The tissue that remains following the extraction of the gonad will be utilized for assessment of disease condition. Dermo prevalence and intensity will be diagnosed using Ray's fluid thyocollate method (RFTM), as described by Bushek et al. (1994). Small pieces (~1 cm<sup>2</sup>) of gill and mantle tissue will be incubated in RFTM with antibiotics for seven days at room temperature (20-25°C). Tissue pieces will then be placed on glass microscope slides, macerated with a razor blade, stained with Lugol's, and examined at 40x for the presence of hyphospores. Parasite density (infection intensity) will be ranked using the Mackin scale, which ranges from 0 (no infection) to 5 (heavy infection). Average parasite densities will be calculated for each sample. Remaining oyster tissue will be placed in Dietrich's fixative and processed for histopathology (Barber, 1996). Finished slides will be examined at 100x for the presence of MSX and other parasites. MSX and other parasites will be quantified, unless too numerous to count, in which case infection will be classified as either light, moderate, or heavy. Mean prevalence (i.e., proportion of oysters infected) will be calculated for each site. Infection prevalence and

17

intensity will be statistically compared among sample dates and locations with the non-parametric Friedman's Test (Zar, 1984).

Table 1. Qualitative reproductive staging criteria for oysters, *Crassostrea virginica*, collected from Florida waters.

Value	Observations
0	Neuter or resting stage with no visible signs of gametes
1	Gametogenesis has begun with no mature gametes
2	First appearance of mature gametes to approximately one-third mature gametes in follicles
3	Follicles have approximately equal proportions of mature and developing gametes
4	Gametogenesis progressing, but follicles dominated by mature gametes
5	Follicles distended and filled with ripe gametes, limited gametogenesis, ova compacted into polygonal configurations, and sperm have visible tails
6	Active emission (spawning) occurring; general reduction in sperm density or morphological rounding of ova
7	Follicles one-half depleted of mature gametes
8	Gonadal area is reduced, follicles two-thirds depleted of mature gametes
9	Only residual gametes remain, some cytolysis evident
10	Gonads completely devoid of gametes, and cytolysis is ongoing

**Task 4: Juvenile Growth Monitoring**

Twenty five axenic oyster valves will be anchored to 12.5 mm wire mesh during spring (April) and deployed at each site. The arrays will be placed horizontally at the lowest point at each reef site and be kept off the bottom by 1-4"-diameter PVC pipes. These juvenile growth arrays will be examined once per month afterward during regular field sampling and the shell height of 30 random oyster recruits (or all oysters if <30) will be measured. Water quality parameters of temperature, salinity, dissolved oxygen, pH and turbidity will be taken at each sampling period using a Yellow Springs Instruments meter and secchi disk. Weather conditions (air temp, wind direction, approx wind speed, and cloud cover) will be noted.

**6.0 DELIVERABLES**

**Task 1: Adult Sampling**

Statistical evaluation of oyster density, vertical distribution and size shall be made for each site and sampling event. Appropriate parametric or non-parametric statistical tests will be utilized (Zar, 1984). Data will be tested to meet assumptions of the underlying

tests; if data do not meet assumptions, appropriate data transformations will be undertaken. It is anticipated that density and size will be compared among sites using one-way ANOVA followed by a means test (e.g., Tukey-Kramer). Vertical distribution analysis for density and size will be descriptive (graphed) to visualize if there is any apparent trends.

#### **Task 2: Spat Recruitment**

Statistical evaluation of settled oyster number shall be made for each site and sampling event. Appropriate parametric or non-parametric statistical tests will be utilized (Zar, 1984). Data will be tested to meet assumptions of the underlying tests; if data do not meet assumptions, appropriate data transformations will be undertaken. It is anticipated that settled oyster number will be compared among sites using one-way ANOVA followed by a means test (e.g., Tukey-Kramer).

#### **Task 3: Condition Index, Reproductive Stage, and Disease Monitoring**

Summary data and, as a complete data set is acquired, statistically inferred estimates of variation (ANOVA and means test) for condition index, gonadal development and disease prevalence among sites will be provided. Reproductive stage will be classified according to the previously described scheme and the resultant data plotted and compared between sites. Condition index will be compared by one-way ANOVA. Disease prevalence and intensity will be statistically compared among sample dates and sites with the non-parametric Friedman's Z Test (Zar, 1984) or other appropriate parametric or non-parametric approaches.

#### **Task 4: Juvenile Growth Monitoring**

Statistical evaluation of growth of settled oysters shall be made for each site and sampling event. Appropriate parametric or non-parametric statistical tests will be utilized (Zar, 1984). Data will be tested to meet assumptions of the underlying tests; if data do not meet assumptions, appropriate data transformations will be undertaken. It is anticipated that growth of settled oysters will be compared among sites using one-way ANOVA followed by a means test (e.g., Tukey-Kramer).

**Due Dates:** Quarterly summary reports of Tasks 1, 2, 3 and 4 are due 30 days after each quarter (June, September, December 2008, and March 2009), in both hard copy and electronic format. A completed final report is due no later than 90 days after the final sampling in February 2009.

#### **Reporting**

All data shall be maintained in a Microsoft Excel spreadsheet and reports shall be submitted in Microsoft Word. The Consultant shall submit quarterly reports consisting of the following:

- A summary of work performed on each site, including the dates of site visits, water quality physical parameters, and weather conditions;
- A summary of statistically evaluated density, vertical distribution, and size estimates in adult sampling and spat recruitment for each site;
- A summary of reproductive and disease monitoring for each site that occurred

- during the quarter;
- A summary of juvenile growth monitoring for each site that occurred during the quarter;
- Graphics and tables of summary statistics and data;

The final report shall be cumulative and shall summarize all data collected for the twelve months period of the study and shall have a discussion section of the analytical results, and an assessment of limiting factors for reef success.

### Payment

Invoices will be submitted along with quarterly reports. Upon acceptance of the quarterly reports and the final report, the CONSULTANT shall be compensated \$13,440 for each report for a total of \$67,200 for this project.

### REFERENCES

- Barber, B.J., 1996. Gametogenesis of eastern oysters, *Crassostrea virginica* (Gmelin, 1791) and Pacific oysters, *Crassostrea gigas* (Thunberg, 1793) in disease-endemic lower Chesapeake Bay. J. Shellfish Res. 15: 285-290.
- Bushek, D., S.E. Ford and S.K. Allen, 1994. Evaluation of methods using Ray's fluid thioglycollate medium for diagnosis of *Perkinsus marinus* infection in the eastern oyster, *Crassostrea virginica*. Ann. Rev. Fish Diseases 4: 201-217.
- Carriker, M.R. and P.M. Gaffney. 1996. A catalogue of selected species of living oysters (Ostreacea) of the world, pp 1-18. In: Kennedy, V.S., Newell, R.I.E. and Eble, A.F. (eds), The Eastern Oyster *Crassostrea virginica*. Maryland Sea Grant Book, College Park, MD, 734 pp.
- Fisher, W. S., J. T. Winstead, L. M. Oliver, H. L. Adminston and G. O. Bailey, 1996. Physiological variability of eastern oysters from Appalachicola Bay, Florida. J. Shellfish Res. 15: 543-555.
- Shumway, S. 1996. Natural environmental factors, pp 467-513. In: Kennedy, V.S., Newell, R.I.E. and Eble, A.F. (eds), The Eastern Oyster *Crassostrea virginica*. Maryland Sea Grant Book, College Park, MD, 734 pp.
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- Zar, J.H., 1984. Biostatistical Analysis, Second Edition. Prentice Hall, Englewood Cliffs, New Jersey, 718 pp.

20

Attachment 2



CHIEF FINANCIAL OFFICER  
STATE OF FLORIDA

ALEX SINK  
STATE RISK MANAGEMENT TRUST FUND

## CERTIFICATE OF COVERAGE

Policy Number: WC-07-0201 STATE EMPLOYEE WORKERS'  
COMPENSATION and EMPLOYER'S  
LIABILITY

Name Insured: FLORIDA ATLANTIC UNIVERSITY

Coverage Limits:

Coverage A - Compensation coverage is provided to comply with the applicable State Workers' Compensation, Occupational Disease Laws and any rule promulgated thereunder.

Coverage B \$100,000.00 each person  
\$200,000.00 each occurrence

Inception Date: 7/1/07

Expiration Date: 7/1/08

Alex Sink

Chief Financial Officer

DI4-867  
(REV. 3/01)



**DEPARTMENT OF FINANCIAL SERVICES**  
**Division of Risk Management**

**STATE RISK MANAGEMENT TRUST FUND**  
**STATE EMPLOYEE WORKERS' COMPENSATION AND**  
**EMPLOYER'S LIABILITY**  
**CERTIFICATE OF COVERAGE**

In consideration of the provisions and stipulations contained herein or added hereto and for the premium charged, the State Risk Management Trust Fund, hereinafter referred to as the "Fund", certifies that the State department or agency named in this certificate is hereby entitled to workers' compensation coverage as set forth in the Workers' Compensation Laws and to employer's legal liability coverage as established herein. Coverage shall be effective on the inception date at 12:01 a.m., standard time.

This certificate is comprised of the foregoing provisions and stipulations, together with such other provisions and stipulations as may be added hereto by the Fund in the future:

- I. Coverages**
- A. Coverage A - Workers' Compensation**  
To pay promptly when due all compensation and other benefits required of the insured by the Workers' Compensation Laws.
- B. Coverage B - Employer's Liability**  
To pay on behalf of the insured all sums which the insured shall become liable to pay as damages because of bodily injury by accident or disease, including death, at any time resulting therefrom, which are sustained by an employee of the insured and which arise out of and in the course of his employment with the insured in the United States of America, its territories or possessions, or while temporarily employed outside the United States of America, its territories or possessions.
- II. Defense, Settlement, Supplementary Payments**  
As respects the insurance afforded by the other terms of this certificate, the Fund shall:
- (a) defend any proceeding against the insured seeking such benefits and any suit against the insured alleging such injury and seeking damages on account thereof, even if such proceeding or suit is groundless, false, or fraudulent. The Fund will investigate all claims filed against the insured in order to determine the legal liability of the insured and to determine damages sustained by the claimant. The Fund will negotiate, settle, or deny the claim based on these findings and appropriate Florida law.
- (b) pay all expenses incurred by the Fund, all costs taxed against the insured in any such proceeding or suit, and all interest accruing after entry of judgment until the Fund has paid, tendered, or deposited in court such part of such judgment as does not exceed the limit of the Fund's liability thereon;
- (c) pay amounts incurred under this insuring certificate, except settlements of claims and suits, in addition to the amounts payable under Coverage A, or the applicable limit of liability under Coverage B.
- III. Definitions**
- (a) **Workers' Compensation Law** - The workers' compensation law and any occupational disease law of a state designated in this certificate, but does not include those provisions of any such law which provide non-occupational disability benefits.
- (b) **State** - Any state or territory of the United States of America and the District of Columbia.
- (c) **Bodily Injury by Accident - Bodily Injury by Disease** - The contraction of disease is not an accident within the meaning of the word "accident", as used in the term "bodily injury by accident", and only such disease as results directly from a bodily injury by accident is included within the term "bodily injury by accident". The term "bodily injury by disease" includes only such disease as is not included within the term "bodily injury by accident".
- (d) **Assault and Battery** - Under Coverage B, Assault and Battery shall be deemed an accident unless committed by or at the direction of the insured.
- IV. Applications of Coverage**  
This certificate applies only to (1) injury by accident occurring during the coverage period, or (2) occupational injury by disease as such is defined by law which occurs during the coverage period.
- V. Exclusions**  
This certificate does not apply under Coverage B:
- (a) to any claim or judgment for punitive damages;
- (b) to any claim for interest for the period prior to judgment;
- (c) to that portion of a claim or judgment which is in excess of the statutory limits of liability;
- (d) to liability assumed by the insured or any third party pursuant to any contract or agreement in writing;
- (e) to any obligation for which the named insured or any carrier as his insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits laws, or under any similar law;
- (f) to any action by officers, employees, agents, or volunteers as defined in Chapter 110, Part V, Florida Statutes, committed in bad faith, or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.
- VI. Conditions:**
- A. Premium**  
Premium charges shall be assessed in accordance with the provisions of Chapter 284, Part II, Florida Statutes, and any rules promulgated thereunder utilizing a retrospective rating arrangement premium calculation method whereby 80% of the premium is based on losses actually incurred by the insured and 20% is based on the changes in risk exposures (employees, volunteers, etc.) of an insured. The premium must be paid promptly by an insured agency from its operating budget upon receiving the premium bill or invoice.
- B. Inspection**  
The Fund shall be permitted, but not obligated, to inspect at any reasonable time, the workplaces, operations, machinery, and equipment covered by this certificate. Neither the right to make inspections, nor the making thereof, nor any report thereon shall constitute an

22

undertaking on behalf of or for the benefit of the insured or others, to determine or warrant that such workplaces, operations, machinery, or equipment are safe.

**C. Insured's Duties in the Event of Injury, Claim or Suit**

**(1) Notice of Injury**

When an injury occurs, notice shall be given immediately, in accordance with current reporting procedures by the insured to the Fund. Such notice shall contain particulars sufficient to identify the insured along with reasonably obtainable information respecting the time, place, circumstances of the injury, the names and addresses of the injured and all known witnesses. Such notice is to be directed to the Division of Risk Management, Bureau of State Employees' Workers' Compensation Claims, P. O. Box 8020, Tallahassee, Florida 32314-8020, or to contract service vendor in accordance with current reporting procedures.

**(2) Notice of Claim or Suit**

If claim is made or suit or other proceedings is brought against the insured, the insured shall immediately forward to the Fund every demand, notice, summons, or other process received by it or its representative.

**(3) Assistance and Cooperation of the Insured**

The insured shall cooperate with the Fund, and at its request, shall attend hearings and trials, assist in effecting settlements, secure and give evidence, obtaining the attendance of witnesses. The insured shall not except at its own cost, voluntarily make any payment, assume any obligation, or incur any expense other than for such immediate medical and other services at the time of injury as are required by the Workers' Compensation Law.

**(4) Statutory Provisions - Coverage A**

The Fund shall be directly and primarily liable to any person entitled to the benefits of the Workers' Compensation Law under this certificate. The obligations of the Fund may be enforced by such person, or for his benefit, by any agency authorized by law, whether against the Fund alone or jointly with the insured. As between the employee and the Fund, notice or knowledge of the injury on the part of the insured shall be notice or knowledge, as the case may be, on the part of the Fund. The Fund shall, in all things, be bound by and subject to the findings, judgments, awards, decrees, orders or decisions rendered against the insured in the form and manner provided by law and within the terms, limitations, and provisions of this certificate not inconsistent with existing law.

All of the provisions of the Workers' Compensation Law shall be and remain a part of this coverage as fully and completely as if written herein insofar as coverage applies to compensation and other benefits provided by this certificate and in respect to special taxes, payments into security or other special funds, and assessments required of or levied against compensation insurance carriers under the Workers' Compensation Law.

The insured shall reimburse the Fund for any payments required of the Fund under the Workers' Compensation Law, which are made in excess of the benefits regularly provided by such law, solely because of injury to (a) any employee by reason of the serious and willful misconduct of the insured, or (b) any employee employed by the insured in violation of law with the knowledge or acquiescence of the insured or any executive officer thereof.

**(5) Limits of Liability - Coverage B**

The words "damages because of bodily injury by accident or disease, including death at any time resulting therefrom" in Coverage B include damages for care and loss of services and damages for which the insured is liable by reason of suits or claims brought against the insured by others because of such bodily injury sustained by employees of the insured arising out of and in the course of their employment. The limits of liability for Coverage B are those established by Section 768.28, Florida Statutes.

**(6) Other Insurance**

**Coverage A** - If the insured has other insurance against a loss covered by this certificate, the Fund shall not be liable to the insured hereunder for (1) a greater proportion of such loss than the amount which would have been payable under this certificate had no such other insurance existed, and (2) the amount which would have been payable under each other policy applicable to such loss had each such policy been the only policy so applicable.

**Coverage B** - If there is a valid and collectible policy of insurance applicable to any otherwise valid claim hereunder, the coverage extended by this certificate shall not apply.

**(7) Subrogation**

In the event of any payment under this certificate, the Fund shall be subrogated to all rights of recovery therefor of the insured and any person entitled to the benefits of this coverage against any person or organization, and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

**(8) Cancellation**

Failure of the Fund to receive the amount of premiums billed to the insured agency within the time frames allowed by law may result in cancellation of the certificate of coverage. Payments must be made promptly from the insured's operating budget upon receipt of the premium bill as specified in Section 284.36, Florida Statutes, and lack of prompt payment will result in a request from the Fund to the Comptroller to transfer premiums from any available funds of the delinquent agency under the provisions of Section 284.44(7), Florida Statutes.

**(9) Terms of Coverage Conformed to Statute**

Terms of this certificate which are in conflict with the provisions of the Workers' Compensation Law, or Section 768.28, Florida Statutes, are hereby amended to conform to such laws.

**(10) Self-Insurance Coverage**

Coverage for defending and paying claims under this certificate is provided under the authority of Chapter 284, Florida Statutes, wherein the state is authorized to administer a self-insurance program. Provision of this certificate does not constitute the issuance of insurance other than on a self-insurance basis, and payment of any covered claim obligations is contingent upon availability of legislative funding.

23



CHIEF FINANCIAL OFFICER  
STATE OF FLORIDA

ALEX SINK  
STATE RISK MANAGEMENT TRUST FUND

## CERTIFICATE OF COVERAGE

Policy Number: AL-07-0201 AUTOMOBILE LIABILITY

Name Insured: FLORIDA ATLANTIC UNIVERSITY

Automobile Liability Coverage provided pursuant to Chapter 284, Part II, Section 768.28, Florida Statutes, the Florida Vehicle No-Fault Law, and any rules promulgated thereunder.

Coverage Limits:

General Liability: \$100,000.00 each person  
\$200,000.00 each occurrence

Personal Injury: \$10,000.00 each person  
\$10,000.00 each occurrence

Inception Date: 7/1/07

Expiration Date: 7/1/08

Alex Sink

Chief Financial Officer

DI4-864  
(REV. 3/01)





**DEPARTMENT OF FINANCIAL SERVICES**  
**Division of Risk Management**

**STATE RISK MANAGEMENT TRUST FUND**  
**AUTOMOBILE LIABILITY**  
**CERTIFICATE OF COVERAGE**

In consideration of the provisions and stipulations contained herein or added hereto and for the premium charged, the State Risk Management Trust Fund, hereinafter referred to as the "Fund", certifies that the State department or agency named in this certificate is hereby provided automobile liability coverage. Coverage shall be effective on the inception date at 12:01 a.m. standard time.

This certificate is comprised of the foregoing provisions and stipulations, together with such other provisions and stipulations as may be added hereto by the Fund in the future:

**I. LIABILITY COVERAGE**

**A. Coverage - Bodily Injury and Property Damage**

To pay on behalf of the insured all sums which the insured shall become legally obligated to pay (but not to exceed the statutory limits as set forth by Section 768.28, Florida Statutes) for damages because of bodily injury, sickness or disease, including death at any time resulting therefrom (hereafter called bodily injury), sustained or alleged to have been sustained by any person or persons or injury to or destruction of property including loss of use thereof (hereafter called property damage), arising out of the ownership, maintenance, or use including loading or unloading of any owned, hired or non-owned automobile, caused by the negligent or wrongful act or omission of any officer, employee, agent or volunteer of the named insured, as such terms may be further defined herein or by administrative rule, while acting within the scope of his office or employment, pursuant to the provisions and limitations of Chapter 284, Part II and Section 768.28, Florida Statutes.

**B. Defense, Settlement, Supplementary Payments**

With respect to such coverage as is afforded by this certificate, the Fund shall:

- (a) defend any proceeding against the insured seeking such benefits and any suit against the insured alleging such injury and seeking damages on account thereof, even if such proceeding or suit is groundless, false, or fraudulent. The Fund will investigate all claims filed against the insured in order to determine the legal liability of the insured and to determine damages sustained by the claimant. The Fund will negotiate, settle, or deny the claim based on these findings and appropriate Florida law.
- (b) pay all premiums on bonds to release attachments and on appeal bonds required in any such defended suit for an amount not in excess of the applicable limit of liability of this certificate;
- (c) pay all expenses incurred by the Fund, all costs taxed against the insured in any such suit and all interest accruing after entry of judgment until the Fund has paid, tendered, or deposited in court such part of such judgment as does not exceed the limit of the Fund's liability thereon;
- (d) pay expenses incurred by the insured for such immediate medical relief to others as shall be imperative at the time of the accident.

**C. Definitions**

The following definitions shall apply to liability coverages established herein:

- (a) **Named Insured** - The department or agency named herein.
- (b) **Insured** - The unqualified word "insured" shall include the State department or agency named herein, their officers, employees, agents, or

volunteers acting within the course and scope of employment.

- (c) **Volunteer** - Any person who of his own free will, provides goods or services to the named insured, with no monetary or material compensation as defined in Chapter 110, Part IV, Florida Statutes.
- (d) **Agent** - Any person not an employee, acting under the direct control and supervision of a state agency or department, for the benefit of a state agency or department.
- (e) **Automobile** - A land motor vehicle, motorcycle, trailer, or semi-trailer designed and licensed for use on public roads (including machinery or apparatus attached thereto), but does not include mobile equipment.
- (f) **Owned Automobile** - An automobile owned by the named insured or leased under contract for six months or more.
- (g) **Hired Automobile** - An automobile used under contract in behalf of or loaned to the named insured, provided such automobile is not owned by or leased under contract for six months or more, or registered in the name of (1) the named insured, or (2) an executive officer thereof, or (3) an employee or agent of the named insured who is granted an operating allowance for the use of such automobile.
- (h) **Non-owned Automobile** - Any automobile which is not an owned or hired automobile.
- (i) **Trailer** - The word trailer includes semi-trailer.
- (j) **Mobile Equipment** - A land vehicle (including machinery or apparatus attached thereto), whether or not self-propelled; (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the named insured, including the ways immediately adjoining, or (3) designed for use principally off public roads, or (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle; power cranes, shovels, loader, diggers and drills; concrete mixers (other than the mix-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well-servicing equipment.

**D. Exclusions**

This certificate does not apply to:

- (a) any claim or judgment for punitive damages;
- (b) interest for the period prior to judgment;
- (c) that portion of the claim or judgment which is in excess of the statutory limits of liability;
- (d) any judgment entered personally against any insured where the insured was found to have acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property;
- (e) liability assumed by the insured under any contract or agreement;
- (f) any obligation for which the named insured or any carrier as his insurer may be held liable under workers'

25

- compensation, unemployment compensation or disability benefits law, or under any similar law;
- (g) the owner of a hired automobile or any agent or employee of any such owner;
  - (h) to any action which may be brought against the State department or agency named herein by anyone who unlawfully participates in riot, unlawful assembly, public demonstration, mob violence, or civil disobedience if the claim arises out of such riot, unlawful assembly, public demonstration, mob violence, or civil disobedience;
  - (i) damage or destruction to property owned by the insured;
  - (j) liability related in any way with nuclear energy.

#### E. Conditions

1. Premium  
Premium charges shall be assessed in accordance with the provisions of Chapter 284, Part II, Florida Statutes, and any rules promulgated thereunder, utilizing a retrospective rating arrangement premium calculation method whereby 80% of the premium is based on losses actually incurred by the insured and 20% is based on the changes in risk exposures (vehicles, etc.) of an insured. The premium must be paid promptly by an insured agency from its operating budget upon receiving the premium bill or invoice.
2. Insured's duties in the Event of Occurrence, Claim or Suit
  - (a) In the event of an occurrence, written notice containing particulars sufficient to identify the insured along with reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and all known witnesses, shall immediately be given by or for the insured to the Fund.
  - (b) If claim is made or suit is brought against the insured, the insured shall immediately forward to the Fund every demand, notice, summons, or other process received by him or his representative. Failure by the insured to advise the Fund of a claim or suit prior to a settlement or agreement or the insured otherwise obligating itself, shall void coverage by the Fund for that claim.
  - (c) The insured shall cooperate with the Fund and, upon the Fund's request, assist in making settlements in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of injury or damage with respect to which coverage is afforded under this contract and the insured shall upon request, make available all agency records pertaining to a specific claim, shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation, or incur any expenses other than for first aid to others at the time of accident.
3. Limits of Liability  
The limits of liability expressed as applicable to "each person" is the limit of the Fund's liability for all damages including damages for care and loss of services, arising out of bodily injury and property damage sustained by one person as a result of any one occurrence; but the total liability of the Fund for all damages sustained by two or more persons as a result of any one occurrence shall not exceed the limit of liability as applicable to "each occurrence".
4. Insurance  
If there is insurance applicable to any claim, the coverage extended by this certificate shall not apply, except as excess insurance over any and all other available coverage.

## II. PERSONAL INJURY PROTECTION

### A. Coverage

The Fund will pay to:

- (a) any insured injured while occupying an owned vehicle, or
- (b) any other person injured while occupying the owned motor vehicle or while a pedestrian through being struck by the owned motor vehicle, in accordance with the Florida Motor Vehicle No-Fault Law, the following benefits:
  - (1) eighty percent (80%) of all reasonable and necessary medical expenses, and
  - (2) sixty percent (60%) of all loss of gross income and loss of earning capacity per individual from inability to work proximately caused by the injury sustained by the injured person, plus all expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed without income for the benefit of his household, and
  - (3) funeral, burial or cremation expenses in an amount not to exceed \$5,000.00 per individual, incurred as a result of bodily injury caused by an accident arising out of the ownership, maintenance or use of an owned motor vehicle.

### B. Exclusions

This insurance does not apply:

- (a) to an insured while occupying a motor vehicle of which the named insured is not the owner and which is not an owned motor vehicle under this coverage;
- (b) to any person while operating the owned motor vehicle without the express or implied consent of the authorized person employed by the named insured;
- (c) to any person, if such person's conduct contributed to his bodily injury under any of the following circumstances:
  - (1) causing bodily injury to himself or herself intentionally; or
  - (2) while committing a felony;
- (d) to the extent that benefits are paid or payable under any workers' compensation law or Medicaid program;
- (e) to any pedestrian, other than an insured, not a legal resident of the State of Florida;
- (f) to any person, including an insured, if such person is the owner of a motor vehicle with respect to which security is required under Florida's Motor Vehicle No-Fault Law;
- (g) to any person, including an insured, who is entitled to personal injury protection benefits from the owner of a motor vehicle which is not an owned motor vehicle under this endorsement or from the owner's insured;
- (h) to any person who sustained bodily injury while occupying a motor vehicle located for use as a resident or premises;
- (i) to any person who is incarcerated by the State, a ward of the State, or whose medical needs are otherwise provided for by the State of Florida or other governmental entity.

### C. Limits of Liability: Other Insurance

Regardless of the number of persons insured, policies or bonds applicable, vehicles involved, or claims made, the total aggregated limit of personal injury protection benefits available under the Florida Motor Vehicle No-Fault Law from all sources combined, including this coverage, for all loss and expense incurred by or on behalf of any person who sustained bodily injury as the result of any one accident shall be \$10,000.00, provided that payment for funeral, cremation or burial expenses included in the foregoing shall in no event exceed \$2,500.00. Any statutory changes in the amount of these benefits will automatically supersede the amount stated in this Certificate of Coverage.

If benefits have been received under the Florida Motor Vehicle No-Fault Law from any insurer for the same item of loss and expense for which benefits are available under this coverage, the Fund shall not be liable to make duplicate payments to or for the benefit of the injured person.

### D. Definitions

The following definitions shall apply to Personal Injury Protection coverages provided herein:

- (a) Bodily Injury - Bodily Injury, sickness or disease, including death at any time resulting therefrom;
- (b) Medical Expenses - Expenses for necessary medical, surgical, x-ray, dental, ambulance, hospital, professional nursing and rehabilitative services recognized and permitted under the law of the State of Florida and for an injured person who relies upon spiritual means through prayer along with healing in accordance with his religious beliefs;
- (c) Named Insured - The department or agency named herein;
- (d) Insured - Includes authorized individuals in the course and scope of their employment for the department or agency named herein;
- (e) Motor Vehicle - Any self-propelled vehicle with four or more wheels which is of a type both designed and required to be licensed for use on the highways of this State and any trailer or semi-trailer designed for use with such vehicle and includes:
  - (1) a "private passenger motor vehicle" which is any motor vehicle which is a sedan, station wagon, jeep-type vehicle not used at any time as a public or delivery conveyance for passengers and, if not used primarily for occupational, professional, or business purposes, a motor vehicle of the pickup, panel, van, camper, or motor home type.
  - (2) a "commercial motor vehicle" which is any motor vehicle which is not a private passenger motor vehicle. The term "motor vehicle", however, does not include a mobile home or any motor vehicle owned by a municipality, a transit or public school transportation authority, or by a political subdivision of the State which is used in mass transit or public school transportation and designed to transport more than five passengers exclusive of the operator of a motor vehicle.
- (f) Occupying - In or upon or entering into or alighting from;
- (g) Owned Motor Vehicles - A motor vehicle of which the named insured is the owner and with respect to which:
  - (1) the bodily injury liability insurance of the policy applies;
  - (2) security is required to be maintained under the Florida Motor Vehicle No-Fault Law.
- (h) Pedestrian - Person while not an occupant of any self-propelled vehicle;
- (i) Owner - A person or organization who holds the legal title to a motor vehicle, including:
  - (1) a debtor having the right to possession, in the event a motor vehicle is the subject of a security agreement, and
  - (2) a lessee having the right to possession, in the event a motor vehicle is the subject of a lease with option to purchase and such agreement is for a period of six months or more, and
  - (3) a lessee having the right to possession, in the event a motor vehicle is the subject of a lease without option to purchase, and such lease agreement is for a period of six months or more, and the lease agreement provides that the lessee shall be responsible for securing the insurance.

**E. Policy Period: Territory**

The insurance under this section applies only to accidents which occur during the certificate period:

- (a) in the State of Florida, and
- (b) as respect the insured while occupying the insured motor vehicle outside the State of Florida, but within the United States of America, its territories or possessions or Canada.

**F. Conditions**

**(a) Notice**

In the event of an accident, written notice of the loss must be given to the Fund or any of its authorized agents as soon as practicable.

**(b) Proof of Claim; Medical Reports and Examinations; Payment of Claim Withheld.**

As soon as practicable, the person making claim shall give to the Fund written proof of claim, under oath if required, which may include full particulars of the nature and extent of the injuries and treatment received and contemplated, and such other information as may assist the Fund in determining the amount due and payable. Such person shall submit to mental and physical examinations at the Fund's expense when and as often as the Fund may reasonably require and a copy of the medical report shall be forwarded to such person if requested. If the person unreasonably refuses to submit to an examination, the Fund will not be liable for subsequent personal injury protection benefits.

**III. GENERAL COVERAGE CONDITIONS**

**A. Audit**

The Fund shall be permitted to examine and audit the insured's books and records at any time during the term of this certificate and any extension thereof and within three years after the final termination of this certificate, as far as they relate to the premium bases or the subject matter of the certificate.

**B. Action against the Fund**

No action shall lie against the Fund unless, as a condition precedent thereto, the insured has fully complied with all of the terms of this certificate and the provisions of Section 768.28, Florida Statutes.

**C. Severability of Interests**

The term "the insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the Fund's liability.

**D. Two or More Automobiles**

The terms of this certificate apply separately to each automobile insured hereunder, but a motor vehicle and a trailer or trailers attached thereto shall be held to be one automobile as respects to limits of liability.

**E. Term of Coverage**

This certificate is issued for the purpose of confirming coverage as contemplated by Chapter 284, Part II, provisions or coverages in this certificate and the provisions of any Florida Statutes or laws including, but not limited to the aforesaid, the statutes and laws shall control.

**F. Cancellation**

Failure of the Fund to receive the amount of premiums billed to the insured agency within the time frames allowed by law may result in cancellation of the certificate of coverage. Payments must be made promptly from the insured's operating budget upon receipt of the premium bill as specified in Section 284.36, Florida Statutes, and lack of prompt payment will result in a request from the Fund to the Comptroller to transfer premiums from any available funds of the delinquent agency under the provisions of Section 284.44(7), Florida Statutes.

**G. Self-Insurance Coverage**

Coverage for defending and paying claims under this certificate is provided under the authority of Chapter 284, Florida Statutes, wherein the state is authorized to administer a self-insurance program. Provision of this certificate does not constitute the issuance of insurance other than on a self-insurance basis, and payment of any covered claim obligations is contingent upon availability of legislative funding.



**DEPARTMENT OF FINANCIAL SERVICES**  
**Division of Risk Management**

**STATE RISK MANAGEMENT TRUST FUND**  
**ADDENDUM TO AUTOMOBILE LIABILITY**  
**CERTIFICATE OF COVERAGE FOR OFF-DUTY**  
**LAW ENFORCEMENT VEHICLE PROPERTY DAMAGE**

In consideration of the provisions and stipulations contained herein or added hereto and for the premium charged, the State Risk Management Trust Fund, hereinafter referred to as the "Fund", certifies that the State department or agency named in this Addendum, hereinafter referred to as the "insured", is hereby provided automobile property damage coverage. Coverage shall be effective on the inception date at 12:01 a.m. standard time.

This Addendum is comprised of the foregoing provisions and stipulations as well as those provisions and stipulations contained in the Automobile Liability Certificate of Coverage, together with such other provisions and stipulations as may be added hereto by the Fund in the future.

**I. General**

The purpose of this Addendum is to provide property damage insurance coverage to State agencies and law enforcement officers as required by Section 284.311, F.S.

**II. Property Damage Coverage**

The Fund will pay for property damage to a motor vehicle owned by the insured when this property damage occurs while the motor vehicle is being used by a law enforcement officer, as defined in Section 943.10, F.S., for off-duty work for which the officer must reimburse the State, subject to the exclusions and deductible amounts stated in this Addendum. The Fund will pay reasonable repair costs or the actual cash value of the vehicle whichever is less.

If an independent appraisal of the property damage is required, the Fund will pay for this expense. If the accidental loss results in the motor vehicle being declared a total loss, the Fund will pay the insured the actual cash value of the motor vehicle (minus any applicable deductible amounts), and the Fund shall retain the salvage value of the motor vehicle.

Upon payment by the Fund of a loss under this Addendum, the insured shall assign all rights to recover the amount of loss to the Fund. The Fund will pursue and retain any monies collected from third parties who are legally liable for the loss.

**III. Conditions**

The law enforcement officer must be in the course and scope of approved off duty activities for which the officer must reimburse the State for use of the motor vehicle. The employee must be a law enforcement officer as defined in Section 943.10, F.S.

**IV. Definitions**

The following definitions shall apply to the property damage coverage established herein:

- (a) "Motor vehicle" - Any self-propelled vehicle with two or four or more wheels which is of a type both designed and required to be licensed for use on the highways of this state and any trailer or semi trailer designed for use with such vehicle and includes:

A "private passenger motor vehicle" which is any motor vehicle which is a sedan, station wagon, or jeep-type vehicle and, if not used primarily for occupational, professional or business purposes, a motor vehicle of the pickup, panel, van, camper, or motor home type.

A "commercial motor vehicle" which is any motor vehicle which is not a private passenger motor vehicle.

The term "motor vehicle" does not include a mobile home or any motor vehicle which is used in mass

transit other than public school transportation, and designed to transport more than five passengers exclusive of the operator of the motor vehicle and which is owned by a municipality, a transit authority, or a political subdivision of the State.

- (b) "At fault" - The law enforcement officer shall be deemed "at fault" (thereby subjecting the insured to the deductible amount) if the "contributing cause" code on a Florida Traffic Crash Report (Long Form) is anything other than code "01", (no improper driving action).
- (c) "Actual cash value" - Replacement cost minus depreciation.
- (d) "Property damage" - Physical damage to the covered motor vehicle due to collision or impact with another vehicle or object or due to other accidental loss.

**V.**

**Deductibles**

The Fund will reduce the payments for property damage to the insured by any applicable deductible amount when the law enforcement officer is determined to be at fault in causing property damage to the insured motor vehicle.

Any proceedings to appeal the determination of fault will be pursued with the employing agency.

The Fund will adjust the deductible amount at the beginning of each fiscal year, upon consultation with the state agencies that employ the covered law enforcement officers. The amount of the deductible shall not exceed \$500 per incident.

**VI.**

**Exclusions**

The Fund will not pay for property damage if:

- (a) The law enforcement officer was not in the course and scope of approved off duty activities when the property damage occurred.
- (b) The law enforcement officer is found to have acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety or property.
- (c) The law enforcement officer does not have to reimburse the State for use of the motor vehicle.
- (d) Property damage is due to wear and tear or mechanical breakdown.

**VII.**

**Limits of Liability**

Our limit of liability for loss will be the lesser of the:

- (a) Actual cash value of the damaged property; or
- (b) Amount necessary to repair or replace the property with other property of like kind and quality.

An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total loss.

If a repair or replacement results in better than like kind of quality, the Fund will not pay for the amount of the betterment.

28



CHIEF FINANCIAL OFFICER  
STATE OF FLORIDA

ALEX SINK  
STATE RISK MANAGEMENT TRUST FUND

## CERTIFICATE OF COVERAGE

Policy Number: GL-07-0201 GENERAL LIABILITY

Name Insured: FLORIDA ATLANTIC UNIVERSITY

General Liability Coverage provided pursuant to Chapter 284, Part II, Section 768.28, Florida Statutes, and any rules promulgated thereunder.

### Coverage Limits:

General Liability: \$100,000.00 each person  
\$200,000.00 each occurrence

Inception Date: 7/1/07

Expiration Date: 7/1/08

*Alex Sink*

Chief Financial Officer

DI4-863  
(REV. 3/01)



**DEPARTMENT OF FINANCIAL SERVICES**  
**Division of Risk Management**

**STATE RISK MANAGEMENT TRUST FUND**  
**GENERAL LIABILITY**  
**CERTIFICATE OF COVERAGE**

In consideration of the provisions and stipulations contained herein or added hereto and for the premium charged, the State Risk Management Trust Fund, hereinafter referred to as the "Fund", certifies that the State department or agency named in this certificate is hereby provided general liability coverage. Coverage shall be effective on the inception date at 12:01 a.m. standard time.

This certificate is comprised of the foregoing provisions and stipulations, together with such other provisions and stipulations as may be added hereto by the Fund in the future:

**I. COVERAGES**

**General Liability Coverage—Bodily and Property Damage**

To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any officer, employee, agent or volunteer of the named insured, as such terms may be further defined herein or by administrative rule, while acting within the scope of his office or employment, pursuant to the provisions and limitations of Chapter 284, Part II and Section 768.28, Florida Statutes.

**II. DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS**

With respect to such coverage as is afforded by this certificate, the Fund shall:

- (a) defend any proceeding against the insured seeking such benefits and any suit against the insured alleging such injury and seeking damages on account thereof, even if such proceeding or suit is groundless, false, or fraudulent. The Fund will investigate all claims filed against the insured in order to determine the legal liability of the insured and to determine damages sustained by the claimant. The Fund will negotiate, settle, or deny the claim based on these findings and appropriate Florida law.
- (b) pay all premiums on bonds to release attachments and on appeal bonds required in any such defended suit for an amount not in excess of the applicable limit of liability established in this certificate;
- (c) pay all expenses incurred by the Fund, all costs taxed against the insured in any such suit, and all interest accruing after entry of judgment until the Fund has paid, tendered, or deposited in court that part of such judgment as does not exceed the limit of the Fund's liability thereon;
- (d) pay expenses incurred by the insured for such immediate medical relief to others as shall be imperative at the time of the accident.

**III. DEFINITIONS**

- (a) **Named Insured** - The department or agency named herein.
- (b) **Insured** - State department or agency named herein, their officers, employees, agents or volunteers.
- (c) **Volunteer** - Any person who of his own free will, provides goods or services to the named insured, with no monetary or material compensation as defined in Chapter 110, Part IV, Florida Statutes.
- (d) **Agent** - Any person not an employee, acting under the direct control and supervision of a state agency or department, for the benefit of a state agency or department.
- (e) **Automobile** - A land motor vehicle, trailer, or semi-trailer designed and licensed for use on public roads (including machinery or apparatus attached thereto), but does not include mobile equipment.
- (f) **Mobile Equipment** - A land vehicle (including machinery or apparatus attached thereto), whether or not self-propelled;
  - (1) not subject to motor vehicle registration, or

- (2) maintained for use exclusively on premises owned by or rented to the named insured, including the ways immediately adjoining, or
- (3) designed for use principally off public roads, or
- (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle; power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding, and building cleaning equipment; and geophysical exploration and well-servicing equipment.

**IV. EXCLUSIONS**

This certificate does not apply:

- (a) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of:
  - (1) any automobile owned or operated by or rented or loaned to any insured, or
  - (2) any other automobile operated by any person in the course of his employment by any insured, but this exclusion does not apply to the parking of an automobile on premises owned by, rented to, or controlled by the named insured or the ways immediately adjoining, if such automobile is not owned by, rented, or loaned to any insured;
- (b) to any action which may be brought against the named insured by anyone who unlawfully participates in riot, unlawful assembly, public demonstration, mob violence, or civil disobedience if the claim arises out of such riot, unlawful assembly, public demonstration, mob violence, or civil disobedience;
- (c) to any obligation for which the insured or the Fund may be held liable under any employer's liability or workers' compensation law;
- (d) to property damage to property owned or occupied by the insured;
- (e) to property damage to premises alienated by the insured arising out of such premises or any part thereof;
- (f) to loss of use of tangible property which has not been physically injured or destroyed, resulting from:
  - (1) a delay in or lack of performance by or on behalf of the named insured of any contract or agreement;
  - (2) the failure of the named insured's products, or work performed by or on behalf of the named insured to meet the level of performance, quality fitness, or durability warranted or represented by the named insured;
- (g) to property damage to the named insured's products arising out of such products or any part of such products;
- (h) to property damage to work performed by or on behalf of the named insured arising out of the work or any portion thereof, or out of materials, parts, or equipment furnished in connection therewith;

- (i) eminent domain proceedings or damage to persons or property of others arising therefrom;
- (j) to punitive damages;
- (k) to actions of insureds committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property;
- (l) to professional medical liability of the Board of Regents, the physicians, officers, employees, or agents of the Board;
- (m) to liability related in any way with nuclear energy;
- (n) to liability assumed by the insured under any contract or agreement;
- (o) to final judgments in which the insured has been determined to have caused the harm intentionally;
- (p) to awards for injunctive, declaratory, or prospective relief rendered against an insured by any federal or state court, agency or commission.

#### V. CONDITIONS

##### A. Premium

Premium charges shall be assessed in accordance with the provisions of Chapter 284, Part II, Florida Statutes, and any rules promulgated thereunder utilizing a retrospective rating arrangement premium calculation method whereby 80% of the premium is based on losses actually incurred by the insured and 20% is based on the changes in risk exposures (employees, etc.) of an insured. The premium must be paid promptly by an insured agency from its operating budget upon receiving the premium bill or invoice.

##### B. Audit

The Fund shall be permitted to examine and audit the insured's books and records at any time during the term of this coverage and any extension thereof, and within three years after the final termination of this coverage, as far as they relate to the premium bases or the subject matter of this coverage.

##### C. Insured's Duties in the Event of Occurrence, Claim or Suit

- (1) **Event of Occurrence**  
Written notice containing particulars sufficient to identify the insured, along with reasonably obtainable information with respect to the time, place and circumstances thereof, the names and addresses of the injured and all known witnesses, shall immediately be given by or for the insured to the Fund.
- (2) **Notice of Claim or Suit**  
If claim is made by suit brought against the insured, the insured shall immediately forward to the Fund every demand, notice, summons, or other process received by him or his representative. Failure by the insured to advise the Fund of a claim or suit prior to a settlement agreement or the insured otherwise obligating itself, shall void coverage by the Fund, for that claim.
- (3) **Assistance and Cooperation of the Insured**  
The insured shall cooperate with the Fund and, upon the Fund's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of injury or damage with respect to which coverage is afforded under this certificate, and the insured shall upon request, make available all agency records pertaining to a specific claim, shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expenses other than for first aid to others at the time of accident.

##### (4) Action Against the Fund

No action shall lie against the Fund unless, as a condition precedent thereto, the insured shall have been in full compliance with all of the terms of this certificate and the provisions of applicable Florida Statutes.

##### (5) Severability of Interest

The term "the insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the Fund's liability.

##### (6) Limits of Liability

The limit of liability expressed as applicable to "each person" is the limit of the Fund's liability for all damages, including damages for care and loss of services, arising out of personal injury and property damage sustained by one person as a result of any one occurrence; but the total liability of the Fund for all damages sustained by two or more persons as a result of any one occurrence shall not exceed the limit of liability as applicable "each occurrence".

##### (7) Other Insurance

If there is insurance applicable to any claim, the coverage extended by this certificate shall apply only as excess insurance over any and all other applicable insurance.

##### (8) Terms of Coverage

This certificate is issued for the purpose of confirming coverage as contemplated by Chapter 284, Part II, Florida Statutes. In the event of any conflict between provisions or coverages in this certificate and the provisions of any Florida Statutes or laws including, but not limited to the aforesaid, said statutes and laws shall control.

##### (9) Cancellation

Failure of the Fund to receive the amount of premiums billed to the insured agency within the time frames allowed by law may result in cancellation of the certificate of coverage. Payments must be made promptly from the insured's operating budget upon receipt of the premium bill as specified in Section 284.36, Florida Statutes, and lack of prompt payment will result in a request from the Fund to the Comptroller to transfer premiums from any available funds of the delinquent agency under the provisions of Section 284.44(7), Florida Statutes.

##### D. Self-Insurance Coverage

Coverage for defending and paying claims under this certificate is provided under the authority of Chapter 284, Florida Statutes, wherein the state is authorized to administer a self-insurance program. Provision of this certificate does not constitute the issuance of insurance other than on a self-insurance basis, and payment of any covered claim obligations is contingent upon availability of legislative funding.

31



CHIEF FINANCIAL OFFICER  
STATE OF FLORIDA

ALEX SINK  
STATE RISK MANAGEMENT TRUST FUND

## CERTIFICATE OF COVERAGE

Policy Number: FC-07-0201

FEDERAL CIVIL RIGHTS LIABILITY  
and EMPLOYMENT DISCRIMINATION

Name Insured: FLORIDA ATLANTIC UNIVERSITY

Federal Civil Rights Liability Coverage provided pursuant to Chapter 284, Part II,  
Section 768.28, Florida Statutes, and any rules promulgated thereunder.

Federal Civil Rights:

Liability: Unlimited each person  
Unlimited each occurrence

Inception Date: 7/1/07

Expiration Date: 7/1/08

Alex Sink

Chief Financial Officer

DI4-865  
(REV. 3/01)

32





**DEPARTMENT OF FINANCIAL SERVICES**  
**Division of Risk Management**

**STATE RISK MANAGEMENT TRUST FUND**  
**FEDERAL CIVIL RIGHTS LIABILITY AND EMPLOYMENT DISCRIMINATION COVERAGE**  
**CERTIFICATE OF COVERAGE**

In consideration of the provisions and stipulations contained herein or added hereto and for the premium charged, the State Risk management Trust Fund, hereinafter referred to as the "Fund", certifies that the State department or agency named in this certificate is hereby provided federal civil rights liability and employment discrimination coverage. Coverage shall be effective on the inception date at 12:01 a.m. standard time.

This certificate is comprised of the foregoing provisions and stipulations, together with such other provisions and stipulations as may be added hereto by the Fund in the future:

**I. COVERAGES**

**A. Federal Civil Rights Coverage**

To pay on behalf of the insured all sums which the insured shall become legally obligated to pay, subject to the stated exclusions, arising from federal civil rights actions filed under 42 USC 1983, and other similar federal statutes. The coverage includes payment of claims and awards for plaintiff attorney fees where so provided by the above federal statutes.

**B. Employment Discrimination Coverage**

To pay on behalf of the insured all sums which the insured shall become legally obligated to pay, subject to the stated exclusions, arising from employment discrimination actions filed under 42 USC 2000e, Title VII of the 1964 Civil Rights Act, the Rehabilitation Act of 1973 (handicap discrimination), the Age Discrimination in Employment Act of 1967, the Vietnam Era Veteran's Readjustment Act of 1974, and other similar employment discrimination acts and statutes.

**II. DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS**

With respect to such coverages as is afforded by this certificate, the Fund shall:

- (a) defend any proceeding against the insured seeking such benefits and any suit against the insured alleging such injury and seeking damages on account thereof, even if such proceeding or suit is groundless, false, or fraudulent. The Fund will investigate all claims filed against the insured in order to determine the legal liability of the insured and to determine damages sustained by the claimant. The Fund will negotiate, settle, or deny the claim based on these findings and appropriate Florida and federal laws.
- (b) defend any suit against an insured filed under the statutes and acts stated in coverages A and B, except the named insured is responsible for defending or directing the defense of injunctive or prospective relief issues;
- (c) pay all premiums on bonds to release attachments and on appeal bonds required in any such defended suit for an amount not in excess of the applicable limit of liability established in this certificate;
- (d) pay all expenses incurred by the Fund, all costs taxed against the insured in any such suit and all interest accruing after entry of judgment until the Fund has paid, tendered, or deposited in court that part of such judgment as does not exceed the limit of the Fund's liability thereon.

**III. DEFINITIONS**

- (a) Named Insured - The department or agency named herein.
- (b) Insured - State department or agency named herein, their officers, employees, agents or volunteers.

- (c) Volunteer - Any person who of his own free will, provides goods or services to the named insured, with no monetary or material compensation as defined in Chapter 110, Part IV, Florida Statutes.

- (d) Agent - Any person not an employee, acting under the direct control and supervision of a state agency or department, for the benefit of a state agency or department.

**IV. EXCLUSIONS**

This certificate does not apply:

- (a) to any action which may be brought against the named insured by anyone who unlawfully participates in riot, unlawful assembly, public demonstration, mob violence, or civil disobedience, if the claim arises out of such riot, unlawful assembly, public demonstration, mob violence, or civil disobedience;
- (b) to any obligation for which the insured or the Fund may be held liable under any employer's liability or workers' compensation law;
- (c) eminent domain proceedings or damage to persons or property of others arising therefrom;
- (d) to punitive damages;
- (e) to actions of insureds committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property;
- (f) to professional medical liability of the Board of Regents, the physicians, officers, employees, or agents of the Board;
- (g) to liability related in any way with nuclear energy;
- (h) to liability assumed by the insured under any contract or agreement;
- (i) to final judgments in which the insured has been determined to have caused the harm intentionally;
- (j) to awards for injunctive or prospective relief rendered against an insured by any federal or state court, agency or commission except plaintiff's attorney fee awards in such actions are covered by the Fund. The Fund will not pay any costs associated with implementing or monitoring a declaratory, injunctive or prospective relief award.
- (k) to awards to employees or retirees of the named insured for backpay or other benefits, except backpay and other benefits awarded for the period prior to and up to the date of final judgment and paid by the named insured are reimbursable from the Fund to the named insured through journal transfer.

**V. CONDITIONS**

**A. Premium**

Premium charges shall be assessed in accordance with the provisions of Chapter 284, Part II, Florida Statutes, and any rules promulgated thereunder, utilizing a retrospective rating arrangement premium calculation method whereby 80% of the premium is based on losses actually incurred

93

by the insured and 20% is based on the changes in risk exposures (employees, etc.) of an insured. The premium must be paid promptly by an insured agency from its operating budget upon receiving the premium bill or invoice.

**B. Audit**

The Fund shall be permitted to examine and audit the insured's books and records at any time during the term of this coverage and any extension thereof, and within three years after the final termination of this coverage, as far as they relate to the premium bases or the subject matter of this coverage.

**C. Insured's Duties in the Event of Occurrence, Claim or Suit**

**(1) Event of Occurrence**

Written notice containing particulars sufficient to identify the insured, along with reasonably obtainable information with respect to the time, place and circumstances thereof, the names and addresses of the injured and all known witnesses, shall immediately be given by or for the insured to the Fund.

**(2) Notice of Claim or Suit**

If claim is made by suit brought against the insured, the insured shall immediately forward to the Fund every demand, notice, summons, or other process received by him or his representative. Failure by the insured to advise the Fund of a claim or suit prior to a settlement agreement or the insured otherwise obligating itself, shall void coverage by the Fund for that claim.

**(3) Assistance and Cooperation of the Insured**

The insured shall cooperate with the Fund and, upon the Fund's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of injury or damage with respect to which coverage is afforded under this certificate, and the insured shall upon request, make available all agency records pertaining to a specific claim, shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expenses.

**(4) Action Against the Fund**

No action shall lie against the Fund unless, as a condition precedent thereto, the insured shall have been in full compliance with all of the terms of this certificate and the provisions of applicable Florida Statutes.

**(5) Severability of Interest**

The Term "the insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the Fund's liability.

**(6) Insurance**

If there is a valid and collectible policy of insurance applicable to any claim, the coverage extended by this certificate shall not apply.

**(7) Terms of Coverage**

This certificate is issued for the purpose of confirming coverage as contemplated by Chapter 284, Part II, Florida Statutes. In the event of any conflict between provisions or coverages in this certificate and the provisions of any Florida Statute or laws including, but not limited to the aforesaid, said statutes and laws shall control.

**(8) Cancellation**

Failure of the Fund to receive the amount of premiums billed to the insured agency within the time frames allowed by law may result in cancellation of the certificate of coverage. Payments must be made promptly from the insured's operating budget upon receipt of the premium bill as specified in Section 284.36, Florida Statutes, and lack of prompt payment will result in a request from the Fund to the Comptroller to transfer premiums from any available funds of the delinquent agency under the provisions of Section 284.44(7), Florida Statutes.

**D. Self-Insurance Coverage**

Coverage for defending and paying claims under this certificate is provided under the authority of Chapter 284, Florida Statutes, wherein the state is authorized to administer a self-insurance program. Provision of this certificate does not constitute the issuance of insurance other than on a self-insurance basis, and payment of any covered claim obligations is contingent upon availability of legislative funding.