



**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<u>(2,000,000)</u>	<u>(2,000,000)</u>	<u>(2,000,000)</u>	<u>(2,000,000)</u>	<u>(2,000,000)</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>(2,000,000)</u>	<u>(2,000,000)</u>	<u>(2,000,000)</u>	<u>(2,000,000)</u>	<u>(2,000,000)</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes  No

Budget Account No: Fund 2079 Dept 810 Unit 4100 Object 3517  
 Program \_\_\_\_\_

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

OFMB will be the Contract Administrator for this Agreement and is responsible for the coordination and submittal of the annual reports required herein. The revenues received from the State MUST be used toward debt service payments associated with the Ballpark of the Palm Beaches.

C. Departmental Fiscal Review: N/A

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development Comments:**

John A. McLean 9/26/16  
 OFMB 9/26/16 MSB 9/26/16

D. J. Jacobson 9/26/16  
 Contract Development and Control

**B. Legal Sufficiency:**

[Signature] 9/26/16  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**This summary is not to be used as a basis for payment.**

**Background and Policy Issues Continued**

The Agreement requires the County to continually meet all requirements for certification. In addition, the Agreement requires the County to submit annual reports which must include:

- A detailed accounting of all local and state funds expended to date, as of the date of submission of the report, on the County's Stadium Construction Project. In addition to this detailed accounting, and during the Development Period only, the County must submit a short summary of all local, state and private funds expended on the County's Stadium Construction Project as of the date of submission of this report.
- A copy of the First Restated Sports Facility Use Agreement and the First Restated Sports Facility Development Agreement between the County and its Spring Training Franchises.
- A cost-benefit analysis of the Spring Training Franchises' impact on the County. TDC is going to engage the services of a consultant to prepare such study.
- A list of all Contracts with an estimated cost greater than **\$250,000** executed in furtherance of this Agreement.
- Written evidence that the County continues to meet the certification criteria in effect when the County was certified pursuant to section 288.11631, F.S. (2015).
- Written evidence that the County is in compliance with section 288.1167, F.S.
- A letter signed by the Chair of the Board of County Commissioners or delegee certifying that all information and documentation contained in the annual report and submitted to DEO is true and correct.
- Any additional documents or certifications which are reasonably related to the County's obligations under this Agreement as requested and required by DEO.
- Evidence of the efforts to promote and advertise the facility that have taken place since the last reporting period, in accordance with Section 23 of the Agreement.

The Agreement identifies the following as breaches and, after cure periods which are not listed in the board item, assigns the identified financial consequences/remedies in the event of such a breach. These remedies are in addition to any remedies that FDEO may have in law or equity:

- If the County fails to timely or adequately provide any of the reports, documents, or certification(s) required under this Agreement, and fails to cure such failure within thirty (30) days of notice from FDEO, FDEO may impose a fine of \$100/day until cured.
- If less than two Spring Training Franchises are operating at the Facility during the term of this Agreement and either (a) due to modifications to the First Restated Sports Facility Use Agreement made without DEO's prior consent, or (b) due to the departure of one or more Spring Training Franchises solely resulting from a breach of contract by the County, DEO does not receive adequate repayment from the Spring Training Franchise(s), DEO may impose a financial consequence in an amount up to: (a) 60% of the County's remaining monthly distributions received from the State under this Agreement, each month if only one Spring Training Franchise is not operating at the Facility, and (b) 100% of the County's remaining monthly distributions received from the State under this Agreement, each month if both Spring Training Franchises are not operating at the Facility, and in either case, until such time as the County cures.
- If DEO determines that the County has knowingly submitted or certified to information, or knowingly made a representation, that is false, misleading, deceptive, or otherwise untrue, and said submittal, certification, or representation relates to a material provision of this Agreement, DEO may at its option either (a) impose a liquidated financial consequence in an amount up to the County's monthly distributions received from the State under this Agreement for a single month, or (b) pursue any rights and remedies available at law to DEO for the false, misleading, deceptive or otherwise untrue representation.
- If County materially breaches, or defaults under, this Agreement, other than as described above, and fails to cure, DEO may impose a financial consequence in an amount of up to \$5000/month, until such time as the County cures.

The County and DEO agree that wherever one or more Spring Training Franchises would be required to repay to DEO amounts that were or will be provided to County under this Agreement, DEO must demand such amounts from the Spring Training Franchise(s).

**SPORTS DEVELOPMENT PROGRAM AGREEMENT  
BETWEEN  
FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY  
AND  
PALM BEACH COUNTY, FLORIDA**

This SPRING TRAINING FACILITY FUNDING AGREEMENT (“Agreement”) Number SB16-007 is made and entered into by and between the State of Florida (the “State”) Department of Economic Opportunity (“DEO”) and PALM BEACH COUNTY, FLORIDA (the “County”). DEO and the County are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties.”

**RECITALS**

**WHEREAS**, the Legislature of the State of Florida has created the Major League Baseball Spring Training Baseball Franchise Retention program under section 288.11631, Florida Statutes (F.S.) (the “Program”); and

**WHEREAS**, the Program is designed for the public purpose of constructing or renovating qualified spring training facilities within the State, in accordance with the criteria set forth in section 288.11631, F.S.; and

**WHEREAS**, the Legislature set aside specific funds reflected in section 212.20(6)(d)6.e. for certified applicants; and

**WHEREAS**, the County was certified under this program by DEO on October 29, 2015, for the County’s Stadium Construction Project (the construction of The Ballpark of the Palm Beaches), as defined in the First Restated Sports Facility Developer Agreement entered into by the County and HW Spring Training Complex, LLC dated October 20, 2015; and

**WHEREAS**, the County entered into a First Restated Sports Facility Use Agreement with HW Spring Training Complex, LLC, and, as to certain obligations therein, the Houston Astros, LLC and the Washington Nationals Baseball Club, LLC (hereinafter each a “Spring Training Franchise”) on October 20, 2015 for the use of The Ballpark of the Palm Beaches for Major League Baseball spring training; and

**WHEREAS**, pursuant to subsection 288.11631(2)(c), F.S., DEO is directed to enter into an Agreement with any applicant certified under s. 288.11631, F.S.; and

**WHEREAS**, the purpose of this Agreement is to define the Parties’ mutual rights, expectations, and responsibilities for the award of the designated funds based on the County’s certification.

**NOW, THEREFORE**, for and in consideration of the agreements, covenants and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

**1. NOTICES.**

(a) All notices and demands that are required or may be given pursuant to the terms of this Agreement shall be in writing at the following respective addresses:

**If to DEO:**

Florida Department of Economic Opportunity  
Division of Strategic Business Development  
107 East Madison Street, MSC 80,  
The Caldwell Building  
Tallahassee, Florida 32399-0001  
Telephone: (850) 717-8973  
Facsimile: (850) 410-4770  
Email: katherine.morrison@deo.myflorida.com

**If to the County:**

Palm Beach County  
Office of Financial Management & Budget  
301 N. Olive Ave  
West Palm Beach, FL. 33401  
Telephone (561) 355-4160  
Facsimile: (561) 656-7142  
Email: SBrown4@pbcgov.org

**With copy to:**

Palm Beach County  
County Attorney's Office, Suite 601  
301 N. Olive Ave.  
West Palm Beach, FL 33401

Palm Beach County  
Director, Facilities Development & Operations  
2633 Vista Parkway  
West Palm Beach, FL 33411

(b) All notices and demands to be given or delivered under or by reason of the provisions of this Agreement shall be deemed to have been given:

- (1) when personally delivered,
- (2) when transmitted via facsimile to the number set out above if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid),
- (3) the day following the day (except if not a business day then the next business day) on which the same has been delivered prepaid to a reputable national overnight air courier service, or
- (4) the third business day following the day on which the same is sent by certified or registered mail, postage prepaid, with return receipt.

(c) Notices and demands, in each case to the respective Parties, shall be sent to the applicable address set forth in Section 1(a), unless another address has been previously specified in writing in accordance with Section 1(d).

(d) The Parties may modify the notice address by delivering written notice of said modification to the other Party in accordance with Section 1(b) above.

## 2. ADMINISTRATORS.

(a) DEO's administrator in connection with this Agreement is Katherine Morrison, Strategic Industry Partnerships Manager, Division of Strategic Business Development; telephone: (850) 717-8973; email: [katherine.morrison@deo.myflorida.com](mailto:katherine.morrison@deo.myflorida.com).

(b) The County's administrator in connection with this Agreement is:

Name: Sherry Brown

Title: Director, Office of Financial Management and Budget

E-mail: [SBrown4@pbcgov.org](mailto:SBrown4@pbcgov.org)

Telephone: (561) 355-4160

(c) All approvals and certifications pursuant to this Agreement must be obtained from the Parties' respective administrators or their respective designees.

(d) The Parties may replace their respective administrators by delivering written notice of the appointment of a replacement administrator to the other Party in accordance with Section 1(b) above.

## 3. AGREEMENT TERM/DEFINITIONS.

(a) This Agreement is effective as of the date on which the last party executes the Agreement (such date, the "Effective Date") and will end when the \$50 million provided for herein has been distributed to the County in accordance with this Agreement. DEO acknowledges and agrees that the County has issued bonds for the construction of the County's Stadium Construction Project and that the County will pay a portion of the debt service on said bonds from the \$50 million provided for herein, and that, pursuant to Section 288.11631(5)(f), F.S., the County may therefore not be decertified from the receipt of said funds unless otherwise provided therein or by other law. Notwithstanding the foregoing, the provisions of Articles 8, 9, 11, 12, 13, 15, 16, 17, 25, 30, 31, and 34 shall survive the expiration of this Agreement; provided, however, that the record-keeping and audit-related obligations set forth in Article 11, *Audits and Records*, of this Agreement shall terminate in accordance with the requirements of Article 11.

(b) Definitions:

1. "Contract" means any agreement, assignments, leases or purchase order for the provision of construction, goods and/or services executed specifically by the County in furtherance of the County overall obligations under this Agreement, unless specifically defined elsewhere in this Agreement.
2. "Development Period" means the period of time between certification pursuant to FS 288.11631 and full completion of all services and payments contemplated under the First Restated Developer Agreement.

#### **4. DUTIES AND OBLIGATIONS OF THE COUNTY.**

##### **STATUTORY REQUIREMENTS**

(a) The County shall comply with all of the provisions of this Agreement and shall continually, throughout the term of this Agreement, meet all requirements for certification within section 288.11631, F.S. (2015), as verified and determined by DEO, which includes, but is not limited to, the following:

(1) The County is responsible for the construction or renovation of the facility for a spring training franchise or holds title to the property on which the facility for a spring training franchise is located.

(2) The County must have a certified copy of signed lease agreements with two Spring Training Franchises. The signed agreement(s) with the Spring Training Franchises for the use of a facility must, at a minimum, be equal to the length of the term of the bonds issued for the public purpose of constructing or renovating a facility for the spring training franchises. The lease agreements must also require each franchise to reimburse the State if the franchise relocates before the lease agreements expires; the required reimbursement must be equal to the total amount of state distributions expected to be paid from the date the franchises breaks its lease agreements with the County through the final maturity of the bonds, as further set forth in paragraph (f) of this section.

(3) The County must maintain its financial commitment to provide 50 percent or more of the funds required by an agreement for the construction or renovation of the facility for spring training franchises.

(4) The County must demonstrate, at least annually, that the facility for spring training franchises will attract (prior to completion of the County's Stadium Construction Project) or does attract (after completion of the County's Stadium Construction Project) a paid attendance of at least 50,000 persons annually to the spring training games held in that facility.

(5) The facility for spring training franchises must be located in a county that levies a tourist development tax under section 125.0104, F.S.

(b) As a certified applicant under section 288.11631, F.S., the County may use state funds provided under section 212.20(6)(d)6.e, F.S. and this Agreement, only to:

(1) serve the public purpose of constructing or renovating a facility for spring training franchise(s);

(2) pay or pledge for the payment of debt service on bonds issued for the construction or renovation of such facility;

(3) fund debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect thereto on bonds issued for the construction or renovation of such facility;

(4) reimburse the costs under paragraphs (1), (2), or (3), above; and/or

(5) refinance bonds issued for the construction or renovation of such facility.

(c) As a certified applicant under section 288.11631, F.S., the County may not use state funds distributed according to this Agreement and pursuant to section 212.20(6)(d)6.e, F.S., to subsidize facilities that are privately owned by, maintained by, and used exclusively by one or more spring training franchises.

(d) The County must place unexpended state funds received pursuant to section 212.20(6)(d)6.e., F.S., in a trust fund or separate account for use only as authorized in section 288.11631, F.S.

(e) The County's expenditure of state funds received pursuant to this Agreement must begin within 48 months after the initial receipt of said state funds. Additionally, the construction or renovation of a spring training facility within the County and pursuant to the County's certification under section 288.11631, F.S., must be completed within 24 months of the County's Stadium Construction Project's commencement.

(f) As more fully set forth in Section 22.3 of the First Restated Sports Facility Use Agreement, if one or more of the County's Spring Training Franchise(s) relocates from the spring training facility or no longer occupies or uses the facility as the facility's primary tenant, the first of County's Spring Training Franchises that relocates must reimburse the State in an amount equal to 60%, and the second of the County's Spring Training Franchises that relocates must reimburse the State in an amount equal to 40%, of the total amount of state distributions expected to be paid from the date the County's Spring Training Franchise(s) breaks its agreement or agreements with the County through the maturity of the bonds issued for the County's Stadium Construction Project under section 288.11631 F.S. The County agrees it has, and will have, at all times throughout the term of this Agreement, and will enforce, a valid provision for such reimbursement to the State in the County's signed spring training facility lease agreements with its Spring Training Franchises. DEO acknowledges and agrees that the provisions of Section 22.3 of the First Restated Sports Facility Use Agreement meet the requirements of section 288.11631, F.S.

(g) The County agrees that, prior to making any material changes, amendments, modifications, extensions or the like, to the County's First Restated Sports Facility Use Agreement, or the terms thereof, that could reasonably have any effect on DEO's or the State's rights or privileges, including, but not limited to, any Spring Training Franchise's assignment of its rights and obligations under the Sports Facility Use Agreement, or the County's certification or any Spring Training Franchise's reimbursement requirements under section 288.11631, F.S., the County shall obtain DEO's prior, written approval, which shall not be unreasonably delayed, conditioned, or withheld. DEO shall acknowledge receipt of County's proposed material changes, amendments, modifications, extensions or the like, and provide an estimate of the date that DEO will provide a response to County's request for approval within 10 business days of receipt.

## REPORTING REQUIREMENTS

(h) **Annual Reports:** On or before September 1 of each year, and throughout the term of this Agreement, and as long as County remains certified under section 288.11631, F.S., the County shall submit an annual report to DEO which must include, but is not limited to, the following:

(1) A detailed accounting of all local and state funds expended to date, as of the date of submission of the report, on the County's Stadium Construction Project financed under section 288.11631, F.S. In addition to this detailed accounting, and during the Development Period only, the County must submit a short summary of all local, state and private funds expended on the County's Stadium Construction Project as of the date of submission of this report.

(2) A copy of the First Restated Sports Facility Use Agreement and the First Restated Sports Facility Development Agreement between the County and its Spring Training Franchises, including all amendments, modifications, extensions, assignments, or ancillary agreements thereto, current as of the date of the annual report. The County's Spring Training Franchises shall remain the Houston Astros and the Washington Nationals Baseball Club, unless properly changed pursuant to law and the terms of this Agreement and the First Restated Sports Facility Use Agreement.

(3) A cost-benefit analysis of the Spring Training Franchises' impact on the County. This cost-benefit analysis must be substantially similar in content and format to the 2009 Major League



Baseball Florida Spring Training Economic Impact Study except that its scope shall be limited to the impact on Palm Beach County.

(4) A list of all Contracts with an estimated cost greater than **\$250,000** executed in furtherance of this Agreement. In addition, and only for those reporting periods which encompass the Development Period, the list shall include all contracts entered into by HW, LLC and HW, LLC's first-tier subcontractors (Hunt Construction Group, Inc., HKS Architects Inc., Marc Taylor Inc, URS Corporation Southern, Urban Design Studio LLC, and Kimley Horn & Associates) with an estimated cost greater than \$250,000 executed in furtherance of the County's Stadium Construction Project.

(5) Written evidence that the County continues to meet the certification criteria in effect when the County was certified pursuant to section 288.11631, F.S. (2015).

(6) Written evidence, including numerical and/or statistical analysis as applicable, that the County is in compliance with section 288.1167, F.S.

(7) A letter signed by the Chair of the Board of County Commissioners or delegee certifying that all information and documentation contained in the annual report and submitted to DEO is true and correct.

(8) Any additional documents or certifications which are reasonably related to the County's obligations under this Agreement as requested and required by DEO.

(9) Evidence of the efforts to promote and advertise the facility that have taken place since the last reporting period, in accordance with Section 23 hereof.

(i) **Stadium Development Status Reports:** On a monthly basis and until the County's Spring Training Franchises have commenced spring training at the facility, the County shall copy DEO on the written monthly updates provided to the Board of County Commissioners and the City of West Palm Beach Commission. Those monthly updates will include updates on permitting, construction activities (site development, environmental, structures, operations, plumbing and electrical, procurement, and schedule), SBE, M/WBE and local participation, and upcoming milestones. In addition, during the Development Period, the County will promptly respond to a request from DEO for any information in the County's possession (including construction pay applications and back-up), or reports that the County is generating for its own purposes. The section does not require the County to generate financial reports beyond those specifically required by this Agreement.

## **5. DISTRIBUTIONS.**

(a) Distributions under this Agreement will be made to the County subject to and in accordance with sections 212.20(6)(d)6.e. and 288.11631, F.S.

(1) The State of Florida's and DEO's performance and obligation for distribution of funds per this Agreement are contingent upon an annual appropriation by the Legislature. If such funds are not appropriated or available for the Agreement purpose, such event will not constitute a default by DEO or the State

(2) All distributions shall be subject to the terms of this Agreement, including, but not limited to Article 15, *Breach, Financial Consequences, and Remedies*.

(b) Pursuant to sections 212.20(6)(d)6.e. and 288.11631(3)(c), F.S, the DOR will begin distributions to the County upon DEO's notification to DOR that the County has fulfilled all the requirements for certification as set forth in section 288.11631, F.S.

(c) Pursuant to subsection 212.20(6)(d)6.e., F.S., the County shall receive distributions from DOR of up to \$166,667.00 monthly, beginning July 1, 2016, or upon the Effective Date of this Agreement, whichever is later, and continue, unless this Agreement is otherwise terminated, for not more than 25 years from the initial distribution date, in an amount equal to and not to exceed a total sum of \$50,000,000.00. Failure to comply with the requirements set forth in this Agreement or applicable law, may result in the application of financial consequences as set forth in Article 15, *Breach, Financial Consequences, and Remedies*, of this Agreement, the repayment of funds as referenced in section 288.11631, F.S., or Article 34, *Return or Recoupment of Funds*, of this Agreement.

(d) The County may request in writing at least 20 days before the next monthly distribution that DEO halt future distributions. If such a request is made, upon receipt by DEO, DEO shall immediately notify DOR to halt future distributions for such period of time as DEO deems appropriate, under the circumstances, but only as permitted by law.

## **6. CONTRACTS.**

(a) The County shall be responsible and liable for all work performed and all expenses incurred in connection with the County's Stadium Construction Project or any activities related to, in connection with, or in furtherance of this Agreement.

(b) The County may, as appropriate and in compliance with applicable law, contract the performance of the activities related to, in connection with, or in furtherance of this Agreement, including entering into Contracts with vendors for services and commodities, *provided, however*, that the County, and not DEO, shall be solely liable to the contractor for all expenses and liabilities incurred under any Contract. The County shall not enter into a Contract in which DEO could be held liable to the contractor for any expenses or liabilities. The County agrees that DEO shall not be held liable to the contractor for any expenses or liabilities incurred under any Contract. Pursuant to section 768.28, F.S., and to the extent permitted by applicable law, the County shall, at its expense, defend and hold DEO harmless of any liabilities incurred under any of the Contracts entered into by the County in connection this Agreement. The County shall be liable for all work performed and all expenses incurred as a result of any Contract. Contractors hired by the County following the Effective Date of this Agreement, in connection with the County's Stadium Construction Project or any activities related to, in connection with, or in furtherance of this Agreement are required to comply with all relevant terms of this Agreement.

(c) Any Contract executed by the County after the Effective Date of this Agreement for the expenditure of funds from, related to, in connection with, or in furtherance of this Agreement shall be evidenced by a written document and include provisions requiring compliance with this Agreement and all applicable Federal, State and local laws, regular performance reporting, accounting for proper use of funds provided under the agreement (including the provision of audit rights pursuant to Attachment A, *Audit Requirements*, as applicable).

## **7. INDEPENDENT CAPACITY OF CONTRACTOR.**

(a) The Parties mutually understand and agree that the County, its officers, agents, employees, contractors or assignees, in the performance of the County's duties and responsibilities under this Agreement, is at all times acting and performing as an independent contractor and not as an officer, employee or agent of the State of Florida. Nothing in this Agreement is intended to, or shall be deemed to constitute, a partnership or joint venture between the Parties.

(b) The County shall not represent to others that, as the County, it has the authority to bind DEO unless specifically authorized to do so.

(c) Neither the County, nor its officers, agents, employees, contractors, or assignees are entitled to state retirement or state leave benefits, or to any other compensation of state employment as a result of performing the duties and obligations of this Agreement.

(d) The County agrees to take such actions as may be necessary to ensure that each contractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the State of Florida.

(e) DEO will not furnish services of support (*e.g.*, office space, office supplies, telephone service, secretarial, or clerical support) to the County, its Spring Training Franchises, beneficiary, its contractor, or assignee in furtherance of this Agreement.

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

(g) The County, at all times during the Agreement, must comply with any and all applicable reporting and Reemployment Assistance contribution payment requirements of chapter 443, F.S.

(h) The County agrees to take such steps as may be necessary to ensure that each contractor of the County will be deemed to be an independent contractor and will not be considered or permitted to be an agent of the State of Florida.

(i) The County shall not pledge the State of Florida's nor DEO's credit nor make the State of Florida or DEO a guarantor of payment or surety for any contract, debt, obligation, judgment lien, or any form of indebtedness.

## **8. LIABILITY.**

(a) DEO shall not assume any liability for the acts, omissions to act, or negligence of the County, its Spring Training Franchises, agents, beneficiaries, affiliates, contractors, contractors, servants, or employees. In all instances, the appropriate party, but not the DEO, shall be responsible for any injury or property damage resulting from any activities conducted by said appropriate party in the performance of this Agreement.

(b) DEO shall not be liable to the County for special, indirect, punitive, or consequential damages. DEO shall not be liable for lost profits, lost revenue, or lost institutional operating savings.

## **9. INDEMNIFICATION.**

(a) The Parties acknowledge that nothing in this Agreement shall constitute (1) an agreement by either party to indemnify or insure the other Party for the other Party's negligence or to assume any liability of the other Party's negligence; (2) a waiver of sovereign immunity beyond the limits set forth in Section 768.28, F.S. or any applicable waiver of sovereign immunity that is inherent in the act of contracting; (3)

a waiver of any defense the parties may have under such statute; or (4) consent to be sued by third parties.

(b) The County shall indemnify, defend, and hold harmless the State and DEO, and their officers, agents, and employees, from any and all suits, actions, damages, and costs of every name and description that arise from or are related to this Agreement, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by the County, its employees, HW, LLC, and HW, LLC's first tier-subcontractors (Hunt Construction Group, Inc., HKS Architects Inc., Marc Taylor Inc, URS Corporation Southern, Urban Design Studio LLC, and Kimley Horn & Associates), provided, however, that the County is not obligated to indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or DEO.

(c) The County shall indemnify, defend and hold harmless the State and DEO, its employees and agents, from liability of any nature or kind, including costs and expenses for or on account of any trademarked, trade secret, copyrighted, patented, or unpatented invention, process, product or article manufactured by the County. DEO shall not be liable for any royalties.

(d) The County's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or DEO giving the County:

- (1) written notice of any action or threatened action,
- (2) the opportunity to take over and settle or defend any such action at the County's sole expense, and
- (3) assistance in defending the action at the County's sole expense.

The County is not obligated to be liable for any cost, expense, or compromise incurred or made by the State or DEO in any legal action without the County's prior written consent, which shall not be unreasonably delayed, conditioned or withheld.

(e) At DEO's election and upon notification to the County, the County shall assume the defense or settlement of any third-party claim arising under this Agreement with counsel reasonably satisfactory to DEO; *provided, however*, that the County shall not settle or compromise any such claim in an amount over \$10,000 without DEO's prior written consent. Notwithstanding the foregoing, (1) DEO shall have the right, but not the obligation, at its option and expense, to participate fully in the defense or settlement of any third-party claim; and (2) if the County does not continuously defend or settle any third-party claim within 30 days after it is notified of the assertion or commencement thereof, then (i) DEO shall have the right, but not the obligation, to undertake the defense or settlement of such claim for the account and at the risk of the County, and (ii) the County shall be bound by any defense or settlement that DEO may make as to such claim. DEO shall also be entitled to join the County in any third-party claim for the purpose of enforcing any right of indemnity hereunder.

#### **10. RESPONSIBILITIES OF GOVERNING BOARD OR AUTHORITIES.**

The Parties agree that any information, including updates, reports, publications, studies, and any and all reasonably requested information, that is required by Federal, State or local law shall be approved by a person having the authority to do so prior to submission, and shall be signed only by those persons having the legal authority to do so or appropriately ratified by such an authority.

## **11. AUDITS AND RECORDS.**

(a) The County shall retain and maintain all records so as to sufficiently and properly reflect all expenditures of funds distributed by the State or DEO to the County pursuant to this Agreement, in accordance with generally accepted accounting procedures and practices. Records shall include, but are not limited to, independent auditor working papers, notes, books, vouchers, bills, invoices, requests for payment, receipts, and other supporting, source documentation, including electronic storage media. Such records shall be subject at all times to inspection, review, and audit by, as well as transfer to, representatives of DEO, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability, or representatives of the Federal government and their duly authorized representatives upon request.

(b) The County agrees to comply with all applicable audit requirements of section 215.97, F.S., and those found in Attachment A, *Audit Requirements*; and, if an audit is required, the County shall disclose all related transactions to the auditor.

(c) The County shall maintain and retain all County records, financial records, supporting documents, statistical records, and any other documents, including electronic storage media, pertinent to this Agreement, as well as all financial records related to funds paid by the County to any parties for work on the matters that are the subject of this Agreement, in accordance with the record retention requirements of Part V of Attachment A, *Audit Requirements*. The County shall cooperate with DEO to facilitate the duplication and transfer of such records or documents upon request of DEO.

(d) If applicable, the County shall submit a written independent audit report to DEO specifically covering the period of Agreement expenditures pursuant to sections 215.97 and 11.45, F.S., and other relevant laws.

(e) The County must provide copies of any audit referencing this Agreement, the audit transmittal letter, and any response to such audit to DEO within 30 days of receipt by the County.

(f) The County understands and will comply with section 20.055(5), F.S., including, but not limited to, the duty of the County to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to section 20.055, F.S. The County agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the County's compliance with the terms of this Agreement which results in a finding of noncompliance, fraud, illegality, or financial misuse, in connection with this Agreement by the County. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees.

(g) The County shall include the audit and record keeping requirements aforementioned in this Article and in Attachment A, *Audit Requirements*, in all Contracts executed for the expenditure of funds from, related to, in connection with, or in furtherance of this Agreement which are executed after the Effective Date of this Agreement.

(h) Within 60 working days of the close of the County's fiscal year, on an annual basis, the County shall electronically submit a completed *Audit Compliance Certification* (a version of this certification is attached hereto as Attachment B) to [audit@deo.myflorida.com](mailto:audit@deo.myflorida.com). The County's timely submittal of

one completed Audit Compliance Certification for each applicable fiscal year will fulfill this requirement within all agreements (e.g., contracts, grants, memorandums of understanding, memorandums of agreement, economic incentive award agreements, etc.) between DEO and the County.

## **12. ACCESS TO RECORDS AND PUBLIC RECORDS REQUIREMENTS.**

(a) DEO may perform on-site reviews to independently validate any information or reports submitted to DEO. The County shall allow DEO's Administrator and other DEO authorized personnel access to any information and any other documents requested by DEO for purposes of monitoring the County's performance under or compliance with this Agreement.

(b) The County must comply with all applicable Florida public records law as it relates to this Agreement. In particular, the County shall allow public access to all documents, papers, letters or other materials made or received by the County in conjunction with this Agreement, unless the records are not public records, or are exempt, and/or confidential pursuant to section 24(a) of Article 1 of the State Constitution, section 119.07(1), F.S., or other Florida statute(s).

(c) The County is directly and solely responsible to respond to each and every request the County receives for public records made, received or in the custody or control of the County in conjunction with this Agreement, in accordance with chapter 119, F.S.

(d) The County acknowledges that DEO is subject to the provisions of chapter 119, F.S., and that documents submitted to DEO, or in DEO's custody or control, in relation to this Agreement constitute public records, subject to exemption and confidentiality under Florida law. The County shall cooperate with DEO regarding DEO's efforts to comply with the requirements of chapter 119, F.S.

(e) The provisions of chapter 119, F.S., and other applicable Florida and federal laws govern the disclosure of any confidential information received by the Parties.

(1) If the County submits records to DEO that the County deems legally confidential and/or exempt from public disclosure, as trade secrets, proprietary confidential business information, or for any other valid legal exemption under applicable Florida or Federal law, such records must be properly identified as such prior to submission to DEO. Failure to identify the legal basis for and the specific content of each claim of exemption and/or confidentiality from the requirements of chapter 119, F.S. or other law, prior to submittal of the record to DEO, may serve as a waiver of a claim of exemption and/or confidentiality of that record.

(2) The County shall ensure that public records in the custody and/or control of the County, that are exempt or confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law.

(3) The County shall not disclose to third parties any confidential information obtained by the County or the County's agents, employees, officers, contractors in furtherance of this Agreement.

(i) The County shall notify DEO verbally within 24 chronological hours and in writing within 72 chronological hours of any improper disclosure or unauthorized use of confidential information related to this Agreement by the County, its employees, agents, or representatives which is not in compliance with the terms of this Agreement or Federal or State law or if any information related to this Agreement is subpoenaed.

(ii) The County shall make a report to DEO not more than 7 business days after the County County learns of such an improper disclosure or unauthorized use of confidential information. The

County's report shall identify, to the extent known, the nature of the improper disclosure or unauthorized use, the confidential information disclosed or used, who made the disclosure of or used the information, what the County has done or shall do to mitigate any deleterious effect of the improper disclosure or unauthorized use, and what corrective action the County has taken or shall take to prevent future similar unauthorized use or improper disclosure. The County shall provide any other such information about the unauthorized use or improper disclosure as reasonably requested by DEO. The County shall take all steps DEO deems advisable to mitigate, resolve and/or prevent the unauthorized use or improper disclosure of confidential information shared or exchanged by the Parties and their affiliates in connection with this Agreement.

(f) Upon expiration of this Agreement, County shall either (a) transfer, at no cost, to DEO all public records in possession of County which are reasonably related to this Agreement or (b) keep and maintain public records which are reasonably related to this Agreement as required by law. If the County keeps and maintains public records upon completion of the Agreement, County shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to DEO, upon request from the DEO's custodian of records, in a format that is compatible with the information technology systems of DEO.

(g) To the extent allowable by law, the County shall be fully liable for the actions of HW, LLC, and HW, LLC's first tier-subcontractors (Hunt Construction Group, Inc., HKS Architects Inc., Marc Taylor Inc, URS Corporation Southern, Urban Design Studio LLC, and Kimley Horn & Associates) and shall fully indemnify, defend, and hold harmless the State and DEO, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to public record requests or public record law violation(s), alleged to be caused in whole or in part by the County, HW, LLC, and HW, LLC's first tier-subcontractors (Hunt Construction Group, Inc., HKS Architects Inc., Marc Taylor Inc, URS Corporation Southern, Urban Design Studio LLC, and Kimley Horn & Associates), provided, however, that the County does not indemnify for that portion of any costs or damages proximately caused by the negligent act or omission of the State or DEO. DEO, in its sole discretion, has the right, but the not obligation, to enforce this indemnification provision.

(h) The County shall include provisions in accordance with this Article, chapter 119, F.S., and all applicable Florida public records law, in all Contracts executed for the expenditure of funds from, related to, in connection with, or in furtherance of this Agreement following the Effective Date of this Agreement.

### **13. GOVERNING LAW.**

This Agreement is executed and entered into in the State of Florida, and shall be construed, performed, and enforced in all respects in accordance with the laws, rules, and regulations of the State of Florida. Each Party shall perform its obligations herein in accordance with the terms and conditions of this Agreement. Without limiting the provisions of Article 15, *Breach, Financial Consequences, and Remedies*, or Article 34, *Return or Recoupment of Funds*, of this Agreement, the exclusive venue of any legal or equitable action that arises out of or relates to this Agreement shall be brought in the appropriate court in Leon County, Florida, applying Florida law; in any such action, the County waives any right to jury trial.

#### **14. STRICT COMPLIANCE.**

The County agrees that all acts to be performed by it in connection with this Agreement must be performed in strict conformity with all local, State and Federal laws and regulations. For the avoidance of doubt, to the extent of any conflict between the terms of this Agreement and any law or regulation, the law or regulation shall control.

#### **15. BREACH, FINANCIAL CONSEQUENCES, AND REMEDIES.**

(a) If the County fails to comply with any of the terms of this Agreement, including but not limited to, timely delivery of the reports required under this Agreement, or continuing to meet the criteria for certification under section 288.11631, F.S., DEO may exercise any of the remedies available to it at law or in equity, and including, but without limitation, imposition of financial consequences as set forth in subsection (b) and (c) below.

(b) If the County fails to cure any breach or default of this Agreement or applicable law related thereto, DEO may impose the following financial consequences, as allowable by law:

(1) If the County fails to timely or adequately provide, as determined by DEO in its sole, reasonable discretion, any of the reports, documents, certification(s), or portions thereof required by this Agreement, or requested by DEO pursuant to this Agreement, including, but not limited to, the reports, documents, and certifications described in Article 4, *Duties and Obligations of the County*, of this Agreement, DEO will provide written notice of said failure to the County. The County shall have 30 days from such written notice to cure the failure, prior to the imposition of any financial consequence; however, if said failure is not cured, in DEO's sole, reasonable discretion, after 30 calendar days, a financial consequence of \$100.00 per calendar day will be imposed until such time as the failure is cured. If said breach or default is not capable of being cured within 30 days, the County shall provide DEO with a response setting forth a plan, including a timeframe, for curing the breach or default, which is subject to review and approval by DEO. Following said review and approval, the County shall not be subject to any financial consequence if County complies with the plan for cure; however, if, in DEO's sole reasonable discretion, the County fails to comply with the plan for cure, a financial consequence of \$100.00 per calendar day will be imposed until such time as the County complies with the plan for cure or until the breach or default is cured, whichever occurs earlier. This financial consequence shall be imposed independently for each outstanding document or missing or inadequate portion thereof.

(2) If less than two Spring Training Franchises are operating at the Facility during the term of this Agreement and either (a) due to modifications to the First Restated Sports Facility Use Agreement made without DEO's prior consent, or (b) due to the the departure of one or more Spring Training Franchises solely resulting from a breach of contract by the County, DEO does not receive adequate repayment from the Spring Training Franchise(s), DEO may impose a financial consequence in an amount up to: (a) 60% of the County's remaining monthly distributions received from the State under this Agreement, each month if only one Spring Training Franchise is not operating at the Facility, and (b) 100% of the County's remaining monthly distributions received from the State under this Agreement, each month if both Spring Training Franchises are not operating at the Facility, and in either case, until such time as the County cures, in DEO's sole, reasonable discretion, said breach or default.

Provided, however, the above financial consequence shall terminate if the County enters into a new lease agreement with a replacement Spring Training Franchise, which must be with a major



league baseball Spring Training Franchise and approved by DEO, for a term at least equal to the time remaining on the original Spring Training Franchise's lease.

(3) If DEO determines that the County has knowingly submitted or certified to information, or knowingly made a representation, that is false, misleading, deceptive, or otherwise untrue, and said submittal, certification, or representation relates to a material provision of this Agreement, DEO shall provide notice of the same to the County. County shall have 30 days from such notice to respond to DEO's determination. If, following the receipt of County's response, DEO determines that the County has violated this subsection, DEO may at its option either (a) impose a liquidated financial consequence in an amount up to the County's monthly distributions received from the State under this Agreement for a single month, or (b) pursue any rights and remedies available at law to DEO for the false, misleading, deceptive or otherwise untrue representation. This section shall not in any way limit the rights of DEO under law, including, but not limited to, the right to seek rescission of this Agreement based on fraud in the inducement principles.

(4) Following completion of the facility, which is to occur within 24 months from the project's commencement, as described in s. 288.11631(3)(d)3., F.S., if the County has failed to maintain its financial commitment to provide 50 percent or more of the funds required for the construction or renovation of the Facility, DEO shall provide county a notice and at least 60 days opportunity to cure the deficiency. If the deficiency is not timely cured, the County shall repay to DEO a pro-rated amount of the total award, calculated by multiplying the percentage of funds not matched by the total award. DEO shall permit the County to make such repayments in equal parts for the remainder of the term of this Agreement.

(c) If County materially breaches, or defaults under, this Agreement, other than as described in subsections (b)(1)-(4) above, DEO shall provide 60 days written notice to County, during which time County shall either enter into a corrective action plan with DEO that must be agreeable to DEO, or County must otherwise cure the breach. If County fails to enter into a corrective action plan with DEO, or otherwise cure the breach, or if County fails to substantially comply with the terms of the corrective action plan, DEO may impose a financial consequence in an amount of up to \$5000 each month, until such time as the County cures, in DEO's sole, reasonable discretion, said breach or default, or begins complying with the corrective action plan agreed to between DEO and County.

(d) The County and DEO agree that wherever one or more Spring Training Franchises would be required by section 288.11631, F.S, or by this or any other agreement, including the First Restated Sports Facility Use Agreement, or by other law, to repay to DEO amounts that were or will be provided to County under this Agreement, DEO must demand such amounts from the Spring Training Franchise(s). The Spring Training Franchise(s) have entered into Guarantys for the purpose of securing such repayment, which Guarantys are a part of the First Restated Sports Facility Use Agreement between County and each Spring Training Franchise.

(e) The sanctions set forth in this section 15 are not sole remedies, and shall be cumulative with any rights and remedies available to DEO under law.

**16. SEVERABILITY.**

If any term or provision of this Agreement, in whole or in part, is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, then such term or provision shall be severed from this Agreement. This Agreement and the rights and obligations of the Parties shall be construed as if this Agreement did not contain such severed term or provision, in whole or in part, and this Agreement otherwise shall remain in full force and effect.

**17. PRESERVATION OF REMEDIES.**

No delay or omission to exercise any right, power, or remedy accruing to either Party upon breach or default under this Agreement will impair any such right, power, or remedy of either Party, nor will such delay or omission be construed as a waiver of any such breach or default or any similar breach or default. Any waiver must be in writing and signed by the Party to be charged. No waiver of a right, power, or remedy shall, or shall be construed to, waive any similar or future right, power, or remedy. The rights and remedies available to DEO under this Agreement are cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies otherwise available to DEO.

**18. DISCRIMINATORY VENDOR.**

The County affirms that it is aware of the provisions of section 287.134, F.S. The County shall disclose to DEO if any of its affiliates, as defined by section 287.134(1)(a.), F.S. appears on the discriminatory vendor list. The County shall ensure provisions in accordance with section 287.143, F.S., are present in all Contracts in furtherance of or related to this Agreement which are entered into following the Effective Date of this Agreement.

**19. NON-DISCRIMINATION.**

The County shall not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, race, sex, creed, color, handicap, national origin, or marital status. The County shall insert a provision in substantial compliance with this Article, in all Contracts for services in relation to this Agreement which are entered into following the Effective Date of this Agreement.

**20. HARASSMENT-FREE WORKPLACE.**

The County shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management. The County shall insert a provision in accordance with this Article, in all Contracts for services in relation to this Agreement which are entered into following the Effective Date of this Agreement.

**21. PUBLIC ENTITY CRIMES.**

The County affirms that it is aware of the provisions of section 287.133, F.S., and that at no time has the County, its Spring Training Franchises, or its affiliates, as defined by section 287.133(1)(a), F.S., been convicted of a Public Entity Crime. The County agrees that it shall not violate such law. The County shall insert a provision in accordance with this Article and the applicable Florida Statutes in all Contracts in connection with or related to this Agreement which are entered into following the Effective Date of this Agreement.

## **22. WARRANTY OF ABILITY TO PERFORM.**

The County warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the County's or its Spring Training Franchises, beneficiary's, or affiliates' ability to satisfy its Agreement duties or obligations. The County shall immediately notify DEO in writing if the County's or its Spring Training Franchises' or its affiliates' ability to perform in connection with this Agreement is compromised in any manner during the term of this Agreement.

## **23. PROMOTION/ADVERTISEMENT OF FACILITY.**

The County shall undertake reasonable efforts to promote and advertise the facility. For the purposes of this section, the term "reasonable efforts to promote and advertise the facility" shall mean the County's enforcement of the requirements in Article 12 of the First Restated Sports Facility Use Agreement. However, the County shall not be obligated to enforce the requirements in Article 12 of the First Restated Facility Sports Facility Use Agreement against a Relocating Team (as that term is defined in Article 22 therein).

## **24. LOBBYING.**

(a) Pursuant to sections 11.062 and 216.347, F.S., the County shall not use any funds received under this Agreement for lobbying the Legislature, the judicial branch, or any state agency.

(b) The County will keep DEO apprised of any requests for testimony or its participation in any Congressional, legislative and other State or Federal hearings, or agency, committee, or task force meetings or the like, related to this Agreement.

(c) The County shall insert a provision in accordance with this Article, in all Contracts related to this Agreement or for which funds distributed pursuant to this Agreement are to be expended which are entered into following the Effective Date of this Agreement.

## **25. ATTORNEY FEES.**

Neither Party shall be liable to pay attorney fees, interest, expenses or cost of collection in conjunction with this Agreement.

## **26. NON-ASSIGNMENT.**

(a) Except as otherwise provided in this Agreement, neither party may assign, delegate, nor otherwise transfer its rights, duties, or obligations under this Agreement without the prior written consent of the other Party, which consent will not be unreasonably delayed, conditioned or withheld. Any assignment, delegation, or transfer in violation of this Article is void *ab initio*. In the event DEO approves an assignment, delegation or transfer of the County's obligations under this Agreement, the County hereby agrees that it shall remain responsible for all work performed and all expenses incurred in connection with this Agreement, regardless of such an assignment, delegation, or transfer. In addition, this Agreement shall bind the successors, assigns or legal representatives of the County.

(b) Notwithstanding Article 26(a) above, DEO shall at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental agency in the State of Florida, upon giving 30 days prior written notice to the County. This Agreement shall bind the successors, assigns or legal representatives of DEO and the State of Florida.

## **27. RENEGOTIATION AND AMENDMENTS.**

The Parties agree to enter into good-faith negotiations of an amendment to this Agreement if Federal and/or State revisions of any applicable laws or regulations make changes to this Agreement necessary. Amendments to or modifications of this Agreement shall only be valid when such change(s) are in writing and duly executed by all Parties. Any such change(s) shall become effective upon the date of execution of both Parties or such later date as may be specified therein.

## **28. FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE.**

Neither Party shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party's control, or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay or failure to perform from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting delay or disruption in the Party's performance obligation under this Agreement. If the delay or failure to perform is excusable under this paragraph, the delay or failure to perform will not result in any additional charge or cost under the Agreement to either Party. In the case of any delay or failure to perform a Party believes is excusable under this paragraph, said Party shall notify the other Party in writing of the delay, potential delay, potential inability to perform, or failure to perform and describe the cause of such either: (1) within ten calendar days after the cause that creates or will create the delay or nonperformance first arose, if the Party claiming the force majeure could reasonably foresee that a delay or nonperformance could occur as a result; or (2) within five calendar days after the date the Party claiming the force majeure first had reason to believe that a delay or nonperformance could result, if the delay or nonperformance is not reasonably foreseeable. **THE FOREGOING SHALL CONSTITUTE THE SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY. ADDITONALLY, THE FOREGOING SHALL CONSTITUTE THE SOLE REMEDY OR EXCUSE WITH RESPECT TO NONPERFORMANCE BASED ON AN EVENT OF FORCE MAJEURE.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. The Party receiving the notice of force majeure, in its sole discretion, will determine if the delay or nonperformance is excusable under this paragraph and will notify the other Party of its decision in writing. No claim for damages, other than for an extension of time, shall be asserted against either Party. The County shall not be entitled to an increase in the Agreement distribution amount of any kind from DEO for direct, indirect, consequential, impact, or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If the County's performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist, the County shall perform per the terms of this Agreement, unless DEO determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to DEO or the State, in which case, DEO may do any or all of the following: (1) accept allocated performance from the County, provided the County grants preferential treatment to DEO with respect to any such allocation; or (2) pursue any other rights or remedies provided by law or under the Agreement.

**29. AUTHORITY OF THE COUNTY'S SIGNATORY.**

Upon execution, the County shall return executed copies of this Agreement in accordance with the instructions provided by DEO along with documentation ensuring that the below signatory has authority to bind the County to this Agreement as of the date of execution. Documentation may be in the form of a legal opinion from the County's attorney, or other reliable documentation demonstrating such authority, and is hereby incorporated by reference. DEO may, in its discretion, request additional documentation related to the below signatory's authority to bind the County to this Agreement.

**30. NO THIRD PARTY BENEFICIARIES.**

Nothing in this Agreement, express or implied, is intended to either: (a) confer upon any third person or entity, other than the Parties and their permitted successors and assigns hereto, any rights or remedies under or by reason of the terms and conditions of this Agreement as a third party beneficiary or otherwise, except as may be specifically provided for in this Agreement; or (b) authorize any person or entity not a party to this Agreement to maintain any legal action or bring any claim for its benefit, pursuant to or based upon the terms and conditions of this Agreement.

**31. INFORMATION RELEASE AND ADVERTISING.**

DEO does not endorse any commodity, service, project, or entity. Subject to chapters 119 and 286, F.S., the County shall not publicly disclose or disseminate any information concerning this Agreement without prior written approval from DEO, including, but not limited to mentioning this Agreement in a press release or other promotional material, identifying DEO or the State as a reference, or otherwise linking the County and either a description of the Agreement or the name of DEO or the State in any material published, either in print or electronically, to any entity that is not a Party to this Agreement, except potential or actual authorized contractors, subcontractors, distributors, dealers, resellers, or service representatives.

**32. CONFLICT OF INTEREST.**

This Agreement and the use of funds distributed pursuant to this Agreement are subject to chapter 112, F.S. The County shall disclose the name of any officer, director, employee, or other agent of the County, its Spring Training Franchises, or its affiliates who is also an employee of the State. The County shall disclose the name of any County employee or agent who owns, directly or indirectly, more than 5 percent of the total assets or capital stock of any business entity or its affiliates receiving funds from this Agreement.

**33. INTENTIONALLY LEFT BLANK.**

**34. RETURN OR RECOUPMENT OF FUNDS.**

(a) The County shall return to DEO any overpayments (funds paid in excess of the amount to which the County is entitled under the terms and conditions of this Agreement) distributed to the County. If the County or its independent auditor discovers an overpayment has been made, the County shall repay said overpayment within 60 calendar days without prior notification from DEO. If DEO first discovers an overpayment has been made, DEO will notify the County by letter. DEO shall be entitled to charge interest at the lawful rate of interest on the outstanding balance beginning 61 calendar days after the date of DEO's notification or the County's or its auditor's discovery. The

County shall send repayments to DEO's Agreement Manager, and make checks payable to the "Department of Economic Opportunity."

(b) The parties acknowledge that s. 17.0415, Florida Statutes, permits the Chief Financial Officer of the State of Florida to assign claims among the state, its agencies, and its subdivisions, whether arising from criminal, civil, or other judgments in state or federal court.

**35. UNAUTHORIZED ALIENS.**

In the case of an administrative finding, or conviction by an administrative or judicial official of competent jurisdiction, or the Attorney General of the United States, after all appeals available from such a finding or conviction are exhausted, against the County, the County's Spring Training Franchise(s), beneficiary or its affiliates, or the County's contractors under this Agreement for a violation of State or Federal immigration laws, including, but not limited to, section 448.09, F.S., and section 1324a of title 8 of the United States Code, DEO may pursue any remedy available under this Agreement or State or Federal law.

**36. EXECUTION IN COUNTERPARTS.**

This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**37. ENTIRE AGREEMENT.**

This Agreement and the Attachments and Exhibits attached hereto constitute the complete and exclusive statement of conditions of the Agreement and supersedes and replaces any and all prior negotiations, understandings, and agreements, whether oral or written, between the Parties with respect thereto. Except as expressly provided in this Agreement, no term, condition, usage of trade, course of dealing or performance, understanding of agreement purporting to modify, vary, explain or supplement the provisions of this Agreement shall be effective or binding upon the Parties unless agreed to in writing.

IN WITNESS HEREOF, and in consideration of the mutual covenants set forth above and in the Attachments and Exhibits hereto, the Parties have caused to be executed this Agreement by their undersigned duly authorized officials. By signature below, both Parties agree to abide by the terms, conditions, and provisions of this Agreement.

**DEPARTMENT OF ECONOMIC OPPORTUNITY**

By: \_\_\_\_\_  
**DEAN IZZO**  
**CHIEF OF STAFF**

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

**Approved as to Form and Legal Sufficiency,  
Subject Only to Full and Proper Execution by  
the Parties.**

**OFFICE OF THE GENERAL COUNSEL  
DEPARTMENT OF ECONOMIC  
OPPORTUNITY**

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

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

**SHARON R. BOCK**  
**CLERK & COMPTROLLER**

**PALM BEACH COUNTY, a political  
subdivision of the State of Florida**

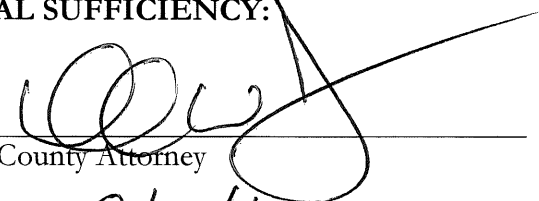
By: \_\_\_\_\_  
Deputy Clerk

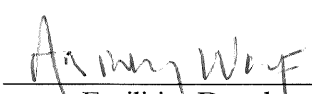
By: \_\_\_\_\_  
Mary Lou Berger, Mayor

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

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

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:**

By:   
County Attorney  
Date: 9/26/16

By:   
Director, Facilities Development & Operations  
Date: 9/23/16

**ATTACHMENT A**  
**AUDIT REQUIREMENTS**

The administration of resources awarded by DEO to the recipient may be subject to audits and/or monitoring by DEO as described in this section.

**MONITORING**

In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEO staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by DEO. In the event DEO determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by DEO staff to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

**AUDITS**

**PART I: FEDERALLY FUNDED**

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised.

1. In the event that the recipient expends \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. Exhibit 1 to this agreement indicates Federal resources awarded through DEO by this agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from DEO. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, will meet the requirements of this part.
2. In connection with the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.
3. If the recipient expends less than \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the recipient expends less than \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from the recipient resources obtained from other than Federal entities).



4. Title 2 CFR part 200, entitled *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards*, also known as the Super Circular, supersedes and consolidates the requirements of OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102 and A-133 and is effective for Federal awards or increments of awards issued on or after December 26, 2014. Please refer to title 2 CFR part 200 for revised definitions, reporting requirements and auditing thresholds referenced in this Attachment and Agreement accordingly.

## **PART II: STATE FUNDED**

This part is applicable if the recipient is a non-state entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such recipient (for fiscal years ending September 30, 2004 or thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Exhibit 1 to this agreement indicates state financial assistance awarded through DEO by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from DEO, other state agencies, and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$500,000 in state financial assistance in its fiscal year (for fiscal years ending September 30, 2004 or thereafter), an audit conducted in accordance with the provisions of section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of section 215.97, F.S., the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. Additional information regarding the Florida Single Audit Act can be found at:  
<http://www.myflorida.com/audgen/pages/flsaa.htm>

## **PART III: OTHER AUDIT REQUIREMENTS**

Not applicable

#### **PART IV: REPORT SUBMISSION**

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by Part I of this agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the recipient directly to each of the following at the address indicated:

- A. DEO at each of the following addresses:

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

or

Paper (hard copy):

Department Economic Opportunity

MSC # 130, Caldwell Building

107 East Madison Street

Tallahassee, FL 32399-4126

- B. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse) at the following address:

Federal Audit Clearinghouse

Bureau of the Census

1201 East 10<sup>th</sup> Street

Jeffersonville, IN 47132

- C. Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.

2. Pursuant to Section .320 (f), OMB Circular A-133, as revised, the recipient shall submit a copy of the reporting package described in Section .320(c), OMB Circular A-133, as revised and any management letter issued by the auditor, to DEO at each of the following addresses:

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

or

Paper (hard copy):

Department Economic Opportunity

MSC # 130, Caldwell Building

107 East Madison Street

Tallahassee, FL 32399-4126

3. Copies of financial reporting packages required by Part II of this agreement shall be submitted by or on behalf of the recipient directly to each of the following:
  - A. DEO at each of the following addresses:

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

or

Paper (hard copy):

Department Economic Opportunity

MSC # 130, Caldwell Building

107 East Madison Street

Tallahassee, FL 32399-4126
  - B. The Auditor General's Office at the following address:

Auditor General

Local Government Audits/342

Claude Pepper Building, Room 401

111 West Madison Street

Tallahassee, FL 32399-1450

Email Address: [flaudgen\\_localgovt@aud.state.fl.us](mailto:flaudgen_localgovt@aud.state.fl.us)
4. Copies of reports or the management letter required by Part III of this agreement shall be submitted by or on behalf of the recipient directly to:
  - A. DEO at each of the following addresses:

**N/A**
5. Any reports, management letter, or other information required to be submitted to DEO pursuant to this agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
6. Recipients, when submitting financial reporting packages to DEO for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (non-profit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

## **PART V: RECORD RETENTION**

1. The recipient shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of five (5) years from the date the audit report is issued, or five (5) state fiscal years after all reporting requirements are satisfied and final payments or distributions have been received, whichever period is longer, and shall allow DEO, or its designee, CFO, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to DEO, or its designee, CFO, or Auditor General upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by DEO. In addition, if any litigation, claim, negotiation, audit, or other action involving the records has been started prior to the expiration of the controlling period as identified above, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the controlling period as identified above, whichever is longer.

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**EXHIBIT 1 TO ATTACHMENT A  
ALLOCATION OF RESOURCES**

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

Federal Program: None

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

Federal Program: Not applicable

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

**MATCHING RESOURCES FOR FEDERAL PROGRAMS:**

Federal Program: None

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

<b>State Project: AWARDED BY THE DEPARTMENT OF ECONOMIC OPPORTUNITY, DIVISION OF STRATEGIC BUSINESS DEVELOPMENT</b>						
	<b>Funding Source</b>	<b>State Fiscal Year</b>	<b>CSFA Number</b>	<b>CSFA Title or Funding Source Description</b>	<b>Funding Amount</b>	<b>State Appropriation Category</b>
	General Revenue		73.016		\$50,000,000	General Revenue
					<b>Total Award</b>	<b>\$50,000,000*</b>

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

For each funding source identified above, the recipient shall comply with the program requirements described in the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/catalog.aspx>]. The services/purposes for which the funds are to be used are included in the Agreement and Amendments. Any match required by the recipient is clearly indicated in the Agreement and Amendments.

NOTE: Title 2 CFR § 200.331 and section 215.97(5), Florida Statutes, require that the information about Federal Programs and State Projects included in Exhibit 1 be provided to the Recipient.

\* Funding is provided directly to the Palm Beach County from the Department of Revenue per section 212.20(6)(d)6.e., F.S.

**ATTACHMENT B**

<b>Audit Compliance Certification</b>	
<i>Email a copy of this form within 60 days of the end of each fiscal year in which this grant was open to audit@deo.myflorida.com.</i>	
Grantee:	
FEIN:	Grantee's Fiscal Year:
Contact's Name:	Contact's Phone:
Contact's Email:	
<p>1. Did Grantee expend state financial assistance, during its fiscal year, that it received under any agreement (e.g., contract, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between the Recipient and the Department of Economic Opportunity (DEO)? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the above answer is yes, answer the following before proceeding to item 2.</p> <p>Did Grantee expend \$500,000 (\$750,000 as of July 1, 2016) or more of state financial assistance (from DEO and all other sources of state financial assistance combined) during its fiscal year? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>If yes, the Recipient certifies that it will timely comply with all applicable state single or project-specific audit requirements of section 215.97, Florida Statutes, and the applicable rules of the Department of Financial Services and the Auditor General.</b></p>	
<p>2. Did the Recipient expend federal awards during its fiscal year that it received under any agreement (e.g., contract, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between the Recipient and DEO? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the above answer is yes, also answer the following before proceeding to execution of this certification:</p> <p>Did the Recipient expend \$750,000 or more in federal awards (from DEO and all other sources of federal awards combined) during its fiscal year? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>If yes, the Recipient certifies that it will timely comply with all applicable single or program-specific audit requirements of title 2 C.F.R. part 200, subpart F, as revised.</b></p>	
<b>By signing below, I certify, on behalf of the Recipient, that the above representations for items 1 and 2 are true and correct.</b>	
Signature of Authorized Representative	Date