

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: September 14, 2021 **Consent** **Regular**
 Ordinance **Public Hearing**

Department: Housing & Economic Development

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an Interlocal Agreement with the Florida Atlantic Research and Development Authority (FARDA) in the amount of \$200,000 for the period October 1, 2021 to September 30, 2022.

Summary: FARDA currently serves 29 companies located in the Research Park at Florida Atlantic University (FAU), including those in Global Ventures. The Interlocal Agreement requires FARDA to: provide 15 internships through Global Ventures and Research Park at FAU companies, create at least 15 new jobs, provide outreach to a minimum of twenty five (25) companies, continue to develop its soft landings center program and represent Global Ventures and Research Park at FAU in at least two (2) international trade shows virtually or in person, to promote the Research Park and Global Ventures. **These are County Ad Valorem funds.** Countywide (DB)

Background and Justification: FARDA was formed in 1985 by Broward and Palm Beach Counties as a special district whose public purpose includes the development, operation, management and financing of research and development parks in affiliation with one or more institutions of higher education. Global Ventures is an entrepreneurial support initiative assisting international and domestic second-stage technology companies with an interest in developing links to FAU. The public/private partnership with FARDA has been ongoing since 2015. FARDA received \$200,000 in Ad Valorem funds during Fiscal Year 2020-2021 and recruited three international companies to Global Ventures exceeding its job creation goal.

Attachment(s):

- 1. Interlocal Agreement with FARDA

Recommended By: Jonathan Braun 8/17/2021
Department Director Date

Approved By: Sonda M. Miller 9/2/2021
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2025	2026
Grant Expenditures	\$200,000				
Operating Costs					
External Revenues					
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	\$200,000				

# ADDITIONAL FTE POSITIONS (Cumulative)	-0-				
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Is Item Included In Proposed Budget? Yes X No
 Does this Item include the use of Federal funds? Yes No X

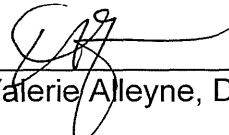
Budget Account No.:

Fund 1539 Dept 143 Units 1180 Object 8201 Program Code/Period N/A

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

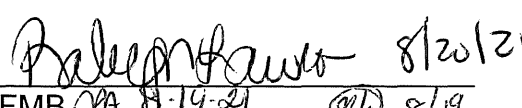
Approval of this agenda item will allocate \$200,000 in General Fund Ad Valorem dollars.

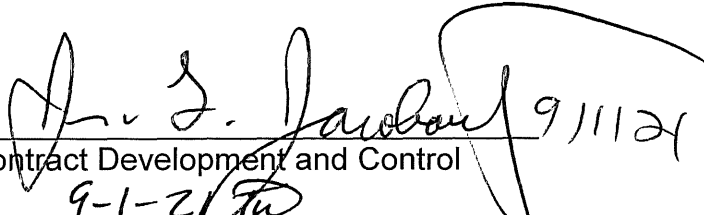
C. Departmental Fiscal Review:


 Valerie Alleyne, Division Manager

III. REVIEW COMMENTS

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

 8/20/21
 OFMB OA 8-19-21 (21) 8/19

 9/1/21
 Contract Development and Control
 9-1-21 (21)

B. Legal Sufficiency:


 Assistant County Attorney

C. Other Department Review:

 Department Director

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY
AND
FLORIDA ATLANTIC RESEARCH AND DEVELOPMENT AUTHORITY**

This Agreement ("Agreement") with an effective date of **October 1, 2021**, is by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of County Commissioners, (hereinafter referred to as the "COUNTY"), and **Florida Atlantic Research and Development Authority (FARDA)**, a public instrumentality created by Broward and Palm Beach counties whose public purposes includes the development, operation, management and financing of research and development parks in affiliation with one or more institutions of higher education, and to foster economic development and broadening the economic base in Palm Beach and Broward counties, organized under Part V Chapter 159 of the Florida Statutes and authorized to do business in the State of Florida, (hereinafter referred to as the "AGENCY"), whose Federal I.D. is 65-0342701.

WHEREAS, the AGENCY is a public instrumentality dedicated to provide support for research programs in Palm Beach County; and

WHEREAS, the COUNTY has provided financial resources in support of research and development in Palm Beach County; and

WHEREAS, the COUNTY desires to provide financial resources to the AGENCY to implement the Florida Atlantic Research and Development Authority Program (hereinafter referred to as "Program"), in order to foster a stronger and more balanced economy in Palm Beach County; and

WHEREAS, the COUNTY and the AGENCY desire to enter into this Agreement.

NOW, THEREFORE, pursuant to all authorities granted by law, including, but not limited to, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969," and in consideration of the mutual promises contained herein, the COUNTY and the AGENCY agree as follows:

ARTICLE 1 – SERVICES

The AGENCY's responsibility under this Agreement is to provide services for the creation and development of emerging technology-based businesses through the Research Park at Florida Atlantic University's Technology Business Incubator (TBI), as more specifically set forth in the Scope of Work detailed in Exhibit "A".

The COUNTY's representative/liaison during the performance of this Agreement shall be Sherry L. Howard, Deputy Director, Department of Housing & Economic Development, telephone number: (561) 233-3653, email: showard@pbcgov.org.

The AGENCY's representative/liaison during the performance of this Agreement shall be Andrew Duffell, President, telephone number: (561) 416-6092 ext. 1402, email: aduffell@research-park.org.

ARTICLE 2 – SCHEDULE

The AGENCY shall commence services on October 1, 2021, the Effective Date and complete all services by September 30, 2022.

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

ARTICLE 3 – PAYMENTS TO AGENCY

- A. The total amount to be paid by the COUNTY under this Agreement for all services and materials including, if applicable, "out of pocket" expenses (specified in paragraph C below) shall not exceed **Two Hundred Thousand Dollars (\$200,000.00)** Dollars ("Grant Funds"). The AGENCY shall notify the COUNTY's representative in writing when 90% of the "not to exceed amount" has been reached. During the term of this Agreement, the AGENCY will bill the COUNTY on a monthly basis in eleven (11) equal payments of **Sixteen Thousand Six Hundred Sixty-six Dollars (\$16,666.00)** and the (1) final payment of **Sixteen Thousand Six Hundred Seventy-Four Dollars (\$16,674.00)**. Invoices shall be accompanied by monthly status reports as detailed in Exhibit "A". This monthly status report shall consist of fully executed copies of Invoice Cover Sheet (Exhibit "B"), Business Service Record (Exhibit "C"), Cumulative Job Creation (Exhibit "D"), and Monthly Narrative Report (Exhibit "E").
- B. Invoices received from the AGENCY pursuant to this Agreement will be reviewed and approved by the COUNTY's representative, to verify that services have been rendered in conformity with the Agreement. Approved invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within forty (30) days following the COUNTY representative's approval.
- C. "Out-of-pocket" expenses: "Out-of-pocket" expenses will not be reimbursed.
- D. Final Invoice: In order for both parties herein to close their books and records, the AGENCY will clearly state "Final Invoice" on the AGENCY's final/last billing to the COUNTY. This shall constitute AGENCY'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 AGENCY.
- E. In order to do business with Palm Beach County, agencies are required to create a Vendor Registration Account OR activate an existing Vendor Registration Account through the Purchasing Department's Vendor Self Service (VSS) system, which can be accessed at <https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService>. If AGENCY intends to use sub-consultants, AGENCY must also ensure that all sub-consultants are registered as consultants in VSS. All subcontractor agreements must include a contractual provision requiring that the sub-consultant register in VSS. COUNTY will not finalize a contract award until the COUNTY has verified that the AGENCY and all of its sub-consultants are registered in VSS.

ARTICLE 4 – TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by the AGENCY 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 Agreement are accurate, complete and current as of the date of the Agreement and no higher than those charged the AGENCY'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 Agreement may be terminated by the AGENCY 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 Agreement through no fault of the AGENCY. It may also be terminated, in whole or in part, by the COUNTY, with cause upon (5) business days written notice to the AGENCY or without cause upon (10) business days written notice to AGENCY. Unless the AGENCY is in breach of this Agreement, the AGENCY shall be paid for services rendered to the COUNTY through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the COUNTY, in writing, the AGENCY 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.

ARTICLE 6 – PERSONNEL

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

All of the services required herein shall be performed by the AGENCY 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 AGENCY'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 AGENCY warrants that all services shall be performed by skilled and competent personnel in accordance with the professional standards in the field.

All of the AGENCY'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 capacity of the subcontractor to perform properly under this Agreement. The AGENCY is encouraged to seek additional small business enterprises for participation in subcontracting opportunities. If the AGENCY uses any subcontractors on this project the following provisions of this Article shall apply:

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

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 AGENCY. AGENCY is not authorized to use the COUNTY's Tax Exemption Number in securing such materials.

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

ARTICLE 9 – AVAILABILITY OF FUNDS

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

ARTICLE 10 – INSURANCE

The AGENCY shall maintain at its sole expense, in force and effect at all times during the term of this Agreement, insurance coverage and limits (including endorsements) as described herein. Failure to maintain at least the required insurance shall be considered default of the Agreement. The requirements contained herein, as well as COUNTY's review or acceptance of insurance maintained by AGENCY, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by AGENCY under the Agreement. AGENCY agrees to notify the COUNTY at least ten (10) days prior to cancellation, non-renewal or material change to the required insurance coverage. Where the policy allows, coverage shall apply on a primary and non-contributory basis.

- A. **Commercial General Liability:** AGENCY shall maintain Commercial General Liability at a limit of liability not less than \$500,000 combined single limit for bodily injury and property damage each occurrence. Coverage shall not contain any endorsement(s) excluding Contractual Liability or Cross Liability.

Additional Insured Endorsement: The Commercial General Liability policy shall be endorsed to include, "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees, and Agents" as an Additional Insured. A copy of the endorsement shall be provided to COUNTY upon request.

- B. **Workers' Compensation Insurance & Employer's Liability:** AGENCY shall maintain Workers' Compensation & Employer's Liability in accordance with Chapter 440 of the Florida Statutes.
- C. **Professional Liability:** AGENCY shall maintain Professional Liability, or equivalent Errors & Omissions Liability, at a limit of liability not less than \$1,000,000 each occurrence, and \$2,000,000 per aggregate. When a self-insured retention (SIR) or deductible exceeds \$10,000, COUNTY reserves the right, but not the obligation, to review and request a copy of AGENCY's most recent annual report or audited financial statement. For policies written on a "claims-made" basis, AGENCY warrants the Retroactive Date equals or precedes the effective date of this Agreement. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the term of this Agreement, AGENCY shall purchase a SERP with a minimum reporting period not less than three (3) years after the expiration of the contract term. The requirement to purchase a SERP shall not relieve the AGENCY of the obligation to provide replacement coverage. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims-made" form. If coverage is provided on a "claims-made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage.

- D. **Waiver of Subrogation**: Except where prohibited by law, AGENCY hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy except Professional Liability. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then AGENCY shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy that includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should AGENCY enter into such an agreement on a pre-loss basis.
- E. **Certificates of Insurance**: On execution of this Agreement, renewal, within forty-eight (48) hours of a request by COUNTY, and upon expiration of any of the required coverage throughout the term of this Agreement, the AGENCY shall deliver to the COUNTY or COUNTY's designated representative a signed Certificate(s) of Insurance evidencing that all types and minimum limits of insurance coverage required by this Agreement have been obtained and are in force and effect. Certificates shall be issued to:

Palm Beach County Board of County Commissioners,
 c/o Department of Housing and Economic Development
 100 Australian Avenue, 5th Floor
 West Palm Beach, Florida 33406

- F. **Right to Revised or Reject**: COUNTY, by and through its Risk Management Department in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverage, or endorsements.

ARTICLE 11 – INDEMNIFICATION

AGENCY shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Agreement or due to the acts or omissions of AGENCY

ARTICLE 12 – SUCCESSORS AND ASSIGNS

The COUNTY and the AGENCY 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 Agreement. Except as above, neither the COUNTY nor the AGENCY shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other.

ARTICLE 13 – REMEDIES/NO THIRD PARTY BENEFICIARIES

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement 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. In the event the AGENCY fails or refuses to perform any term, covenant, or condition of this Agreement for which a specific remedy is not set forth in the Agreement, the COUNTY shall, in addition to any other remedies provided at law or in equity, have the right of specific performance thereof.

Moreover, if the AGENCY fails to comply with any of the provisions of this Agreement, the COUNTY may exercise any and all legal rights and remedies including, without limitation, withholding, temporarily or permanently, all, or any, unpaid portion of the Grant Funds upon giving written notice to the AGENCY, terminating this Agreement, and/or demanding a refund of the Grant Funds, which shall be reimbursed upon demand. In the event of AGENCY's failure to comply with any provisions of this Agreement, the COUNTY shall have no further funding obligation to the AGENCY under this Agreement.

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or AGENCY.

ARTICLE 14 – CONFLICT OF INTEREST

The AGENCY 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, and the Palm Beach County Code of Ethics. The AGENCY further represents that no person having any such conflict of interest shall be employed for said performance of services.

The AGENCY 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 AGENCY's judgement 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 AGENCY 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 AGENCY. The COUNTY agrees to notify the AGENCY of its opinion by certified mail within thirty (30) days of receipt of notification by the AGENCY. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the AGENCY, the COUNTY shall so state in the notification and the AGENCY 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 AGENCY under the terms of this Agreement.

ARTICLE 15 – EXCUSABLE DELAYS

The AGENCY 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 AGENCY 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 AGENCY's request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the AGENCY's failure to perform was without it or its subcontractors fault or negligence, the Agreement Schedule and/or any other affected provision of this Agreement 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 AGENCY shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness. The AGENCY further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

ARTICLE 17 – DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The AGENCY 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 Agreement.

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 AGENCY 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 Agreement 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 Agreement and the consummation of the transactions contemplated hereby.

Notwithstanding any other provision in this Agreement, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of the Inspector General, Palm Beach County Code, Sections 2-421 – 2-440, as amended.

ARTICLE 18 – INDEPENDENT CONTRACTOR RELATIONSHIP

The AGENCY is, and shall be, in the performance of all work services and activities under this Agreement, 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 Agreement shall at all times, and in all places, be subject to the AGENCY's sole direction, supervision, and control. The AGENCY shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the AGENCY'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 AGENCY does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

ARTICLE 19 – CONTINGENT FEES

The AGENCY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the AGENCY to solicit or secure this Agreement 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 AGENCY, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 20 – ACCESS AND AUDITS

The AGENCY shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least five (5) years after completion or termination of this Agreement. 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 AGENCY's place of business.

Palm Beach COUNTY has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 – 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the

production of records, and to audit, investigate, monitor, and inspect the activities of the AGENCY, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

ARTICLE 21 – NONDISCRIMINATION

The COUNTY is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the AGENCY warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.

As a condition of entering into this Agreement, the AGENCY represents and warrants that it will comply with the COUNTY's Commercial Nondiscrimination Policy as described in Resolution 2017-1770, as amended. As part of such compliance, the AGENCY shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the AGENCY retaliate against any person for reporting instances of such discrimination. The AGENCY shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the COUNTY's relevant marketplace in Palm Beach County. The AGENCY understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification or debarment of the company from participating in COUNTY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. AGENCY shall include this language in its subcontracts.

ARTICLE 22 – AUTHORITY TO OPERATE

The AGENCY 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 Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, 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 Agreement 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 AGENCY 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 AGENCY of the COUNTY's notification of a contemplated change, the AGENCY 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 AGENCY's ability to meet the completion dates or schedules of this Agreement.

If the COUNTY so instructs in writing, the AGENCY 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 an Agreement Amendment and the AGENCY shall not commence work on any such change until such written amendment is signed by the AGENCY and approved and executed on behalf of Palm Beach County.

ARTICLE 26 – NOTICE

All notices required in this Agreement 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:

Sherry Howard, Deputy Director
 Department of Housing & Economic Development
 100 Australian Avenue - Suite 500
 West Palm Beach, Florida 33406

With copy to:

David C. Behar, Assistant County Attorney
 Palm Beach County Attorney's Office
 301 North Olive Ave., Suite 601
 West Palm Beach, Florida 33401

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

Andrew Duffell, President
 Research Park at Florida Atlantic University
 3651 FAU Boulevard, Suite 400
 Boca Raton, Florida 33431

ARTICLE 27 – ENTIRETY OF CONTRACTUAL AGREEMENT

The COUNTY and the AGENCY agree that this Agreement 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 Agreement 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.

No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party(s) waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at this final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based on who drafted it.

ARTICLE 28 – CRIMINAL HISTORY RECORDS CHECK

The AGENCY, AGENCY's employees, subcontractors of AGENCY and employees of subcontractors shall comply with Palm Beach County Code, Section 2-371 - 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), for unescorted access to critical facilities ("Critical Facilities") or criminal justice information facilities ("CJI Facilities") as identified in Resolutions R2013-1470 and R2015-0572, as amended. The AGENCY is solely responsible for the financial, schedule, and/or staffing implications of this Ordinance. Further, the AGENCY acknowledges that its Agreement price includes any and all direct or indirect costs associated with compliance with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the COUNTY.

This Agreement may include sites and/or buildings which have been designated as either "critical facilities" or "criminal justice information facilities" pursuant to the Ordinance and above referenced Resolutions, as amended. COUNTY staff representing the COUNTY department will contact the AGENCY(S) and provide specific instructions for meeting the requirements of this Ordinance. Individuals passing the background check will be issued a badge. The AGENCY shall make every effort to collect the badges of its employees and its subcontractors' employees upon conclusion of the contract and return them to the COUNTY. If the AGENCY or its subcontractor(s) terminates an employee who has been issued a badge, the AGENCY must notify the COUNTY within two (2) hours. At the time of termination, the AGENCY shall retrieve the badge and shall return it to the COUNTY in a timely manner.

The COUNTY reserves the right to suspend the AGENCY if the AGENCY 1) does not comply with the requirements of COUNTY Code Section 2-371 - 2-377, as amended; 2) does not contact the COUNTY regarding a terminated AGENCY employee or subcontractor employee within the stated time; or 3) fails to make a good faith effort in attempting to comply with the badge retrieval policy.

ARTICLE 29 – REGULATIONS; LICENSING REQUIREMENTS

The AGENCY shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. AGENCY 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.

ARTICLE 30 – SCRUTINIZED COMPANIES

- A. As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the AGENCY certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725. Pursuant to F.S. 287.135(3)(b), if AGENCY is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Agreement may be terminated at the option of the COUNTY.

- B. **When contract value is greater than \$1 million:** As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the AGENCY certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria.

If the COUNTY determines, using credible information available to the public, that a false certification has been submitted by AGENCY, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of Agreement renewal, if applicable.

ARTICLE 31 – PUBLIC RECORDS

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the AGENCY: (i) provides a service; and (ii) acts on behalf of the COUNTY as provided under Section 119.011(2) F.S., the AGENCY shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The AGENCY is specifically required to:

- A. Keep and maintain public records required by the COUNTY to perform services as provided under this Agreement.
- B. Upon request from the COUNTY's Custodian of Public Records, provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The AGENCY further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach COUNTY PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement, if the AGENCY does not transfer the records to the public agency.
- D. Upon completion of the Agreement the AGENCY shall transfer, at no cost to the COUNTY, all public records in possession of the AGENCY unless notified by COUNTY's representative/liaison, on behalf of the COUNTY's Custodian of Public Records, to keep and maintain public records required by the COUNTY to perform the service. If the AGENCY transfers all public records to the COUNTY upon completion of the Agreement, the AGENCY shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the AGENCY keeps and maintains public records upon completion of the Agreement, the AGENCY shall meet all applicable requirements for retaining public records. All records stored electronically by the AGENCY must be provided to COUNTY, upon request of the COUNTY's Custodian of Public Records, in a format that is compatible with the information technology systems of COUNTY, at no cost to COUNTY.

Failure of the AGENCY to comply with the requirements of this article shall be a material breach of this Agreement. COUNTY shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. AGENCY acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE AGENCY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE AGENCY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

ARTICLE 32 – COUNTERPARTS

This Agreement, including the exhibits referenced herein, may be executed in one or more counterparts, all of which shall constitute collectively but one and the same Agreement. The COUNTY may execute the Agreement through electronic or manual means. AGENCY shall execute by manual means only, unless the COUNTY provides otherwise.

ARTICLE 33 – E-VERIFY - EMPLOYMENT ELIGIBILITY

AGENCY warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended, and that it: (1) is registered with the E-Verify System (E-Verify.gov), and beginning January 1, 2021, uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of AGENCY's subconsultants performing the duties and obligations of this Agreement are registered with the E-Verify System, and beginning January 1, 2021, use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

AGENCY shall obtain from each of its subconsultants an affidavit stating that the subconsultant does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. AGENCY shall maintain a copy of any such affidavit from a subconsultant for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.

COUNTY shall terminate this Agreement if it has a good faith belief that AGENCY has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If COUNTY has a good faith belief that AGENCY's subconsultant has knowingly violated section 448.09(1), Florida Statutes, as may be amended, COUNTY shall notify AGENCY to terminate its contract with the subconsultant and AGENCY shall immediately terminate its contract with the subconsultant. If COUNTY terminates this Agreement pursuant to the above, AGENCY shall be barred from being awarded a future contract by COUNTY for a period of one (1) year from the date on which this Agreement was terminated. In the event of such Agreement termination, AGENCY shall also be liable for any additional costs incurred by COUNTY as a result of the termination.

ARTICLE 34 - INCORPORATION BY REFERENCE

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference. To the extent of a conflict between the terms of this Agreement and any Exhibit, the terms of the Exhibit shall govern.

ARTICLE 35 – RECOGNITION

The AGENCY shall include a reference to the financial support herein provided by the COUNTY in all publications, publicity events, and provide the COUNTY copies of all such publications. The AGENCY shall also notify the COUNTY prior to any ceremonies or events relating to facilities or items funded by this Agreement and, as part of the consideration for this Agreement, shall provide to COUNTY all required admissions to said events to allow for further distribution to the Mayor, County Commissioners, County Administration, Department

Staff or other County Official(s). In addition, the AGENCY will make good faith efforts to recognize the COUNTY's support for all activities made possible with funds made available under this Agreement.

ARTICLE 36 – REPORTS

- A. In compliance with Section 125.045(4), Florida Statutes, the AGENCY shall submit an annual report to the COUNTY detailing how the COUNTY funds were spent and the results of the AGENCY's efforts on behalf of the COUNTY. The annual report shall cover the period from October 1 through September 30 of the reporting year and be due to the COUNTY no later than **December 31st** following the reporting year. Once the AGENCY has submitted the report to the COUNTY, the COUNTY is required to submit the report to the Office of Economic & Demographic Research by **January 15th** of each year and post a copy of said report of the COUNTY'S public website.
- B. The AGENCY shall provide the COUNTY with its independent audit of the immediately preceding fiscal year no later than **January 31** of each year.

THE REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the AGENCY has set its hand the day and year above written.

WITNESS:

AGENCY:

Signature

**FLORIDA ATLANTIC RESEACH AND
DEVELOPMENT AUTHORITY**

Name (type or print)

Andrew Duffell, President

Signature

(Corporate Seal)

Name (type or print)

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida, has made and executed this Agreement on behalf of the COUNTY.

ATTEST:

**Joseph Abruzzo
CLERK AND COMPTROLLER**

**PALM BEACH COUNTY, FLORIDA, a
Political Subdivision of the State of Florida
BOARD OF COUNTY COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
Dave Kerner, Mayor

**Approved as to
Legal Sufficiency**

Approved as to Terms and Conditions

By: _____
David Behar
Assistant County Attorney

By: _____
Jonathan B. Brown, Director
Dept. of Housing & Economic Development

EXHIBIT "A"**Scope of Work****AGREEMENT DOCUMENTS**

The following documents are herein incorporated by reference or made part hereof, and shall constitute and be referred to as the Agreement; and all of said documents taken as a whole constitute the Agreement between the parties hereto and are as fully a part of the Agreement as if they were set forth verbatim and at length herein:

- A. This Agreement including its Exhibits;
- B. Title VI of the Civil Rights Act of 1964, Age Discrimination Act of 1975, and Title II of the Americans with Disabilities Act of 1990;
- C. The Drug-Free Workplace Act of 1988, as amended;
- D. The AGENCY's Policies and Procedures Manuals, and Job descriptions;
- E. The AGENCY's Articles of Incorporation and Bylaws;
- F. The AGENCY's Certificate of Insurance;
- G. Current list of the AGENCY's Officers and members of the Board of Directors;
- H. Florida Statute 112.061, relating to per diem, travel.
- I. Section 448.095, Florida Statutes (F.S.) (E-Verify): <https://www.e-verify.gov/>

All of these documents shall be maintained on file by the AGENCY, including an original of this Agreement, including its Exhibits, and all amendments thereto.

The AGENCY agrees to:**A. PROJECT SCOPE**

Pursuant to the terms of this Agreement, the AGENCY shall develop a pipeline of emerging and second stage technology companies, both domestic and international, working to support and promote research at Florida Atlantic University and to foster the economic development of Palm Beach County, that would remain predominantly in the Research Park at Florida Atlantic University® or in Palm Beach County by:

- a. Providing technical assistance and business support services for all Research Park at FAU companies to facilitate growth in revenues and employment opportunities; and
- b. Sourcing and placing interns from Palm Beach County colleges and universities in Research Park at FAU companies; and
- c. Sourcing and recruiting second stage and mature technology companies from within and outside of the United States to the Research Park at FAU.

B. DELIVERABLES

Subsequent to the effective date of this Agreement and within the contract period, the AGENCY shall as a result of its project scope achieve the following deliverables:

- a. Create at least fifteen (15) internships through Research Park at FAU companies;
- b. Create a minimum of fifteen (15) full-time equivalent jobs in Research Park at FAU companies;
- c. Provide outreach to a minimum of twenty-five (25) companies.
- d. Maintain Global Ventures as a Soft Landings Center Program with official designation by the International Business Innovation Association. Global Ventures is an entrepreneurial support initiative providing foreign and domestic companies entering or expanding in Palm Beach County access to resources to meet their business goals.

- e. Effectively market Global Ventures to relevant domestic and international audiences.
- f. Update Enterprise Florida's Brazil and Israel offices on recent news and developments at Global Ventures and supply each office with updated materials to provide to interested companies.
- g. Represent Global Ventures and Research Park at FAU in at least two (2) international trade shows, either virtually or in-person, to promote the Research Park at FAU and Global Ventures.

C. GEOGRAPHIC LIMITATIONS

The AGENCY shall ensure that all activities funded through this Agreement are performed within the Technology Business Incubator and Research Park at Florida Atlantic University.

D. REPORTS

The AGENCY shall provide a detailed monthly report, to be accompanied by each invoice, which shall include the following information:

1. A **Business Service Record** (Exhibit "C") documenting the provision of services funded through this Agreement, including technical services, business support provided and financial assistance.
2. A **Cumulative Job Creation** (Exhibit "D") documenting the name of the business, address/PCN, full-time or part-time, job title, number of positions, hire date, starting salary and date terminated.
3. A **Monthly Narrative** (Exhibit "E") documenting the following:
 - a. Status on the pipeline of companies interested and discussing expansion into Global Ventures and Research Park at FAU;
 - b. Briefings to Enterprise Florida's international offices and other relevant trade groups;
 - c. Activities to market and advertise Global Ventures to relevant foreign and domestic audiences; Trade and investment events attended;
 - d. Other pertinent information.
4. All reports shall be submitted to the COUNTY, postmarked no later than fourteen (14) days after the end of the reporting period, as outlined in the Exhibits contained herein. The reports shall be to the satisfaction of the COUNTY and be subject to verification. The COUNTY reserves the right to request additional reports from the AGENCY, for any previous periods funded by the COUNTY upon ten (10) business days' notice. The final report produced and submitted by the AGENCY will reflect quarterly and cumulative figures.
5. The AGENCY agrees that DHED shall carry out at least one annual monitoring and evaluation activity, as determined necessary by DHED, during the term of this Agreement. Upon DHED'S request, the AGENCY agrees to furnish and make copies or transcriptions of such records and information, as is determined necessary by DHED. Additionally, the AGENCY shall submit information and status reports required by DHED to enable DHED to evaluate the AGENCY's progress.
6. The AGENCY shall allow DHED to monitor the AGENCY on site. Such site visits may be scheduled or unscheduled as determined by DHED.

EXHIBIT "B"

Invoice Cover Sheet

USE AGENCY LETTERHEAD STATIONERY:

DATE: _____

TO: **Sherry Howard, Deputy Director**
Department of Housing & Economic Development
100 Australian Avenue, Suite 500
West Palm Beach, FL 33406

FROM: **Andrew Duffell, President**
Research Park at Florida Atlantic University
3651 FAU Boulevard, Suite 400
Boca Raton, Florida 33431

SUBJECT: **Research Park at FAU**
Reimbursement Request No. _____
Agreement No. _____

Attached you will find Invoice # _____ requesting reimbursement for \$ _____. The expenditures for this invoice cover the period of _____ through _____.

Additionally, please find the attached back-up original documentation relating to the expenditures being involved.

Andrew Duffell, President

EXHIBIT "C"

Business Service Record

Month of _____ 20__
**Research Park at Florida Atlantic University
and Global Ventures**

Instructions: List all businesses or persons provided with technical assistance or business support services during the reporting month. Use additional pages if necessary.

#	Name of Business Assisted	Address/PCN	Date	New (N) or Existing (E)	Type of Industry	NAICS #	Type of Assistance / Services Provided	Date(s) of Service
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								

Total Unduplicated Businesses Served This Month _____

Total Unduplicated Businesses Served Year-To -Date (YTD) _____

I certify that Research Park at FAU & Global Ventures provided the above-listed businesses and persons with technical assistance or business support services during the reporting month.

Andrew Duffell, President

Date

EXHIBIT "D"

Cumulative Job Creation

Month of _____ 20__
Research Park at Florida Atlantic University
and Global Ventures

A full-time job is working 40 hrs. a week (2080 hrs. per year); A part-time job is working 20 hrs. a week (1040 hrs. per year).

#	Name of Business	Address/PCN	Full Time or Part Time	Job Title	Number of Positions	Hire Date	Starting Salary	Date Terminated
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								

Andrew Duffell, President

Date

Exhibit "E"

Month of _____ 20__

Monthly Narrative Report

(Described in Exhibit "A" D.3.)