Agenda Item #: 3H-5

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: December 1, 2026 | **[X] Consent** | **[ ] Regular** | **[ ] Ordinance** | **[ ] Public Hearing**

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Joint Certification of Completion of the Roger Dean Chevrolet Stadium (RDCS) Renovation Project (Project) required under Section 3(a)(6) of the Spring Training Facility Funding Agreement (R2023-0367) (State Funding Agreement) between Palm Beach County and the Florida Department of Economic Opportunity (DEO).

Summary: On May 17, 2022, the Board of County Commissioners (BCC) approved the Developer Agreement (R2022-0520) with Jupiter Stadium, Ltd. (JSL) to oversee and manage the $126,000,000 Project at RDCS. On March 14, 2023, the BCC approved the State Funding Agreement with the DEO which provides $50,000,000 of State Funding under Florida Statutes Section 288.11631, to be distributed over a 25-year period for the Project. Section 3(a)(6) of the State Funding Agreement requires the completion of the Project within twenty-four (24) months of the Project's commencement. Under the terms of the State Funding Agreement, a joint certification of completion executed by the County and JSL shall constitute evidence of Project completion under Section 3(a)(6). The Project commenced construction activities on November 4, 2024, with all Project elements having achieved full completion as defined in the State Funding Agreement within the required 24-month period. There is no fiscal impact associated with this item. **(FDO) District 1 (MWJ)**

Background and Justification: The State Funding Agreement provides for a total funding amount of $50,000,000 to be equally disbursed to the County over a 25-year period. In accordance with Section 3(a)(6) of the State Funding Agreement, a joint certification of completion shall constitute evidence of Project completion. The debt service on the bonds issued by the County to fund the Project is being paid through a combination of State funds under Florida Statute Section 288.11631, 1st/4th cent Bed Tax proceeds, and annual use fee payments from JSL. The Project included stadium upgrades such as scoreboards, sound systems, Wi-Fi, security, telephone and access systems, third base line new group area and deck with seating, bullpens, concessions, team store expansion, press box, new storage facilities and maintenance building, expansion of office space and ticket office, art in public places component, expansion of the visitor's clubhouse, new batting cages and agility fields, new education building, restrooms and renovated/expanded team clubhouses.

Attachments:

1. Joint Certification of Completion
2. Spring Training Facility Funding Agreement

Recommended By: _____ 10-27-26
Department Director **Date**

Approved By: _____ 11/4/26
Chief Deputy County Administrator **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2027	2028	2029	2030	2031
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County					
NET FISCAL IMPACT	*				
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget: Yes ____ No X
Is this item using Federal Funds: Yes ____ No X
Is this item using State Funds: Yes ____ No X

Budget Account No: Fund Dept ___ Unit ___ Object Program .

B. Recommended Sources of Funds/Summary of Fiscal Impact:
* There is no fiscal impact associated with the approval of this item.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

_____ 10/29/2025
OFMB
KK 10/29 JA 10/29

_____ 11/2/26
Contract Development and Control
ZG 10.30.26

B. Legal Sufficiency:

_____ 11/3/26
Chief Assistant County Attorney

C. Other Department Review:

_____
Department Director

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

Attachment #1

JOINT CERTIFICATION OF COMPLETION
UNDER THE SPRING TRAINING FACILITY FUNDING AGREEMENT FOR ROGER DEAN CHEVROLET STADIUM (SB23-007) (R2023-0367) ("AGREEMENT")

In compliance with Section 3(a)(6) of the Agreement, Palm Beach County ("County") and Jupiter Stadium, Ltd. ("JSL") jointly certify to the State of Florida Department of Economic Opportunity ("DEO") as follows:

1. In Development Period Report No. 8, the County reported to DEO that the RDCS Facility Project commenced on November 4, 2024.

2. On October 16, 2026, the County completed construction and renovation of RDCS Facility Project as "completion" is defined in Section 3(a)(6) of the Agreement.

3. Construction and renovation of the RDCS Facility Project was completed within 24 months of the RDCS Facility Project's commencement.

4. Any capitalized terms not defined in this Certification shall have the meaning as set forth in the Agreement.

We hereby certify that the information contained in this Certification is true and correct.

Signature pages follow

ATTEST:

Yvette Drucker
Clerk of the Circuit Court & Comptroller

By: _____
Clerk

PALM BEACH COUNTY, a political subdivision of the State of Florida, by and through its BOARD OF COUNTY COMMISSIONERS

By: _____
Mayor

APPROVED AS TO LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS AND CONDITIONS

By: _____
Director - FD&O

WITNESS:

By: _____
Witness Signature

Print Witness Name: Nicholas J. Garzia, Esq.

Jupiter Stadium, Ltd, a Florida limited partnership, by its General Partner: JS Stadium, Inc.

By: _____

Name Printed: Daniel J. Good

Title: Co-Chairman

WITNESS:

By: _____
Witness Signature

Print Witness Name: Tony Brasile

Jupiter Stadium, Ltd, a Florida limited partnership, by its General Partner: JS Stadium, Inc.

By: Caroline O'Connor

Name Printed: Caroline O'Connor

Title: Co-Chairman

Attachment #2

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SPRING TRAINING FACILITY FUNDING AGREEMENT
BETWEEN
FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY
AND
PALM BEACH COUNTY

THE SPRING TRAINING FACILITY FUNDING AGREEMENT (this "Agreement") Number S0205 (SB23-007), is made and entered into by and between the State of Florida (the "State"), Department of Economic Opportunity ("DEO") and Palm Beach County, Florida ("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") to provide funds set aside by the Legislature reflected in section 212.20(6)(d)6.e., F.S., for certified applicants to serve the public purpose of constructing or renovating facilities for spring training franchises within the State in accordance with the criteria set forth in section 288.11631, F.S.; and

WHEREAS, the County is the owner of Roger Dean Chevrolet Stadium, located at 4751 Main St, Jupiter, Florida (the "RDCS Facility"), constituting a spring training stadium, playing fields, and appurtenances intended to support spring training activities; and

WHEREAS, the initial funding and construction of the RDCS Facility was the result of a developer agreement (the "Initial Developer Agreement") and a use agreement (the "Initial Use Agreement") between the County and Jupiter Stadium, Ltd. (JSL), then a partnership between the Cardinals and the Expos (the Expos were subsequently replaced by the Marlins); and

WHEREAS, in 2011, the County and JSL restated and extended the Initial Use Agreement until April 30, 2027; and

WHEREAS, on December 17, 2019, the County's Board of County Commissioners (BOCC) approved a term sheet to provide for the funding of a $108 million renovation of the RDCS Facility, and began negotiating new developer and use agreements with JSL to perform the renovation and utilize the RDCS Facility in accordance with the term sheet; and

WHEREAS, on May 17, 2022, the County's BOCC approved and executed a new developer agreement for renovation of the RDCS Facility (such renovation, the "RDCS Facility Project") and a second restated use agreement (respectively, the "New Developer Agreement" and "New Use Agreement", and collectively, the "Spring Training Facility Agreements"), now between the County, JSL, the Cardinals and the Marlins, and also approved the submission of the County's application for certification to receive state funding for a facility for the Cardinals and the Marlins (each a spring training franchise, and hereafter a "Franchise" or collectively, "Franchises") pursuant to section 288.11631, F.S.; and

WHEREAS, the New Developer Agreement commits the County to provide funding for the RDCS Facility Project through the issuance of at least $108 million in 25-year County bonds, the debt service on which shall be divided between distributions received by the County pursuant to this Agreement, tourism development tax, and payments collected from JSL under the New Use Agreement; and

WHEREAS, the New Use Agreement becomes effective upon the date of sale of the County Bonds and will extend use of the stadium by the Marlins and the Cardinals to at least April 30, 2049; and

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WHEREAS, the County represents and warrants that the foregoing recitals are true and correct and that the May 17, 2022, New Developer Agreement and the May 17, 2022, New Use Agreement have not undergone any material changes, amendments, modifications, extensions, or the like since their submission to DEO as part of the County's application for certification under section 288.11631, F.S.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein contained, and in order to induce DEO to certify the County pursuant to section 288.11631, Florida Statutes, the Parties intending to be legally bound, hereby agree as follows:

1. **TERM**. This Agreement is effective as of the date on which DEO executes this Agreement (the "Effective Date") and will end when the Award Funds provided for herein have been distributed to the County in accordance with this Agreement (the "Expiration Date"). The County may be decertified if the County fails to comply with or meet the requirements of section 288.11631, F.S., or this Agreement, in which event DEO may recover Award Funds, until such time as the County has issued bonds as contemplated; however, once the County is certified pursuant to section 288.11631, F.S., it may not be decertified by DEO if it has: (i) paid or pledged for the payment of debt service on, or (ii) to fund debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect thereto, bonds issued for the construction and renovation of the facility for which the County was certified, or for the reimbursement of such costs or the refinancing of bonds issued for such purpose.

2. DISTRIBUTIONS.

(a) Within 30 calendar days after the Effective Date, DEO shall transmit a letter to the Florida Department of Revenue ("DOR") informing DOR of the County's full certification under section 288.11631, F.S. Award Fund 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. Notwithstanding anything herein to the contrary, if funding is not available for any reason, such event will not constitute a breach or default by DEO, DOR, or the State of Florida. This Agreement is not a general obligation of the State of Florida, nor is it backed by the full faith and credit of the State of Florida. To the extent required by law, payment of distributions is conditioned on and subject to specific annual appropriations by the Florida Legislature sufficient to pay amounts authorized in section 288.11631, F.S. All distributions shall be subject to the terms of this Agreement, including, but not limited to Article 4, *Financial Consequences*.

(b) 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.

3. DUTIES AND OBLIGATIONS OF THE COUNTY.

(a) **Statutory Requirements.**

(1) **New Use Agreement Addendum.** The New Use Agreement contains provisions regarding obligations and rights of its parties not directly related to section 288.11631, F.S. Therefore, the parties to the New Use Agreement shall execute an addendum to the New Use Agreement (the "Addendum") to ensure that the New Use Agreement continuously meets the requirements of section 288.11631, F.S., and that DEO can properly and responsibly act as the steward of State funds, without modifying or affecting the New Use Agreement, except to the extent it limits any rights or remedies of the State or DEO as provided for in the Addendum and this Agreement. The terms of the Addendum are subject to DEO's written approval, with such approval to be given at DEO's sole and absolute discretion.

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(2) **Condition Precedent.** DEO's written approval of the terms of the Addendum and the New Use Agreement parties' full execution of same are a condition precedent to the County's certification under section 288.11631, F.S., with respect to the RDCS Facility, as well as any obligations of DEO under this Agreement.

(3) The County shall comply with all 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., as verified and determined by DEO, which includes the following:

a. The County, through the New Developer Agreement with JSL, is responsible for the construction or renovation of the RDCS Facility Project for the Franchises and is the owner of the RDCS Facility. Upon completion of the construction or renovation, the County shall continue to hold title to the property on which the RDCS Facility is located for the duration of this Agreement.

b. The County shall maintain the New Use Agreement, subject to the terms of the Addendum, with JSL and the Franchises for use of the RDCS Facility in full force and effect at all times. The term of the New Use Agreement, together with the Addendum, must, at a minimum, be equal to the length of the term of the bonds issued for the public purpose of constructing or renovating the RDCS Facility for the Franchises. The County shall include a provision in the New Use Agreement, through the Addendum thereto, requiring the Franchises to reimburse the State if the Franchises relocate before the New Use Agreement expires and that the reimbursement be equal to the total amount of state distributions expected to be paid from the date the Franchises break the Use Agreement with the County, through the final maturity of the bonds.

c. The County shall maintain its financial commitment to provide 50 percent or more of the funds required for the construction or renovation of the RDCS Facility for the Franchises.

d. The County shall demonstrate annually that the RDCS Facility has attracted a paid attendance of at least 50,000 persons to the spring training games held in the RDCS Facility.

e. The RDCS Facility must be located in a county that levies a tourist development tax under section 125.0104, F.S.

(4) The County may use Award Funds provided under section 212.20(6)(d)6.e, F.S. and this Agreement, only to:

a. serve the public purpose of constructing or renovating the RDCS Facility for the Franchises;

b. pay or pledge for the payment of debt service on bonds issued for the construction or renovation of the RDCS Facility;

c. fund debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect thereto on bonds issued for the construction or renovation the RDCS Facility;

d. reimburse the costs under paragraphs (a), (b), or (c), above; or

e. refinance bonds issued for the construction or renovation of the RDCS Facility.

(5) The County shall not use Award Funds to subsidize facilities that are privately owned by, maintained by, and used exclusively by any Franchise or partnership thereof. The County shall place unexpended Award 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.

(6) The County shall begin expenditure of the Award Funds within 48 months after initial receipt. The County shall complete construction or renovation of the RDCS Facility Project within 24 months of the RDCS Facility Project's commencement. For purposes of this Agreement, completion shall mean the condition of the RDCS Facility Project renovation, and all elements thereof, being essentially complete to both JSL's and the County's satisfaction in accordance with the New Developer Agreement and related construction contracts, such that the RDCS Facility Project, and all elements thereof, are ready for full occupancy, operation and/or use without material inconvenience or discomfort to JSL, its patrons or sponsors, and all certificates, licenses and permits required by all applicable laws have been obtained, including final certificates of occupancy or completion, as applicable. Completion shall be evidenced by

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documentation and other evidence DEO deems acceptable at its reasonable discretion. A joint certification of the foregoing by both JSL and the County shall constitute evidence of completion.

(7) The County shall obtain DEO's prior, written approval, with such approval to be given at DEO's sole and absolute discretion, before making any material changes, amendments, modifications, extensions or the like to the Spring Training Facility Agreements, or the terms thereof, either directly or indirectly, that have any effect on DEO or the States' rights or privileges, or the County's certification, or any Franchise's reimbursement requirements. 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.

(b) The County's Franchises shall remain the Marlins and the Cardinals, unless properly changed pursuant to law and the terms of the New Use Agreement, subject to the terms of the Addendum.

(c) The County shall undertake reasonable efforts to promote and advertise the RDCS Facility

(d) If the County believes that it will become unable to perform its obligations or use of any portion of the Award Funds as provided for herein, the County shall notify DEO within five business days.

(e) **Reporting Requirements.**

(1) **Annual Reports**. On or before September 1 of each year, and as long as the County remains certified under section 288.11631, F.S., the County shall submit an annual report to DEO which must include the following:

a. A detailed accounting of all local and state funds expended to date, as of the date of submission of the report, on the RDCS Facility Project financed under section 288.11631, F.S.

b. Copies of the Spring Training Facility Agreements including all amendments, modifications, extensions, assignments, addenda, or ancillary agreements thereto, current as of the date of the annual report. If there has been no change, either directly or indirectly, to the Spring Training Facility Agreements then the County may certify that the Spring Training Facility Agreements have not been altered, amended, or modified since the last submission.

c. A cost-benefit analysis of the 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 the County. The analysis should reflect the economic impact of the most recent Spring Training Season and be updated annually.

d. A list of all material 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 (as defined below), the list shall include all contracts entered into with an estimated cost greater than $250,000 executed in furtherance of the RDCS Facility Project.

e. 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.

f. Written evidence, including numerical or statistical analysis as applicable, that the County is in compliance with section 288.1167, F.S.

g. A letter signed by the Chair of the County's Board of County Commissioners certifying that all information and documentation contained in the annual report and submitted to DEO is true and correct.

h. Attendance to spring training games since the last reporting period.

i. Evidence of the efforts to promote and advertise the RDCS Facility that have taken place since the last reporting period.

j. Any additional reports, documents, or certifications which are reasonably related to the County's obligations under this Agreement, as requested by DEO.

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(2) **Development Period Requirements**.

a. "Development Period" means the period of time between certification pursuant to section 288.11631, F.S., and full completion of all services and payments contemplated under the New Developer Agreement.

b. During the Development Period only, and notwithstanding anything in this Agreement to the contrary, the County shall:

i. Within 30 calendar days of the Effective Date, and every 90th calendar day thereafter, provide DEO with a written update on the status of the RDCS Facility Project, including a detailed summary of all RDCS Facility Project activities and all local, state, and private funds expended on the RDCS Facility Project up to the date of the report.

ii. Promptly respond to requests from DEO for any information in the County's possession or in reports that the County is generating for its own purposes.

iii. Include with each report and response furnished to DEO during the Development Period a contemporaneous letter from the Mayor of the County's BOCC, or designee, certifying that all information and documentation contained therein are true and correct.

4. FINANCIAL CONSEQUENCES.

(a) If the County fails to provide any report, document, or certification, required under this Agreement, or as otherwise requested by DEO, DEO will provide written notice of breach to the County. The County will have 30 days from the date of written notice of breach to cure the breach. If the breach is not cured to DEO's satisfaction within 30 days, a financial consequence of $100 per day after the 30th day will be imposed until the breach is cured. If the County cannot cure the breach within 30 days, the County shall provide DEO with a plan, including a timeframe, for curing the default, which must be reviewed and approved by DEO at DEO's sole discretion. After DEO's approval, if the County fails to comply with the plan, a financial consequence of $200 per day will be imposed until such time as the County complies with the plan for cure or until the breach is cured, whichever occurs earlier. For avoidance of doubt, this consequence shall be imposed for each instance failure hereunder. Notwithstanding the foregoing, if the County's failure to provide a requested report is due solely to the fact that a third-party must provide information to the County to enable the County to provide the requested report, so long as the County has diligently pursued such information from the third-party provider, the County shall not be deemed in default under this subsection; provided, however, that the County shall inform DEO within 10 business days of the County's knowledge that any delay has occurred or may occur.

(b) If the Franchises are not both operating at the Facility due to: (1) direct or indirect modifications to either of the Spring Training Facility Agreements made without DEO's prior written approval, (2) the departure of one or both Franchises resulting from a breach of contract by the County, as determined by an administrative tribunal, arbitrator, or court of competent jurisdiction, or (3) the termination of the New Use Agreement pursuant to its section 17.1.3 or other comparable provision expressly providing JSL the option to terminate either Spring Training Facility Agreement due to the County's action or inaction, then the County shall request that DEO notify DOR to suspend further distributions of Award Funds made available under section 212.20(6)(d)6.e., F.S., for 12 months, as required by section 288.11631(3)(d)2., F.S. For purposes of this Agreement and section 288.11631(3)(d)2., F.S., the occurrence of either (1) or (2), above, shall be deemed an "expiration of an existing agreement". The County shall renew this request annually until DEO has approved at its sole and absolute discretion, and the County has executed, new certified, signed agreements, such that two Franchises are once again operating at the Facility, and which meet the requirements of section 288.11631(2)(a)2., F.S and this Agreement. DEO shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or in equity.

(c) 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 (each a "Misrepresentation"), DEO shall provide notice of the same to the County. The County shall have 30 days from such notice to respond to

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DEO's determination. If, following the receipt of the County's response, DEO determines that the County has violated this subsection, DEO may, at its option: (a) impose a financial consequence in an amount equal to the County's monthly distributions received from the State under this Agreement for a single month, or (b) pursue any and all other rights and remedies available to DEO at law or in equity for the Misrepresentation, including, but not limited to, seeking rescission of this Agreement based on Fraud in the Inducement principles..

(d) Following completion of the Facility in accordance with section 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 the County 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 may permit the County to make such repayments in equal parts for the remainder of the term of this Agreement.

(e) If the County materially breaches the terms of this Agreement, other than as described in subsections (a)-(d) above, DEO shall provide written notice to the County, after which time the County shall have 60 calendar days to either enter into a corrective action plan agreeable to DEO at DEO's sole discretion, or to cure the breach. If the County fails to timely enter into a corrective action plan with DEO or cure the breach, or if the County fails to substantially comply with the terms of the corrective action plan, DEO may impose a financial consequence in an amount of $5,000 each month, beginning with the month in which the initial written notice was provided, until such time as the County cures, in DEO's sole and reasonable discretion, said breach or begins complying with the corrective action plan agreed to between DEO and the County.

(f) The County and DEO agree that wherever one or more Franchises would be required by section 288.11631, F.S, or by this or any other agreement, including the New 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 Franchise(s). The Franchise(s) have entered into Guaranties for the purpose of securing such repayment, which Guaranties are a part of the New Developer Agreement between County and each Franchise, and which Guaranties are in favor of the County and the State of Florida, by and through DEO. Notwithstanding the foregoing, the County shall cooperate with and undertake all reasonable efforts to assist DEO and the State in any recoupment efforts undertaken by DEO or the State with respect to such Franchise.

(g) As necessary to impose the financial consequences or otherwise suspend payments as contemplated herein, DEO may direct DOR to withhold future Award Fund disbursements, or offset future Award Fund disbursements, to the County, in amounts sufficient to satisfy the financial consequence or suspended payment. 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 days without prior notification from DEO. If DEO discovers an overpayment has been made, DEO will notify the County by letter. DEO may charge interest at the lawful rate of interest on the outstanding balance beginning 61 days after the date of DEO's notification or the County or its auditors' discovery. The County shall send repayments to DEO's Agreement Manager and make checks payable to the "Department of Economic Opportunity." Notwithstanding anything herein to the contrary, if the County is noncompliant with any provision of this Agreement or applicable law, or if DEO imposes financial consequences on the County pursuant to the terms of this Agreement, DEO has the right to recoup all resulting cost, monetary loss, or funds owed to DEO or the State of Florida, from monies owed to the County under this Agreement. In no event will any refund, repayment, or financial consequence exceed the Award Fund total, plus interest.

5. INDEPENDENT CAPACITY OF CONTRACTOR.

(a) The County shall not represent that it has the authority to bind DEO. The County shall not pledge

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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. The County, and its officers, agents, employees, subcontractors, 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) Neither the County, nor its officers, agents, employees, subcontractors, 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. 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 from an employer other than the State of Florida, to the extent required by law

(c) The County shall take such action 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.

(d) DEO will not furnish services of support (*e.g.*, office space, office supplies, telephone service, secretarial, or clerical support) to any entity in furtherance of this Agreement.

(e) The County shall comply with all applicable reporting and Reemployment Assistance contribution payment requirements of Chapter 443, F.S.

6. LIABILITY AND INDEMNIFICATION.

(a) DEO shall not assume any liability for the acts, omissions to act, or negligence of the County, JSI, the Franchises, agents, beneficiaries, affiliates, contractors, subcontractors, servants, or employees. In all instances, the County shall be responsible for any injury or property damage resulting from any activities conducted by the County in the performance of this Agreement. 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. DEO or the State shall not be liable to any person or entity for any bond default resulting from DEO's or the State's imposition of financial consequences, or a suspension of Award Fund disbursements by DEO or the State, or at the County's request, and, to the extent permitted by law, the County shall indemnify and hold the State and DEO harmless from all claims and actions of any nature or description arising out of or related to an imposition of financial consequences or a suspension of Award Fund disbursements which results in a bond default.

(b) 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.

(c) To the extent permitted by law, 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, 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 agents, employees, partners, contractors, and subcontractors, 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

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omission of the State or DEO.

(d) To the extent permitted by law, 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.

(e) 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. 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 actions;

2. the opportunity to take over and either settle or defend any such action at the County's sole expense and assistance in defending the action at the County's sole expense; provided however, that any settlement is subject to DEO's prior, written approval. Should the County fail to take over and either settle or defend in accordance with the foregoing, the County shall be deemed to have granted its consent to DEO's incurring any and all reasonable cost, expense, and compromise DEO deems reasonably appropriate in the action, and the County shall promptly reimburse the State and DEO all reasonable costs and expenses, including but not limited to attorneys' fees, incurred by the State and DEO in defending the action. For avoidance of doubt, such repayment obligations are in addition to the County's indemnification and hold harmless obligations, which the Parties mutually understand to include any settlement, judgment, or comparable resolution that may be entered against or by the State or DEO in defending or settling the action.

(f) 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 more than $10,000 without DEO's prior written approval. 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.

7. AUDITS AND RECORDS.

(a) The County shall retain and maintain all records so as to sufficiently and properly reflect all expenditures of Award Funds distributed under this Agreement, in accordance with generally accepted accounting procedures and practices. Records shall include 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 shall 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,

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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 the requirements of section 20.055(5), F.S. The County shall cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing pursuant to section 20.055, F.S. The County shall 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 beneficiary, contractors' or subcontractors' 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 or the Franchises, beneficiary, contractor(s), or subcontractor(s). Such reasonable costs shall include: 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, subcontracts, leases, assignments, and agreements executed for the expenditure of funds from, related to, in connection with, or in furtherance of this Agreement, which are entered into 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. 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.

8. ACCESS TO RECORDS AND PUBLIC RECORDS REQUIREMENTS.

(a) The County shall allow DEO, the State, and their respective authorized representatives, agents, and employees on-site access to, or shall deliver immediately upon request, 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 shall comply with the provisions of Chapter 119, F.S., Chapter 286, F.S., and section 24 of Article I of the Florida Constitution. The County shall cooperate with DEO regarding DEO's efforts to comply with the requirements of chapter 119, F.S. 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 that are public records as that term is defined by section 119.011(12), F.S., unless the records are exempt, or confidential pursuant to section 24(a) of Article I of the State Constitution, section 119.07(1), F.S., or other Florida statute(s).

(c) The County is responsible to respond to each request it receives for public records made, as provided by law, 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

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records, subject to exemption and confidentiality under Florida law.

(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, the Franchises or their affiliates, or the County's agents, employees, partners, contractors, or subcontractors submit records to DEO that the County, the Franchises or their affiliates, or the County's contractors or subcontractors, deems legally confidential 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 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 or confidentiality of that record.

(2) The County shall ensure that public records in the custody or control of the County, a Franchise or its affiliates, or the County's agents, employees, partners, contractors, or subcontractors that are confidential are not disclosed except as authorized by law.

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

a. The County shall notify DEO verbally within 24 hours and in writing within 72 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.

b. The County shall make a report to DEO not more than seven business days after the 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, 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, the 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, the County shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to DEO, upon request from 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, and without waiving the sovereign immunity of the County, the County shall be fully liable for the actions of the Franchises and their agents, employees, partners, contractors, and subcontractors 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, a Franchisc, and their respective, agents, employees, partners, contractors, or subcontractors, 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 not the obligation, to enforce this indemnification provision.

(h) The County shall include provisions in accordance with this Article, chapter 119, F.S., and all applicable

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Florida public records law in all agreements, assignments, leases, contracts, and subcontracts executed or amended after the effective date of this Agreement with JSL or the Franchises for the expenditure of funds from, related to, in connection with, or in furtherance of this Agreement.

9. **CONTRACTS.** The County shall be responsible and liable for all work performed and all expenses incurred in connection with the County's RDCS Facility Project or any activities related to, in connection with, or in furtherance of this Agreement. 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 shall be solely liable to its contractors for all expenses and liabilities associated with or arising from such contracts. The County represents and warrants that it has not, and agrees that it shall not enter into any contract in which DEO could be held liable to the contractor or subcontractor for any expenses or liabilities. The County agrees that DEO shall not be held liable to any contractor or subcontractor 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, indemnify, defend, and hold DEO harmless of any liabilities incurred under any contract entered into by the County in connection with or in furtherance of this Agreement. As between DEO and the County, the County shall be liable for all work performed and all expenses incurred as a result of any contract entered into by the County in connection with this Agreement. The County shall ensure that contractors and subcontractors hired by the County in connection with the County's RDCS Facility Project, or any activities related to this Agreement, comply with all relevant terms of this Agreement. Any contract entered by the County for the expenditure of funds from, related to, in connection with, or in furtherance of this Agreement shall be evidenced by a written document. Further, such contracts that are entered into after the effective date of this Agreement shall 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).

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. **GOVERNING LAW**. The laws of the State of Florida shall govern the construction, enforcement, and interpretation of this Agreement, regardless of and without reference to whether any applicable conflicts of laws principles may point to the application of the laws of another jurisdiction. Without limiting the provisions of Article 4, *Financial Consequences*, of this Agreement, the exclusive personal jurisdiction and venue to resolve any and all disputes between them including, without limitation, any disputes arising out of or relating to this Agreement shall be in the state courts of the State of Florida in the County of Leon. The Parties expressly consent to the exclusive personal jurisdiction and venue in any state court located in Leon County, Florida, applying Florida law, and waive any defense of forum non conveniens, lack of personal jurisdiction, or like defense, and further agree that any and all disputes between them shall be solely in the State of Florida. IN ANY LEGAL OR EQUITABLE ACTION BETWEEN THE PARTIES, THE PARTIES HEREBY EXPRESSLY WAIVE TRIAL BY JURY TO THE FULLEST EXTENT PERMITTED BY LAW.

12. **STRICT COMPLIANCE.** The County shall perform all acts in connection with this Agreement 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.

13. **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

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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, and this Agreement shall otherwise remain in full force and effect.

14. PRESERVATION OF REMEDIES. No delay or omission to exercise any right, power, or remedy accruing to either Party upon breach 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 any similar breach. 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.

15. DISCRIMINATORY VENDOR. The County acknowledges the provisions of section 287.134, F.S. The County shall disclose to DEO if any of its affiliates, as defined in section 287.134(1)(a.), F.S., appears on the discriminatory vendor list. The County shall ensure provisions in accordance with section 287.134, F.S., are present in all agreements, assignments, leases, contracts, and subcontracts in furtherance of or related to this Agreement which are entered into after the effective date of this Agreement.

16. 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 accordance with this Article, in all contracts for services in relation to this Agreement which are entered into after the effective date of this Agreement.

17. 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 that executed after the effective date of this Agreement.

18. 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, or to its knowledge the Franchises, or their 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 agreements, assignments, leases, contracts, and subcontracts in connection with or related to this Agreement that are either an agreement with the Franchises, or are another agreement and are either amended or executed after the effective date of this Agreement.

19. 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 prohibit, restrain, or diminish the County's or its Franchises', beneficiary or its affiliates' ability to satisfy its Agreement duties or obligations. The County shall immediately notify DEO in writing if the County's or its Franchises' or their affiliates' ability to perform in connection with this Agreement is compromised in any manner.

20. LOBBYING. 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. 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. The County shall insert a provision in accordance with this Article in all agreements, assignments, leases, contracts, or subcontracts related to this Agreement or for which funds distributed pursuant to this Agreement are to be expended and are either amended, supplemented, or executed after the Effective Date of this Agreement.

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21. **ATTORNEY FEES.** Except as otherwise set forth elsewhere herein, each Party shall at all times be responsible for its own costs, fees, and expenses arising out of or related to this Agreement, including attorneys' fees.

22. **NON-ASSIGNMENT.** Notwithstanding anything herein to the contrary, DEO may assign or transfer its rights, duties, or obligations under this Agreement to another governmental agency in the State of Florida immediately upon written notice to the County. The County may not assign, delegate, or otherwise transfer its rights, duties, or obligations under this Agreement without the prior written approval of DEO, which approval may not be unreasonably delayed, conditioned, or withheld, except with respect to those provisions herein affording DEO sole and absolute discretion. Any assignment, delegation, or transfer in violation of this Article is void *ab initio*. If DEO approves an assignment, delegation, or transfer of the County's obligations under this Agreement, the County shall remain responsible for all work performed and all expenses incurred in connection with this Agreement, regardless of such assignment, delegation, or transfer. This Agreement is binding upon the Parties and their respective successors, assigns, or legal representatives.

23. **RENEGOTIATION AND AMENDMENTS.** The Parties will renegotiate this Agreement if Federal 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.

24. **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 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 the County believes is excusable under this paragraph, the County shall notify DEO 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 days after the cause that creates or will create the delay or nonperformance first arose, if the County could reasonably foresee that a delay or nonperformance could occur as a result; or (2) within five days after the date County 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 COUNTY'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY. ADDITONALLY, THE FORGOIING SHALL CONSTITUTE THE COUNTY'S 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. DEO, in its sole discretion, will determine if the delay or nonperformance is excusable under this paragraph and will notify the County of its decision in writing. No claim for damages, other than for an extension of time, shall be asserted against DEO. 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 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; (2) terminate the Agreement in whole or in part; or (3) pursue any other rights or remedies provided by law or under the Agreement.

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25. **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.

26. **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 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.

27. **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 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 five percent of the total assets or capital stock of any business entity or its affiliates receiving funds from this Agreement.

28. **CONSTRUCTION; INTERPRETATION.** The title of and the section and paragraph headings in this Agreement are for convenience of reference only and shall not govern or affect the interpretation of any of the terms or provisions of this Agreement. The term "this Agreement" means this Agreement together with all Exhibits hereto, as the same may from time to time be amended, modified, supplemented, or restated in accordance with the terms hereof. The use in this Agreement of the term "including" and other words of similar import mean "including, without limitation" and where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit, or restrict in any manner the construction of the general statement to which it relates. The word "or" is not exclusive and the words "herein," "hereof," "hereunder," and other words of similar import refer to this Agreement as a whole, including any Exhibits, and not to any particular section, subsection, paragraph, subparagraph, or clause contained in this Agreement. The use herein of terms importing the singular shall also include the plural, and vice versa. The reference to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and the reference to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. All references to "$" shall mean United States dollars. The term "Party" or "Parties" includes any directors, officers, directors, shareholders, agents, representatives, employees, delegates, contractors, subcontractors, or any other similar person or entity which has been duly authorized to and has the actual authority to act or perform on behalf of the Party so represented. The recitals of this Agreement are incorporated herein by reference and shall apply to the terms and provisions of this Agreement and the Parties. Time is of the essence with respect to the performance of all obligations under this Agreement. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. All references to the Florida Statutes herein shall mean the 2022 Florida Statutes.

29. **EXECUTION.** 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. 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,

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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.

30. **PARTIES AND NOTICES**. Except as otherwise specifically provided in this Agreement, the contact information provided in accordance with this section shall be used by the Parties for all communications under this Agreement. 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: (i) when personally delivered; (ii) when transmitted via email with confirmation of receipt if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid); (iii) 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 recognized overnight delivery service; or (iv) the third business day following the day on which the same is sent by certified or registered mail, postage prepaid, with return receipt. All approvals and certifications pursuant to this Agreement must be obtained from the Parties' respective administrators or their respective designees. If any information provided herein changes, including the designation of a new Agreement Manager, after the execution of this Agreement, the Party making such change shall notify all other Parties in writing of such change. Such changes shall not require a formal amendment to this Agreement.

If to DEO:
Department of Economic Opportunity
Division of Strategic Business Development
ATTN: Cory Strickland
107 East Madison Street, MSC 80
The Caldwell Building
Tallahassee, Florida 32399-0001
Telephone: (850)717-8984
Email: Cory.Strickland@DEO.MyFlorida.com

If to the County:
County Administrator
301 North Olive Avenue, 11th Floor
West Palm Beach, FL 33401

With Copies to:

County Attorney
301 North Olive Avenue, 6th Floor
West Palm Beach, FL 33401

And

Director of Office of Financial Management
301 North Olive Avenue, 7th Floor
West Palm Beach, FL 33401

And

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

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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.

STATE OF FLORIDA,
DEPARTMENT OF ECONOMIC OPPORTUNITY

By: Meredith Ivey
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MEREDITH IVEY, Acting Secretary

Date: 3/30/2023

APPROVED AS TO FORM AND LEGAL SUFFICIENCY, SUBJECT TO FULL AND PROPER EXECUTION OF THE PARTIES

OFFICE OF GENERAL COUNSEL
STATE OF FLORIDA, DEPARTMENT OF ECONOMIC OPPORTUNITY

By: 8F42E414753A4C8...

Date: 3/27/2023

R2023 0367

JOSEPH ABRUZZO
CLERK & COMPTROLLER

By: Deputy Clerk

Date: MAR 14 2023

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

By: Mayor Gregg Weiss

Date: MAR 14 2023

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: County Attorney

Date: 3/14/23

APPROVED AS TO TERMS AND CONDITIONS:

By: Director, Facilities Development & Operations

Date: 3/13/23

DocuSign Envelope ID: AA4F716A-F8E2-4A52-8909-EEC108E2D376

ATTACHMENT A
AUDIT REQUIREMENTS

The administration of resources awarded by DEO to the recipient (herein otherwise referred to as "Grantee") may be subject to audits and/or monitoring by DEO as described in this Attachment 2.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR part 200 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 2 CFR Part 200, 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 2 CFR Part 200, as revised.

1. In the event that the recipient expends $750,000 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 2 CFR Part 200, 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 2 CFR Part 200, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200, 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 F of 2 CFR Part 200, as revised.

3. If the recipient expends less than $750,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of 2 CFR Part 200, as revised, is not required. In the event that the recipient expends less than $750,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 200, 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 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 2 CFR 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 $750,000 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

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215.97, Florida Statutes; 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 nonstate 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 $750,000 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 $750,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statues, the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).

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 2 CFR Part 200, as revised, and required by Part I of this agreement shall be submitted, when required by Section .512, 2 CFR Part 200, as revised, 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

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 2 CFR Part 200, as revised (the number of copies required by Section .512, 2 CFR Part 200, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

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C. Other Federal agencies and pass-through entities in accordance with Section .512, 2 CFR Part 200, as revised.

2. Pursuant to Section .512, 2 CFR Part 200, as revised, the recipient shall submit a copy of the reporting package described in Section .512, 2 CFR Part 200, as revised, and any management letter issued by the auditor, to DEO at each of the following addresses:

Electronic copies (preferred):	or	Paper (hard copy):
Audit@deo.myflorida.com		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):	or	Paper (hard copy):
Audit@deo.myflorida.com		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

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:
Not applicable

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 2 CFR Part 200, 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 2 CFR Part 200 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

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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 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:

State Project: AWARDED BY THE DEPARTMENT OF ECONOMIC OPPORTUNITY, DIVISION OF STRATEGIC BUSINESS DEVELOPMENT

	Funding Source	State Fiscal Year	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
	General Revenue	2022-2023	73.016	Facilities for New Professional Sports or Retained Professional Sports	$50,000,000	General Revenue
					Total Award	**$50,000,000***

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 County from the Department of Revenue per section 212.20(6)(d)6.e., F.S., up to the amount specified.

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ATTACHMENT B

Audit Compliance Certification	
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.	
Grantee:	
FEIN:	Grantee's Fiscal Year:
Contact's Name:	Contact's Phone:
Contact's Email:	

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)? ☐ Yes ☐ No
   If the above answer is yes, answer the following before proceeding to item 2.
   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? ☐ Yes ☐ No
   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.

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? ☐ Yes ☐ No
   If the above answer is yes, also answer the following before proceeding to execution of this certification:
   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? ☐ Yes ☐ No
   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.

By signing below, I certify, on behalf of the Recipient, that the above representations for items 1 and 2 are true and correct.

Signature of Authorized Representative	Date