MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: June 20, 2016

RE: **Sports Development Program Agreement with Department of Economic Opportunity**

Attached hereto for your consideration is a proposed Sports Development Agreement between the Florida Department of Economic Opportunity and the City Of Lakeland. This agreement is required to initiate the State of Florida's portion of the funding for the Joker Marchant Baseball Complex Project.

Florida Statute 288.11631 enacted in 2013 created an annual budget allocation to support local governments who do facility improvements in order to retain their Spring Training baseball franchise. It provides up to $1,000,000 annually for 20 years for qualified projects. The staff was active in the legislative process to get this funding approved and to get the Joker Marchant Project, and our lease extension with the Detroit Tigers, certified as one that qualifies for the funding. The statute also requires that the local government enter into a written agreement to impose the statutory provisions by contract by the funding date of July 1.

There are a number of material provisions that the statute requires prior to certification under the program. The major ones are:

1. The funding must be used to improve an existing spring training facility in order to induce the Spring Training franchise to enter into or extend a lease for a minimum of a 20 year period.
2. At least 50% of the Project funding must be provided by the local government.
3. The franchise must be capable of drawing at least 50,000 in attendance annually and demonstrate direct and indirect job creation.
4. It must be in a county that levies a tourist development tax.

Joker Marchant Project was certified for funding as meeting the statutory requirements last July. Bonds had been issued earlier in the year to finance the construction of the project. A 2013 Interlocal Agreement with Polk County provided tourist development tax money over a corresponding 20 year period. All

those revenue sources, together with rent revenues and other project related revenues, provide the balance of the debt service required to pay for the project bonds.

My office has been in negotiations with the legal staff in the Department of Economic Opportunity to further refine the agreement. It is requested and recommended that the appropriate City officials be authorized to execute the agreement subject to final approval by the City Attorney.

SPORTS DEVELOPMENT PROGRAM AGREEMENT
BETWEEN
FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY
AND
CITY OF LAKELAND, FLORIDA

THE SPRING TRAINING FACILITY FUNDING AGREEMENT ("Agreement") Number SB16-006 is made and entered into by and between the State of Florida (the "State"), Department of Economic Opportunity ("DEO") and the CITY OF LAKELAND, FLORIDA (the "City"). DEO and the City are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

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

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

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

WHEREAS, the City was certified under this program by DEO on April 27, 2015, for the City's Stadium Renovation Project (the planning, design, funding and construction of the Joker Marchant Stadium Complex Improvements, as defined in the Spring Training Development Agreement entered into by the City and the Detroit Tigers, Inc., dated January 16, 2015); and

WHEREAS, the City entered into a Spring Training Facility Lease and Use Agreement with the Detroit Tigers, Inc. (hereinafter "Spring Training Franchise") on January 20, 2015 for the use of Joker Marchant Stadium Complex for Major League Baseball spring training; and

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

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

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

1. NOTICES.

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

If to DEO:

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

If to the City:

City of Lakeland-Attn: Timothy J. McCausland
ADDRESS: 228 South Massachusetts Ave.
Telephone: 863-834-6010
Facsimile: 863-834-8204
Email: timothy.mccausland@lakelandgov.net

With a copy to: City of Lakeland-Attn: Anthony J. Delgado, City Manager
ADDRESS: 228 South Massachusetts Ave.
Telephone: 863-834-6006
Facsimile: 863-834-8402

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

(1) when personally delivered,

(2) when transmitted via facsimile to the number set out above if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid),

(3) the day following the day (except if not a business day then the next business day) on which the same has been delivered prepaid to a reputable national overnight air courier service, or

(4) the third business day following the day on which the same is sent by certified or registered mail, postage prepaid, with return receipt.

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

(d) If the City has knowledge that it is unable to perform its obligations or unable to make use of any portion of the funds awarded herein, the City shall notify DEO within five business days.

2. ADMINISTRATORS.

(a) DEO's administrator in connection with this Agreement is Katherine Morrison, Strategic Industry Partnerships Manager, Division of Strategic Business Development.

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

Name: Bob Donahay

Title: Director, Parks and Recreation Dept.
E-mail: Bob.Donahay@lakelandgov.net
Telephone: 863-834-6089

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

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

3. TERM.

This Agreement is effective as of the date on which the last party executes the Agreement (such date, the "Effective Date")(Please recall the discussion related to the effective date of this agreement to start funding, and the effective date of our new Lease with the Tigers. We Are under an existing lease with them presently, which will continue until the completion of the stadium improvements, at which time the new lease becomes effective. I would propose that we consider a recital, that acknowledges the transition phase of this project where the state agrees to commence funding subject to completion of all the contingencies that have to occur. Something like:

The parties agree and acknowledge this agreement is intended to provide support for the City's Joker Marchant Stadium Complex Project,(Project)which is a qualified project pursuant to FS 286.11631. The parties also acknowledge that there are contingencies contained in the supporting contracts for the Projects that do not become fully executory until those contingencies occur. In order to fascilitate the purposes of the statute and this Agreement, the DEO agrees to initiate funding on the Effective Date, subject to the ultimately occurance of all contingencies. The City agrees to promply notify DEO of the failure or non occurance of any material contingency contained in the supporting Project contracts and agrees to reimburse DEO for any payments received by the City, shoud any of the material contingencies be delayed for more than 180 days past when thye are due. and, unless earlier terminated pursuant to the terms herein, will end when (a) the $20 million provided for herein has been distributed to the City in accordance with this Agreement or (b) there is a requirement to repay funds based on criteria in section 288.11631, F.S. and this Agreement. The City acknowledges and agrees that this Agreement is subject to the satisfactory performance of all duties and obligations hereunder, , and those set forth in section 288.11631, F.S., and other law. Notwithstanding the foregoing, the provisions of Articles 8, 9, 11, 12, 13, 15, 16, 17, 25, 30, 31, and 34 shall survive the termination, including expiration, of this Agreement; provided, however, that the record-keeping and audit-related obligations set forth in Article 11, *Audits and Records*, of this Agreement shall terminate in accordance with the requirements of Article 11.

4. DUTIES AND OBLIGATIONS OF THE CITY.

STATUTORY REQUIREMENTS

(a) The City 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. (2015), as verified and determined by DEO, which includes, but is not limited to, the following:

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

(2) The City must have a certified copy of a signed lease agreement with a spring training franchise. The signed agreement with a spring training franchise for the use of a facility must, at a minimum, be equal to the length of the term of the bonds issued for the public purpose of constructing or renovating a facility for a spring training franchise. The lease agreement must also require the franchise to reimburse the State if the franchise relocates before the lease agreement expires; the required reimbursement must be equal to the total amount of state distributions expected to be paid from the date the franchise breaks its lease agreement with the City through the final maturity of the bonds.

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

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

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

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

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

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

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

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

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

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

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

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

(f) If the City's Spring Training Franchise relocates from the spring training facility or no longer occupies or uses the facility as the facility's primary tenant, the City's Spring Training Franchise must reimburse the State in an amount equal to the total amount of state distributions expected to be paid

from the date the City's Spring Training Franchise breaks its agreement with the City through the maturity of the bonds issued for the City's Stadium Renovation Project under section 288.11631 F.S. The City agrees it has, and will have, at all times throughout the term of this Agreement, and will enforce, a valid provision for such reimbursement to the State in the City's signed spring training facility lease agreement with its Spring Training Franchise.

(g) The City agrees that, prior to making any material changes, amendments, modifications, extensions or the like, to the City's Spring Training and Facility Lease and Use Agreement, or the terms thereof, that have any effect on DEO's or the State's rights or privileges, including, but not limited to, the Spring Training Franchise's assignment of its rights and obligations under the lease, or the City's certification or the Spring Training Franchise's reimbursement requirements under section 288.11631, F.S., the City shall obtain DEO's prior, written approval.

REPORTING REQUIREMENTS

(h) **Annual Reports**: On or before August 1 of each year, the City shall submit an annual report to DEO which must include, but is not limited to, the following:

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

(2) A copy of the Spring Training Facility Lease and Use Agreement and the Spring Training Facility Development Agreement between the City and its Spring Training Franchise, including all amendments, modifications, extensions, assignments, or ancillary agreements thereto, current as of the date of the annual report. The City's Spring Training Franchise shall remain the Detroit Tigers, Inc., unless properly changed pursuant to law and the terms of this Agreement.

(3) A cost-benefit analysis of the Spring Training Franchise's impact on the City. This cost-benefit analysis must be substantially similar in content and format to the 2009 Major League Baseball Florida Spring Training Economic Impact Study, and contain any other information as timely and reasonably requested by DEO.

(4) A list of all material subcontracts, defined herein as agreements with an estimated cost greater than $250,000 executed in furtherance of this Agreement.

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

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

(7) A letter signed by the Mayor of the City certifying that all information and documentation contained in the annual report and submitted to DEO is true and correct.

(8) Any additional documents or certifications as reasonably requested and required by DEO.

The Parties acknowledge that the 2016 report, shal report data under the existing lease agreement and relates to the 2016 MLB Spring Training Season. Future Annual reports shall be in full compliance with this section.

(i) **Quarterly Reports**: The City must submit to DEO a narrative and financial reporting of all activities related to the City's Stadium Renovation Project financed under section 288.11631, F.S.,

that is the subject of this Agreement, quarterly, until such time as the renovations of, improvements to, and construction of the facility is complete and the City's Spring Training Franchise has begun spring training at that facility pursuant to the City and its Spring Training Franchise's facility lease agreement. Quarterly reports are due to DEO on or before 30 days following the end of the quarter. The first quarterly report shall be due on or before October 31, 2016 and must include a detailed summary of all Stadium Renovation Project activities and expenditures up to the date of the report. All quarterly reports must be accompanied by a contemporaneous letter from the Mayor of the City certifying that all information and documentation contained in the quarterly report as submitted to DEO is true and correct.

(ii) The City agrees to contract with woman-, veteran-, and minority-owned small business enterprises pursuant to the requirements of section 288.1167, F.S., and other applicable Florida laws. The Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915 or https://osd.dms.myflorida.com/directories, can provide a list of certified woman-, veteran-, and minority-owned small businesses.

5. DISTRIBUTIONS.

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

(1) The State of Florida's and DEO's performance and obligation for distribution of funds per this Agreement are contingent upon an annual appropriation by the Legislature. DEO shall be the final authority as to the availability of funds for this Agreement, and as to what constitutes an "annual appropriation" of funds to complete this Agreement. If such funds are not appropriated or available for the Agreement purpose, such event will not constitute a default by DEO or the State.

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

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

(c) Pursuant to subsection 212.20(6)(d)6.e., F.S., the City shall receive distributions from DOR of up to $83,333.00 monthly, beginning July 1, 2016, or upon execution of this Agreement, whichever is later, and continue, unless this Agreement is otherwise terminated, for not more than 20 years from the initial distribution date, in an amount not to exceed a total sum of $20,000,000.00. Failure to comply with the requirements set forth in this Agreement or applicable law, may result in the cessation of distributions, the application of financial consequences as set forth in Article 15, *Breach, Financial Consequences, and Remedies*, of this Agreement, the repayment of funds as referenced in section 288.11631, F.S., or Article 34, *Return or Recoupment of Funds*, of this Agreement, and the termination of this Agreement in whole or in part.

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

6. SUBCONTRACTS.

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

(b) The City may, as appropriate and in compliance with applicable law, subcontract the performance of the activities related to, in connection with, or in furtherance of this Agreement, including entering into subcontracts with vendors for services and commodities, *provided, however,* that the City shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract. The City shall not knowlingly enter into a subcontract in which DEO could be held liable to the subcontractor for any expenses or liabilities. The City agrees that DEO shall not be held liable to the subcontractor for any expenses or liabilities incurred under any subcontract. Pursuant to section 768.28, F.S., and to the extent permitted by applicable law, the City shall, at its expense, defend and hold DEO harmless of any liabilities incurred under any of the subcontracts entered into by the City in connection this Agreement. Subcontractors hired by the City, Joker Marchant Baseball Complex Project , in furtherance of this Agreement are required to comply with all relevant terms of this Agreement.

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

7. INDEPENDENT CAPACITY OF CONTRACTOR.

(a) The Parties mutually understand and agree that the City, its officers, agents, employees, subcontractors or assignees, in the performance of the City'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 City, 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.

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

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

(e) DEO shall not be responsible for withholding taxes, if any, with respect to the City's distributions hereunder. The City 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.

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

8. LIABILITY.

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

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

(c) The State and DEO may, in addition to other remedies available to them at law or equity and upon notice to the City, retain such monies from amounts due the City as may be necessary to satisfy any judgement of a court of competent jurisdiction.

9. INDEMNIFICATION.

(a) Pursuant to sections 768.28(2) and (19), F.S., neither Party indemnifies nor insures or assumes any liability for the other Party for the other Party's negligence.

(b) The City shall to the extent set forth in Fla. Stat. 768.28 be liable for the actions of its agents, employees, partners, or subcontractors and 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, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by the City, its agents, employees, partners, or subcontractors, provided, however, that the City is not obligated to indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or DEO.

(c) The City's obligations under the preceding paragraph with respect to any legal action are contingent upon the State or DEO giving the City:

(1) written notice of any action or threatened action,
(2) assistance in defending the action at the City's sole expense.

The City 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 City's prior written consent, which shall not be unreasonably delayed, conditioned or withheld.

(d) At DEO's election and upon notification to the City, the City shall assume the defense or settlement of any third-party claim arising under this Agreement; *provided, however*, that the City shall not settle or compromise any such claim in an amount over $1,000,000.00 without DEO's prior written consent. Notwithstanding the foregoing, (1) DEO shall have the right, but not the obligation, at its option and expense, to participate fully in the defense or settlement of any third-

party claim; and (2) if the City 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, and (ii) DEO shall also be entitled to join the City in any third-party claim for the purpose of enforcing any right of indemnity hereunder.

10. RESPONSIBILITIES OF GOVERNING BOARD OR AUTHORITIES.

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

11. AUDITS AND RECORDS.

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

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

(c) The City shall maintain and retain all City records, financial records, supporting documents, statistical records, and any other documents, including electronic storage media, pertinent to this Agreement, as well as all financial records related to funds paid by the City 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 City shall cooperate with DEO to facilitate the duplication and transfer of such records or documents upon request of DEO.

(d) If applicable, the City 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 City 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 City.

(f) The City will comply with section 20.055(5), F.S., and will use its best efforts to require, its Spring Training Franchise, and any of its contractors or subcontractors to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to section 20.055, F.S. The City agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the City's or its

Spring Training Franchise, 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 City or its Spring Training Franchise, beneficiary, contractor(s), or subcontractor(s). Such reasonable costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees.

(g) The City shall provide any information included in 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.

(h) Within 60 working days of the close of the City's fiscal year, on an annual basis, the City 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 City'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 City.

12. ACCESS TO RECORDS AND PUBLIC RECORDS REQUIREMENTS.

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

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

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

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

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

(2) The City shall use its best efforts to ensure that public records in the custody and/or control of the City, the City's Spring Training Franchise or its affiliates, or the City's agents, employees, partners, contractors or subcontractors that are exempt or confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law.

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

(f) The City shall transfer to DEO, at no cost to DEO, all public records pertaining to this Agreement upon expiration or termination, of this Agreement. All electronic records shall be provided to DEO in a DEO-compatible format.

(g) To the extent allowable by law, the City shall 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 City, its Spring Training Franchise, agents, employees, partners, contractors, or subcontractors, provided, however, that the City does not indemnify for that portion of any costs or damages proximately caused by the negligent act or omission of the State or DEO. DEO, in its sole discretion, has the right, but the not obligation, to enforce this indemnification provision.

13. GOVERNING LAW.

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

14. STRICT COMPLIANCE.

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

15. BREACH, FINANCIAL CONSEQUENCES, AND REMEDIES.

(a) If the City fails to comply with any of the term of this Agreement, including but not limited to, timely delivery of the reports required under this Agreement, continuing to meet the criteria for certification under section 288.11631, F.S., and existence of a valid, DEO-approved spring training facility lease with a spring training franchise, continually throughout the term of this Agreement, DEO may exercise any of the remedies available to it at law or in equity, and including, but without limitation, any or all of the following:

(2) cessation and requirement of repayment of distributions received by City under section 288.1131, F.S., or this Agreement, as required by section 288.1131, F.S., or this Agreement; and upon the judgement of the appropriate court of competent jurisdiction,

(3) termination of this Agreement in whole or in part.

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

(1) If the City fails to timely or adequately provide, , any of the reports, documents, certification(s), or portions thereof required by this Agreement, or requested by DEO pursuant to this Agreement, including, but not limited to, the reports, documents, and certifications described in Article 4, *Duties and Obligations of the City*, of this Agreement, DEO will provide written notice of said failure to the City.

(c) If the City fails to cure any breach or default of this Agreement or applicable law related thereto,after a reasonable notice and an opportunity to cure, DEO has the right, but not the obligation, to impose any or all of the following financial consequences:

(2) If DEO, in its sole, reasonable discretion, determines that the City has knowingly submitted or certified to information, or made a representation, that is false, misleading, deceptive, or otherwise untrue, or knowingly submitted or certified to information with material omissions, including, but not limited to, the information required by Article 4, *Duties and Obligations of the City*, paragraphs (h)-(j), *Reporting Requirements*, of this Agreement, DEO shall provide notice of the same to the City.

(3) If the lease agreement between the City and its Spring Training Franchise is terminated before this Agreement expires, or before the payments made to the City under this Agreement or section 288.11631, F.S., end, the City shall, within 12 months of termination of the lease agreement with that Spring Training Franchise, enter into a new lease agreement, which must be with a major league baseball spring training franchise and approved by DEO, for a term at least equal to the time remaining on the original Spring Training Franchise's lease. Upon the sooner of City's failure to enter into such a new lease with a spring training franchise within that 12 month period or City's failure to provide assurances to DEO within 7 days of DEO's demand that City is attempting in good faith to enter into a new lease agreement as prescribed above, if the State has not received reimbursement in full from the Spring Training Franchise as required by section 288.11631(2)(a)2., F.S., DEO shall have the right, but not the obligation, to require City to pay to DEO an amount equal to the City's monthly distribution received by the City from the State under this Agreement each month until such time as the City enters into a new DEO-approved lease agreement with a spring training franchise as described herein and pursuant to section 288.11631, F.S., the permanent halting of distributions to the City under this Agreement, or the expiration of this Agreement and permanent cessation of the distributions pursuant thereto.

16. <u>SEVERABILITY</u>.

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

17. <u>PRESERVATION OF REMEDIES</u>.

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

18. DISCRIMINATORY VENDOR.

The City affirms that it is aware of the provisions of section 287.134, F.S. The City shall disclose to DEO if any of its affiliates, as defined by section 287.134(1)(a.), F.S. appears on the discriminatory vendor list.

19. NON-DISCRIMINATION.

The City 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 City shall insert a provision in accordance with this Article, in all subcontracts for services in relation to this Agreement.

20. HARASSMENT-FREE WORKPLACE.

The City shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management.

21. PUBLIC ENTITY CRIMES.

The City affirms that it is aware of the provisions of section 287.133, F.S., and that at no time has the City, its Spring Training Franchise, or its affiliates, as defined by section 287.133(1)(a), F.S., been convicted of a Public Entity Crime. The City agrees that it shall not violate such law and further acknowledges and agrees that any conviction of the City, its Spring Training Franchise or its affiliates during the term of this Agreement may result in the termination of this Agreement

22. WARRANTY OF ABILITY TO PERFORM.

The City 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 City's or its Spring Training Franchise, beneficiary's or its affiliates' ability to satisfy its Agreement duties or obligations. The City shall immediately notify DEO in writing if the City's or its Spring Training Franchise's or its affiliates' ability to perform in connection with this Agreement is compromised in any manner during the term of this Agreement.

23. EMPLOYMENT ELIGIBILITY VERIFICATION.

(a) Executive Order 11-116, signed May 27, 2011, by the Governor of Florida, requires DEO contracts in excess of nominal value to expressly require the City to:

(1) Utilize the U.S. DEO of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the City during the Agreement term; and,

(b) E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States after the effective date of the required Memorandum of Understanding (MOU); the responsibilities and elections of Federal contractors, however, may vary, as stated in Article II.D.1.c., of the MOU. There is no charge to employers to use E-Verify. DEO of Homeland Security's E-Verify system can be found at:

http://www.dhs.gov/files/programs/gc_1185221678150.shtm

(c) If the City does not have an E-Verify MOU in effect, the City must enroll in the E-Verify system prior to hiring any new employee after the effective date of this Agreement.

24. LOBBYING.

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

(b) The City will use its best efforts to 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.

25. ATTORNEY FEES.

DEO shall not be liable to pay attorney fees, interest, expenses or cost of collection in conjunction with this Agreement.

26. NON-ASSIGNMENT.

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

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

27. RENEGOTATION AND AMENDMENTS.

The Parties agree to renegotiate this Agreement if Federal and/or State revisions of any applicable laws or regulations make changes to this Agreement necessary. In addition to changes necessitated by law, DEO may at any time, with written notice to the City, make changes within the general scope of this Agreement. Such changes may include modification of the requirements, changes to processing procedures, or other changes as decided by DEO. Any investigation necessary to determine the impact of any such change(s) shall be the responsibility of the City. Amendments to or modifications of this Agreement shall only be valid when such change(s) are in writing and duly executed by all Parties. Any such change(s) shall become effective upon the date of execution of both Parties or such later date as may be specified therein.

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

Neither Party shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party's control, or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay or failure to perform from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting delay or disruption in the Party's performance obligation under this Agreement. If the delay or failure to perform is excusable under this paragraph, the delay or failure to perform will not result in any additional charge or cost under the Agreement to either Party. In the case of any delay or failure to perform the City believes is excusable under this paragraph, the City 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 calendar days after the cause that creates or will create the delay or nonperformance first arose, if the City could reasonably foresee that a delay or nonperformance could occur as a result; or (2) within five calendar days after the date Grantee 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 CITY'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY. ADDITONALLY, THE FORGOIING SHALL CONSTITUTE THE CITY'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 City of its decision in writing. No claim for damages, other than for an extension of time, shall be asserted against DEO. The City shall not be entitled to an increase in the Agreement distribution amount of any kind from DEO for direct, indirect, consequential, impact, or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If the City'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 City 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 City, provided the City 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.

29. AUTHORITY OF THE CITY'S SIGNATORY.

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

30. NO THIRD PARTY BENEFICIARIES.

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

31. INFORMATION RELEASE AND ADVERTISING.

32. CONFLICT OF INTEREST.

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

33. CONTINUING DUTY TO DISCLOSE LEGAL PROCEEDINGS.

(a) Prior to execution of this Agreement, the City must disclose all prior or on-going civil or criminal litigation, investigations, arbitration or administrative proceedings (Proceedings) involving the City, the City's Spring Training Franchise, beneficiary or affiliates, contractors, or subcontractors, in a written statement to DEO's Agreement Manager. Thereafter, the City has a continuing duty to promptly disclose all Proceedings upon occurrence.

(b) This duty of disclosure applies to the City's, the City's Spring Training Franchise, beneficiary's and affiliate's, contractor's, and subcontractor's officers and directors when any Proceeding relates to the officer's or director's business or financial activities arising out of this Agreement. Details of settlements that are prevented from disclosure by the terms of the settlement shall be annotated as such.

(c) The City shall promptly notify DEO's Agreement Manager of any Proceeding relating to or affecting the City's, the City's Spring Training Franchise's, the City's beneficiaries', affiliates', contractors', or subcontractors' business related to this Agreement. If the existence of such Proceeding causes the State concern that the City's or its beneficiary's ability or willingness to perform the Agreement is jeopardized, the City shall be required to provide DEO's Agreement Manager all reasonable assurances requested by DEO to demonstrate that:

(1) The City will be able to perform the Agreement in accordance with its terms and conditions; and

34. RETURN OR RECOUPMENT OF FUNDS.

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

(b) Notwithstanding the damages limitations of Article 8, *Liability*, if the City's non-compliance with any provision of the Agreement results in additional cost or monetary loss to DEO or the State of Florida, DEO can recoup that cost or loss from monies owed to the City under this Agreement. Notwithstanding the above, upon demand from DEO, the City shall repay such cost or loss in full to DEO within 60 days of the date of notice of the amount owed, unless DEO agrees, in writing, to an alternative timeframe.

36. EXECUTION IN COUNTERPARTS.

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

37. ENTIRE AGREEMENT.

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

The remainder of this page is intentionally blank.

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.

CITY OF LAKELAND	**DEPARTMENT OF ECONOMIC OPPORTUNITY**
SIGNED:	SIGNED:
R. HOWARD WIGGS	**CISSY PROCTOR**
MAYOR	**EXECUTIVE DIRECTOR**
DATE: ATTEST: _____ Kelly S. Koos, City Clerk Approved as to form and correctness: _____ Timothy J. McCausland, City Attorney	DATE:

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

OFFICE OF GENERAL COUNSEL
DEO OF ECONOMIC OPPORTUNITY

By: _____

Approved Date: _____

ATTACHMENT A
AUDIT REQUIREMENTS

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

MONITORING

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

AUDITS

PART I: FEDERALLY FUNDED

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

1. In the event that the recipient expends $300,000 ($500,000 for fiscal years ending after December 31, 2003) or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. Exhibit 1 to this agreement indicates Federal resources awarded through DEO by this agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from DEO. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, will meet the requirements of this part.

2. In connection with the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular
A-133, as revised.

3. If the recipient expends less than $300,000 ($500,000 for fiscal years ending after December 31, 2003) in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the recipient expends less than $300,000 ($500,000 for fiscal years ending after December 31, 2003) in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from the recipient resources obtained from other than Federal entities).

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

PART II: STATE FUNDED

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

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of $500,000 in any fiscal year of such recipient (for fiscal years ending September 30, 2004 or thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Exhibit 1 to this agreement indicates state financial assistance awarded through DEO by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from DEO, other state agencies, and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for Federal program matching requirements.

2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

3. If the recipient expends less than $500,000 in state financial assistance in its fiscal year (for fiscal years ending September 30, 2004 or thereafter), an audit conducted in accordance with the provisions of section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than $500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of section 215.97, F.S., the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).

4. Additional information regarding the Florida Single Audit Act can be found at:

   http://www.myflorida.com/audgen/pages/flsaa.htm

PART III: OTHER AUDIT REQUIREMENTS

Not applicable

PART IV: REPORT SUBMISSION

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

   A. DEO at each of the following addresses:

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

      or

      Paper (hard copy):

      Department Economic Opportunity

      MSC # 130, Caldwell Building

      107 East Madison Street

      Tallahassee, FL 32399-4126

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

      Federal Audit Clearinghouse

      Bureau of the Census

      1201 East 10th Street

      Jeffersonville, IN 47132

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

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

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

   or

   Paper (hard copy):

   Department Economic Opportunity

   MSC # 130, Caldwell Building

   107 East Madison Street

   Tallahassee, FL 32399-4126

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

   A. DEO at each of the following addresses:

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

      or

      Paper (hard copy):

      Department Economic Opportunity

      MSC # 130, Caldwell Building

      107 East Madison Street

      Tallahassee, FL 32399-4126

   B. The Auditor General's Office at the following address:

      Auditor General

      Local Government Audits/342

      Claude Pepper Building, Room 401

      111 West Madison Street

      Tallahassee, FL 32399-1450

      Email Address: flaudgen_localgovt@aud.state.fl.us

4. Copies of reports or the management letter required by Part III of this agreement shall be submitted by or on behalf of the recipient directly to:

   A. DEO at each of the following addresses:

      N/A

5. Any reports, management letter, or other information required to be submitted to DEO pursuant to this agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

6. Recipients, when submitting financial reporting packages to DEO for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (non-profit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION

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

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EXHIBIT 1 TO ATTACHMENT A
ALLOCATION OF RESOURCES

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

Federal Program: None

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

Federal Program: Not applicable

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

MATCHING RESOURCES FOR FEDERAL PROGRAMS:

Federal Program: None

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

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		73.016		$20,000,000	General Revenue
					Total Award	**$20,000,000***

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 City of Lakeland from the Department of Revenue per section 212.20(6)(d)6.e., F.S.

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