

**STATE OF FLORIDA
FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION**

CONTRACT No. _____

The FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION, whose address is 620 South Meridian Street, Tallahassee, Florida 32399-1600, hereafter "Commission," and CONTRACTOR NAME, CONTRACTOR FEID#, whose address is _____, hereinafter "Contractor", collectively, "Parties".

INTRODUCTORY CLAUSES

The Commission and Contractor intend to partner together to provide media planning and buying services, in accordance with this contract, FWC RFP#13/14-51 and the awarded vendor's response. RFP 13/14-51 and the awarded vendor's response are hereby attached and incorporated into this contract. In case of any conflict, the order of precedence and prevailing terms shall be in this order; this Contract, FWC RFP 13/14-51 and the awarded vendor's response.

The Commission has awarded this Contract as a result of FWC RFP #13/14-51 pursuant to the requirements of Section 287.057, Florida Statutes; and

Such benefits are for the ultimate good of the State of Florida, its resources, wildlife, and public welfare.

TERMS OF THE CONTRACT

The Commission and the Contractor, for the considerations stated in this Contract, agree as follows:

- 1. PROJECT DESCRIPTION.** The Contractor shall provide the services and products, and perform the specific responsibilities and obligations, as set forth in the Scope of Work, attached hereto as Attachment A and made a part hereof (hereafter, Scope of Work). The Scope of Work specifically identifies project tasks and accompanying deliverables. These deliverables must be submitted and approved by the Commission prior to any payment. The Commission will not accept any deliverable that does not comply with the specified required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable. If this Contract was competitively procured, the Contractor's response to the Commission's solicitation is hereby incorporated by reference.
- 2. PERFORMANCE.**
 - A. Contractor Performance.** The Contractor shall perform the activities described in the Scope of Work in a proper and satisfactory manner. Unless otherwise provided for in the Scope of Work, any and all equipment, products or materials necessary or appropriate to perform under this Contract shall be supplied by the Contractor. Contractor shall obtain all necessary local, state, and federal authorizations necessary to complete this project, and the Contractor shall be licensed as necessary to perform under this Contract as may be required by law, rule, or regulation; the Contractor shall provide evidence of such compliance to the Commission upon request. The Contractor shall procure all supplies and pay all charges, fees, taxes and incidentals that may be required for the completion of this Contract. By acceptance of this Contract, the Contractor warrants that it has the

capability in all respects totally perform the requirements and the integrity and reliability that will assure good-faith performance as a responsible Contractor. Contractor shall immediately notify the Commission's Contract Manager in writing if its ability to perform under the Contract is compromised in any manner during the term of the Contract. The Commission shall take appropriate action, including potential termination of this Contract pursuant to paragraph eleven (11) Remedies, below, in the event Contractor's ability to perform under this Contract becomes compromised.

- B. Contractor – Quarterly Minority and Service-Disabled Veteran Business Enterprise Report.** Contractor shall provide a quarterly Minority and Service-Disabled Veteran Business Enterprise Report to the Commission's Contract Manager, summarizing the participation of certified and non-certified minority and service-disabled veteran subcontractors/material suppliers for the current quarter and project to date. The report shall include the names, addresses and dollar amount of each certified and non-certified Minority Business Enterprise and Service-Disabled Veteran Enterprise participant and a copy must be forwarded to the Commission's Contract Manager. The Office of Supplier Diversity at (850) 487-0915 will assist in furnishing names of qualified minorities. The Commission's Minority Coordinator at (850) 488-3427 will assist with questions and answers.
- C. Contractor Responsibilities.** Contractor agrees that all Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Commission. The Commission may conduct, and Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by Contractor. The Commission may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with the Commission's security or other requirements. Such refusal shall not relieve Contractor of its obligation to perform all work in compliance with the Contract. The Commission may reject and bar from any facility for cause any of Contractor's employees, subcontractors, or agents.
- D. Commission Rights to Assign or Transfer.** Contractor agrees that the State of Florida shall at all times be entitled to assign or transfer its rights, duties, or obligations under this Contract to another governmental agency in the State of Florida, upon giving prior written notice to Contractor.

3. CONTRACT PERIOD.

- A. Contract Period and Limited Obligation Period.** This Contract shall begin upon execution by both Parties or January 6, 2014 (whichever is later) and end January 1, 2019, inclusive. The Commission shall not be obligated to pay for costs related to this Contract prior to its beginning date or after its ending date.
- B. Renewal – Competitive Procurement.** If this Contract was competitively procured, the renewal price(s) must be set forth in the Contractor's response to the Commission's bid document. The renewal price(s) for this Contract are included in the Scope of Work. If applicable, renewal of this Contract shall be subject to the availability of funds,

satisfactory performance evaluations by the Commission, and at the discretion of the Commission; it must also be in writing and subject to the same terms and conditions of this Contract. Renewal amendments must be executed prior to the end date of the Contract. Any costs associated with a renewal may not be passed onto the Commission.

- C. Renewal – Exceptional Purchase.** If this Contract was procured by an exceptional purchase pursuant to Subsections 287.057(3)(a) or (3)(c), Florida Statutes (F.S.), it may not be renewed. Subsection 287.057(13), F.S., provides that contracts for commodities or contractual services may be renewed for up to three (3) years, or for a total term not to exceed the original Contract period, whichever is longer. If applicable, renewal of this Contract shall be subject to the availability of funds, satisfactory performance evaluations by the Commission, and at the discretion of the Commission; it must also be in writing and subject to the same terms and conditions of this Contract. Renewal amendments must be executed prior to the end date of the Contract. Any costs associated with a renewal may not be passed onto the Commission.
- D. Renewal Period.** This Contract Choose one of the following to complete this sentence: If this contract was competitively procured, the renewal price(s) must be set forth in the Contractor's response to the Commission's bid document. The renewal price(s) for this Contract are included in the Scope of Work.
- E. Extension.** If this is a contract for contractual services, any extension of this contract as provided for in the Scope of Work shall be in writing for a period not to exceed six (6) months and shall be subject to the same terms and conditions set forth in the initial contract. There shall be only one extension of this contract unless the failure to meet the criteria set forth in the contract for completion of the contract is due to events beyond the control of the contractor.

4. COMPENSATION AND PAYMENTS.

- A. Compensation.** As consideration for the services rendered by the Contractor under the terms of this Contract, the Commission shall pay the Contractor on a fee schedule basis as specified in the Scope of Work. Based on the fee schedule rates/amounts specified, maximum compensation under this Contract shall not exceed \$500,000.00 annually
- B. Payments.** The Commission shall pay the Contractor for satisfactory performance of the tasks identified in the Scope of Work, as evidenced by the completed deliverables, upon submission of invoices, accompanied by supporting documentation sufficient to justify invoiced expenses or fees, and after acceptance of services and deliverables in writing by the Commission's Contract Manager, identified in paragraph twelve (12), below. Unless otherwise specified in the Scope of Work, invoices shall be due monthly, commencing from the start date of this Contract. Invoices must be legible and must clearly reflect the goods or services that were provided in accordance with the terms of the Contract for the invoice period. Unless otherwise specified in the Scope of Work, a final invoice shall be submitted to the Commission no later than 45 days following the expiration date of this Contract to assure the availability of funds for payment. Costs under this Contract must be obligated and all work completed by the Contractor by the end of the Contract period identified in paragraph three (3).
- C. Invoices.** Each invoice shall include the Commission Contract Number and the Contractor's Federal Employer Identification (FEID) Number. Invoices may be

submitted electronically. If submitting hard copies, an original and two (2) copies of the invoice, plus all supporting documentation, shall be submitted. All bills for amounts due under this Contract shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Contractor acknowledges that the Commission's Contract Manager shall reject invoices lacking documentation necessary to justify invoiced expenses.

- D. Travel Expenses.** If authorized in the Scope of Work, travel expenses shall be reimbursed in accordance with Section 112.061, F.S.
- E. State Obligation to Pay.** The State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature. The parties hereto understand that this Contract and any renewal thereof is not a commitment to future appropriations, but is subject to appropriation and authority to spend provided by the Legislature. The Commission shall be the final authority as to the availability of funds for this Contract, and as to what constitutes an "annual appropriation" of funds to complete this Contract. If such funds are not appropriated or available for the Contract purpose, such event will not constitute a default on behalf of the Commission or the State. The Commission's Contract Manager shall notify Contractor in writing at the earliest possible time if funds are not appropriated or available.
- F. Non-Competitive Procurement and Rate of Payment.** Section 216.3475, F.S., requires that under non-competitive procurements, a Contractor may not receive a rate of payment in excess of the competitive prevailing rate for those services unless expressly authorized in the General Appropriations Act. If applicable, Contractor warrants, by execution of this Contract, that the amount of non-competitive compensation provided in this Contract is in compliance with Section 216.3475, F.S.
- G. Professional Services – Truth-In-Negotiation Certificate.** If this Contract is for professional services and contains a lump-sum or a cost-plus-a-fixed-fee form of compensation which exceeds the threshold of Category Four (\$195,000) as provided in Section 287.017, F.S., then:
- a. The Contractor must execute a Truth-in-Negotiations Certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting, pursuant to Section 287.055(5), F.S.
 - b. The original contract price and any additions will be adjusted to exclude any significant sums by which the Commission determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates. All such contract adjustments must be made within one (1) year following the end of this Contract.
- H. Time Limits for Payment of Invoices.** Payments shall be made in accordance with Sections 215.422 and 287.0585, F.S., governing time limits for payment of invoices. Section 215.422, F.S. provides that agencies have five (5) working days to inspect and approve goods and services, unless bid specifications or the Scope of Work, specifies otherwise. If payment is not available within forty (40) days, measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved, a separate interest penalty set by the Department of Financial Services pursuant to Section 55.03(1), F.S., will be due and payable in addition to the invoice amount. Invoices returned to a vendor due to preparation errors will result in a payment

delay. Invoice payment requirements do not start until a properly completed invoice is provided to the agency.

- I. Electronic Funds Transfer.** Contractor agrees to enroll in Electronic Funds Transfer (EFT), offered by the State's Chief Financial Officer, within thirty (30) days of the date the last Party has signed this Contract. Copies of the Authorization form and a sample blank enrollment letter can be found on the vendor instruction page at:

http://www.fldfs.com/aadir/direct_deposit_web/Vendors.htm

Questions should be directed to the State of Florida's EFT Section at (850) 413-5517. Once enrolled, invoice payments will be made by EFT.

- J. Vendor Ombudsman.** A Vendor Ombudsman, whose duties include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a State agency, may be contacted at (850) 413-5516 or by calling the Chief Financial Officer's Hotline, (800) 342-2762.

- 5. CERTIFICATIONS AND ASSURANCES.** Upon execution of this Contract by the Contractor, the Contractor shall complete, sign and return to the Commission's Contract Manager a completed copy of the form entitled "Certifications and Assurances," attached hereto and incorporated as Attachment B. This includes: Debarment and Suspension Certification; Certification Against Lobbying; Certification Regarding Public Entity Crimes; and Certification Regarding the Scrutinized Companies List (applicable to contracts for goods or services in excess of \$1 million); Attachment B, incorporated and made part of this Contract.

6. MYFLORIDAMARKETPLACE VENDOR REGISTRATION AND TRANSACTION FEE.

- A. MyFloridaMarketPlace.** In accordance with Rule 60A-1.030 of the Florida Administrative Code (F.A.C.), each vendor doing business with the State for the sale of commodities or contractual services as defined in Section 287.012, F.S., shall register in the MyFloridaMarketPlace system, unless exempted under Rule 60A-1.030(3), F.A.C. Information about the registration process is available, and registration may be completed, at the MyFloridaMarketPlace website (link under Business on the State portal at www.myflorida.com). Interested persons lacking Internet access may request assistance from the MyFloridaMarketPlace Customer Service at (866-352-3776) or from State Purchasing, 4050 Esplanade Way, Suite 300, Tallahassee, Florida 32399.
- B. Transaction Fee.** Pursuant to Section 287.057(22), F.S., all payments, unless exempt under Rule 60A-1.030(3), F.A.C., shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State. For payments within the State accounting system (Florida Accounting Information Resource, FLAIR, or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.
- C. Transaction Fee Credits.** The Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any items(s) if such items(s) are returned to the

Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the Contract. Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering re-procurement costs from the Contractor in addition to all outstanding fees. VENDORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.

7. RETURN OR RECOUPMENT OF FUNDS.

- A. Overpayments to Contractor.** Contractor shall return to the Commission any overpayments due to unearned funds or funds disallowed pursuant to the terms of this Contract that were disbursed to Contractor by the Commission. In the event that Contractor or its independent auditor discovers that overpayment has been made, Contractor shall repay said overpayment within forty (40) calendar days without prior notification from the Commission. In the event that the Commission first discovers an overpayment has been made, the Commission will notify Contractor in writing. Should repayment not be made in a timely manner, the Commission shall be entitled to charge interest at the lawful rate of interest established pursuant to Section 55.03(1), F.S., on the outstanding balance beginning forty (40) calendar days after the date of notification or discovery. Refunds should be sent to The Commission's Contract Manager, and made payable to the "The Florida Fish and Wildlife Conservation Commission."
- B. Additional Costs or Monetary Loss Resulting from Contractor Non-Compliance.** If Contractor's non-compliance with any provision of the Contract results in additional cost or monetary loss to the Commission or the State of Florida, the Commission can recoup that cost or loss from monies owed to Contractor under this Contract or any other contract between Contractor and the Commission. In the event that the discovery of this cost or loss arises when no monies are available under this Contract or any other contract between Contractor and the Commission, Contractor will repay such cost or loss in full to the Commission within thirty (30) days of the date of notice of the amount owed, unless the Commission agrees, in writing, to an alternative timeframe. If the Contractor is unable to repay any cost or loss to the Commission, the Commission shall notify the State of Florida, Department of Financial Services, for resolution pursuant to Section 17.0415, F.S.

- 8. COMMISSION EXEMPT FROM TAXES, PROPERTY EXEMPT FROM LIEN.** The Contractor recognizes that the State of Florida, by virtue of its sovereignty, is not required to pay any taxes on the services or goods purchased under the terms of this Contract.

The Contractor acknowledges that Property being improved is titled to the State of Florida, belongs to the State of Florida, and is not subject to lien of any kind for any reason. The Contractor shall include notice of such exemptions in any subcontracts and purchase orders issued hereunder

- 9. MONITORING.** The Commission's Contract Manager shall actively monitor Contractor's performance and compliance with the terms of this Contract. The Commission reserves the right for any Commission staff to make scheduled or unscheduled, announced or unannounced monitoring visits. Specific monitoring terms, conditions, and schedules may be included in the Scope of Work.

10. TERMINATION.

- A. Commission Unilateral Termination.** The Commission may unilaterally terminate this Contract for convenience by providing the Contractor with thirty (30) calendar days of written notice of its intent to terminate. Contractor shall not be entitled to recover any cancellation charges or lost profits.
- B. Termination – Fraud or Willful Misconduct.** This Contract shall terminate immediately in the event of fraud or willful misconduct on the part of the Contractor. In the event of such termination, the Commission shall provide Contractor with written notice of termination.
- C. Termination - Funds Unavailability.** In the event funds to finance this Contract become unavailable or if federal or state funds upon which this Contract is dependent are withdrawn or redirected, the Commission may terminate this Contract upon no less than twenty-four (24) hours notice in writing to Contractor. Said notice shall be delivered by certified mail, return receipt requested or in person with proof of delivery. The Commission shall be the final authority as to the availability of funds and will not reallocate funds appropriated for this Contract to another program thus causing “lack of funds.” In the event of termination of this Contract under this provision, Contractor will be compensated for any work satisfactorily completed prior to notification of termination.
- D. Termination – Other.** The Commission may terminate this Contract if the Contractor fails to: 1.) comply with all terms and conditions of this Contract; 2.) produce each deliverable within the time specified by the Contract or extension; 3.) maintain adequate progress, thus endangering the performance of the Contract; or, 4.) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences for default. The rights and remedies of the Commission in this clause are in addition to any other rights and remedies provided by law or under the Contract. Contractor shall not be entitled to recover any cancellation charges or lost profits.
- E. Contractor Discontinuation of Activities upon Termination Notice.** Upon receipt of notice of termination, the Contractor shall, unless the notice directs otherwise, immediately discontinue all activities authorized hereunder. Upon termination of this Contract, the Contractor shall promptly render to the Commission all property belonging to the Commission. For the purposes of this section, property belonging to the Commission shall include, but shall not be limited to, all books and records kept on behalf of the Commission.

11. REMEDIES.

- A. Financial Consequences.** In accordance with Section 287.058(1)(h), F.S., the Scope of Work, contains clearly defined deliverables. If Contractor fails to produce each deliverable within the time frame specified by the Scope of Work, the budget amount allocated for that deliverable will be deducted from Contractor’s payment. The Commission shall apply any additional financial consequences identified in the Scope of Work.

B. Cumulative Remedies. The rights and remedies of the Commission in this paragraph are in addition to any other rights and remedies provided by law or under the Contract.

12. NOTICES AND CORRESPONDENCE. Any and all notices shall be delivered to the individuals identified below. In the event that any Party designates a different Contract Manager after the execution of this Contract, the Party will provide written notice of the name, address, zip code, telephone and fax numbers, and email address of the newest Contract Manager or individual authorized to receive notice on behalf of that Party to all other Parties as soon as possible, but not later than five (5) business days after the new Contract Manager has been named. A designation of a new Contract Manager shall not require a formal amendment to the Contract.

FOR THE COMMISSION:
Contract Manager Contact
Information to be provided
In this Section

FOR THE CONTRACTOR:
Contract Manager Contact
Information to be provided
In this Section

13. AMENDMENT.

A. Waiver or Modification. No waiver or modification of this Contract or of any covenant, condition, or limitation herein contained shall be valid unless in writing and lawfully executed by both parties.

B. Change Orders. The Commission may, at any time, by written order, make a change to this Contract. Such changes are subject to the mutual agreement of both parties as evidenced in writing. Any change which causes an increase or decrease in the Contractor's cost or time shall require an Amendment. Minor changes, such as those updating a party's contact information, may be accomplished by a Modification.

C. Renegotiation upon Change in Law or Regulations. The Parties agree to renegotiate this Contract if federal and/or state revisions of any applicable laws or regulations make changes in the Contract necessary.

14. INTELLECTUAL PROPERTY RIGHTS.

A. Contractor's Preexisting Intellectual Property (Proprietary) Rights. Unless specifically addressed otherwise in the Scope of Work, intellectual property rights to the Contractor's preexisting property will remain with the Contractor. Contractor shall indemnify and hold harmless the Commission and its employees from any liability, including costs, expenses, and attorney's fees, for or on account of any copyrighted, patented, or un-patented invention, process or article manufactured or supplied by Contractor.

B. Proceeds Related to Intellectual Property Rights. Proceeds derived from the sale, licensing, marketing or other authorization related to any intellectual property right created or otherwise developed by the Contractor under this Contract for the Commission shall be handled in the manner specified by applicable state statute.

C. Commission Intellectual Property Rights. Where activities supported by this Contract produce original writing, sound recordings, pictorial reproductions, drawings or other graphic representation and works of any similar nature, the Commission and the State of

Florida have the unlimited, royalty-free, nonexclusive, irrevocable right to use, duplicate and disclose such materials in whole or in part, in any manner, for any purpose whatsoever and to have others acting on behalf of the Commission to do so. If this Contract is supported by federal funds, the federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes, and to authorize others to do so.

15. RELATIONSHIP OF THE PARTIES.

- A. Independent Contractor.** The Contractor shall perform as an independent contractor and not as an agent, representative, or employee of the Commission. The Contractor covenants that it presently has no interest and shall not acquire any interest that would conflict in any manner or degree with the performance of services required. Each party hereto covenants that there is no conflict of interest or any other prohibited relationship between the Contractor and the Commission.
- B. Contractor Training Qualifications.** Contractor agrees that all Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification.
- C. Commission Security.** All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Commission. The Commission may conduct, and Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by Contractor. The Commission may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with the Commission's security or other requirements. Such refusal shall not relieve Contractor of its obligation to perform all work in compliance with the Contract. The Commission may reject and bar from any facility for cause any of Contractor's employees, subcontractors, or agents.
- D. Commission Rights to Assign or Transfer.** Contractor agrees that the State of Florida shall at all times be entitled to assign or transfer its rights, duties, or obligations under this Contract to another governmental agency in the State of Florida, upon giving prior written notice to Contractor.
- E. Commission Rights to Undertake or Award Supplemental Contracts.** Contractor agrees that the Commission may undertake or award supplemental contracts for work related to the Contract. Contractor and its subcontractors shall cooperate with such other contractors and the Commission in all such cases.

16. SUBCONTRACTS.

- A. Authority. Contractor is permitted to subcontract work under this Agreement, therefore, the following terms and conditions apply.** If Contractor is authorized to subcontract, Contractor shall ensure, and provide assurances to the Commission upon request, that any subcontractor selected for work under this Contract has the necessary qualifications and abilities to perform in accordance with the terms and conditions of this Contract. Contractor must provide the Commission with the names of any subcontractor considered for work under this Contract; the Commission reserves the right to reject any

subcontractor. Contractor agrees to be responsible for all work performed and all expenses incurred with the project. Any subcontract arrangements must be evidenced by a written document available to the Commission upon request. Contractor further agrees that the Commission shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract and Contractor shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract. Contractor, at its expense, will defend the Commission against such claims. The following provisions apply, in addition to any terms and conditions included in the Scope of Work.

- B. Contractor Payments to Subcontractor.** If subcontracting is permitted pursuant to Paragraph A, above, Contractor agrees to make payments to the subcontractor within seven (7) working days after receipt of full or partial payments from the Commission in accordance with Section 287.0585, F.S., unless otherwise stated in the contract between Contractor and subcontractor. Contractor's failure to pay its subcontractors within seven (7) working days will result in a penalty charged against Contractor and paid to the subcontractor in the amount of one-half of one (1) percent of the amount due per day from the expiration of the period allowed herein for payment. Such penalty shall be in addition to actual payments owed and shall not exceed fifteen (15) percent of the outstanding balance due.
- C. Commission Right to Reject Subcontractor Employees.** The Commission shall retain the right to reject any of Contractor's or subcontractor's employees whose qualifications or performance, in the Commission's judgment, are insufficient.
- D. Subcontractor as Independent Contractor.** If subcontracting is permitted pursuant to Paragraph A above, Contractor agrees to take such 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.

17. MANDATORY DISCLOSURE.

- A. Disclosure of Interested State Employees.** This Contract is subject to Chapter 112, F.S. Contractors shall disclose the name of any officer, director, employee, or other agent who is also an employee of the State of Florida. Contractors shall also disclose the name of any State employee who owns, directly or indirectly, an interest of five percent (5%) or more in Contractor or its affiliates.
- B. Prompt Disclosure of Litigation, Investigations, Arbitration, or Administrative Proceedings.** Throughout the term of the Contract, Contractor has a continuing duty to promptly disclose to the Commission's Contract Manager, upon occurrence, all civil or criminal litigation, investigations, arbitration, or administrative proceedings (Proceedings) relating to or affecting the Contractor's ability to perform under this contract. If the existence of such Proceeding causes the Commission concern that the Contractor's ability or willingness to perform the Contract is jeopardized, Contractor may be required to provide the Commission with reasonable assurances to demonstrate that:
 - a.) Contractor will be able to perform the Contract in accordance with its terms and conditions; and, b.) Contractor and/or its employees, agents or subcontractor(s) have not and will not engage in conduct in performing services for the Commission which is similar in nature to the conduct alleged in such Proceeding.

18. INSURANCE.

- A. Reasonably Associated Insurance.** During the term of the Contract, Contractor, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits as may be reasonably associated with the Contract. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor, and failure to maintain such coverage may void the Contract. The limits of coverage under each policy maintained by Contractor shall not be interpreted as limiting Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers licensed and authorized to write policies in Florida.
- B. Workers Compensation.** To the extent required by Chapter 440, F.S., the Contractor will either be self-insured for Worker's Compensation claims, or will secure and maintain during the life of this Contract, Workers' Compensation Insurance for all of its employees connected with the work of this project, with minimum employers' liability limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policy shall cover all employees engaged in any contract work. If any work is subcontracted, the Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. Such self-insurance program or insurance coverage shall comply fully with the Florida Workers' Compensation law (Chapter 440, F.S.). In case any class of employees engaged in hazardous work under this Contract is not protected under Workers' Compensation statutes, the Contractor shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to the Commission, for the protection of its employees not otherwise protected. Employers who have employees who are engaged in work in Florida must use Florida rates, rules, and classifications for those employees.
- C. General Liability Insurance.** By execution of this Contract, unless Contractor is a state agency or subdivision as defined by Subsection 768.28(2), F.S. or unless otherwise provided for in the Scope of Work, Contractor shall provide reasonable and adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Contract. A self-insurance program established and operating under the laws of the State of Florida may provide such coverage.
- D. Insurance Required for Performance.** During the Contract term, Contractor shall maintain any other types and forms of insurance required for the performance of this Contract as required in the Scope of Work.
- E. Written Verification of Insurance.** Upon execution of this Contract, Contractor shall provide the Commission written verification of the existence and amount for each type of applicable insurance coverage. Within thirty (30) days of the effective date of the Contract, Contractor shall furnish proof of applicable insurance coverage to the Commission's Contract Manager by standard Association for Cooperative Operations Research and Development (ACORD) form certificates of insurance. In the event that any applicable coverage is cancelled by the insurer for any reason, Contractor shall immediately notify the Commission's Contract Manager in writing of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within fifteen (15) business days after the cancellation of coverage.

- F. Commission Not Responsible for Insurance Deductible.** The Commission shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of Contractor providing such insurance.

19. PUBLIC ENTITY CRIMES.

- A. Convicted Vendor List.** Pursuant to Subsection 287.133(2)(a), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.
- B. Notice of Conviction of Public Entity Crime.** Any person must notify the Department of Management Services and the Commission within 30 days after conviction of a public entity crime applicable to that person or an affiliate of that person as defined in Section 287.133, F.S.
- C. Certifications and Assurances.** Upon execution of this Contract by the Contractor, the Contractor shall complete, sign and return to the Commission's Contract Manager a completed copy of the form entitled "Certifications and Assurances," attached hereto and incorporated as Attachment B. This includes the Certification Regarding Public Entity Crimes.

20. VENDORS ON SCRUTINIZED COMPANIES LIST

- A. Scrutinized Companies.** Pursuant to Section 287.135, Florida Statutes, if this Contract is for goods or services in the amount of \$1 million or more, in executing this Contract, Contractor certifies, that it is not listed on: the Scrutinized Companies with Activities in Sudan List; or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, F.S. and is not engaged in business operations in Cuba or Syria.
- B. Certifications and Assurances – Scrutinized Companies List.** If this Contract is for goods or services in the amount of \$1 million or more, upon execution of this Contract by the Contractor, the Contractor shall complete, sign and return to the Commission's Contract Manager a completed copy of Attachment B, "Certifications and Assurances." This includes the Certification Regarding the Scrutinized Companies List.
- C. False Scrutinized Lists Certification – Termination.** Pursuant to Subsection 287.135(3)(b), F.S., the Commission may immediately terminate this Contract for cause if Contractor is found to have submitted a false certification or if, during the term of the Contract, Contractor is placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engages in business operations in Cuba or Syria.
- D. False Certifications – Termination Notice and Penalties.** If the Commission determines that Contractor has submitted a false certification, the Commission will provide written notice to Contractor. Unless Contractor demonstrates in writing, within

ninety (90) days of receipt of the notice, that the Commission's determination of false certification was made in error, the Commission shall bring a civil action against Contractor. If the Commission's determination is upheld, a civil penalty equal to the greater of \$2 million or twice the amount of this Contract shall be imposed on Contractor, and Contractor will be ineligible to bid on any contract with an agency or local governmental entity for three (3) years after the date of the Commission's determination of false certification by the Contractor.

E. Cessation of Federal Authority. In the event that federal law ceases to authorize the states to adopt and enforce the contracting prohibition identified in this paragraph, this provision shall be null and void to the extent no longer authorized.

21. SPONSORSHIP. As required by Section 286.25, F.S., if Contractor is a nongovernmental organization which sponsors a program financed wholly or in part by state funds, including any funds obtained through this Contract, it shall, in publicizing, advertising, or describing the sponsorship of the program, state: "Sponsored by (Contractor's name) and the State of Florida, Fish and Wildlife Conservation Commission." If the sponsorship reference is in written material, the words "State of Florida, Fish and Wildlife Conservation Commission" shall appear in the same size letters or type as the name of the Contractor's organization.

22. PUBLIC RECORDS.

A. This Contract may be unilaterally canceled by the Commission for refusal by the Contractor to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Contractor in conjunction with this Contract, unless exemption for such records is allowable under Florida law.

B. Pursuant to Section 119.0701, F.S., the Contractor shall comply with the following:

- i.** Keep and maintain public records that ordinarily and necessarily would be required by the Commission in order to perform the service.
- ii.** Provide the public with access to public records on the same terms and conditions that the Commission would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law.
- iii.** Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- iv.** Meet all requirements for retaining public records and transfer, at no cost, to the Commission all public records in possession of the Contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the Commission.

23. SECURITY AND CONFIDENTIALITY. The Contractor shall maintain the security of any information created under this Contract that is identified or defined as "confidential" in the Scope of Work. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work. To ensure confidentiality, the Contractor shall take

appropriate steps regarding its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

24. RECORD KEEPING REQUIREMENTS.

- A. Contractor Responsibilities.** The Contractor shall maintain accurate books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract, in accordance with generally accepted accounting principles.
- B. State Access to Contractor Books, Documents, Papers, and Records.** The Contractor shall allow the Commission, 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 authorized representatives of the state or federal government to have access to any of Contractor's books, documents, papers, and records, including electronic storage media, as they may relate to this Contract, for the purposes of conducting audits or examinations or making excerpts or transcriptions.
- C. Contractor Records Retention.** Unless otherwise specified in the Scope of Work, these records shall be maintained for five (5) years following the close of this Contract. Contractor shall cooperate with the Commission to facilitate the duplication and transfer of such records upon the Commission's request.
- D. Contractor Responsibility to Include Records Requirements – Subcontractors.** In the event any work is subcontracted under this Contract, Contractor shall include the aforementioned audit and record keeping requirements in all subcontract agreements.
- E. Compliance with Federal Funding Accountability and Transparency.** Any federal funds awarded under this Contract must comply with the Federal Funding Accountability and Transparency Act (FFATA) of 2006. The intent of the FFATA is to empower every American with the ability to hold the government accountable for each spending decision. The result is to reduce wasteful spending in the government. The FFATA legislation requires that information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website: www.USASpending.gov. Grant recipients awarded a new Federal grant greater than or equal to \$25,000 awarded on or after October 1, 2010 are subject to the FFATA. Contractor agrees to provide the information necessary, over the life of this Contract, for the Commission to comply with this requirement.

25. NONEXPENDABLE PROPERTY.

- A. Non-Expendable Property Defined.** For the requirements of this section of the Contract, "nonexpendable property" is the same as "property" as defined in Section 273.02, F.S. (equipment, fixtures, and other tangible personal property of a non-consumable and nonexpendable nature, with a value or cost of \$1,000 or more, and a normal expected life of one year or more; hardback-covered bound books that are circulated to students or the general public, with a value or cost of \$25 or more; and uncirculated hardback-covered bound books, with a value or cost of \$250 or more).
- B. Title to Nonexpendable Property.** Title (ownership) to all nonexpendable property acquired with funds from this Contract shall be vested in the Commission and said

property shall be transferred to the Commission upon completion or termination of the Contract unless otherwise authorized in writing by the Commission or unless otherwise specifically provided for in the Scope of Work.

26. FEDERAL FUNDS. This Contract relies on federal funds, therefore, the following terms and conditions apply:

- A. Prior Approval to Expend Federal Funds to Federal Agency or Employee.** It is understood and agreed that the Contractor is not authorized to expend any federal funds under this Contract to a federal agency or employee without the prior written approval of the awarding federal agency.
- B. Compliance with Federal Laws, Rules and Regulations.** As applicable, Contractor shall comply with all federal laws, rules, and regulations, including but not limited to:
- Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).
 - The Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3).
 - The Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5).
 - Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)
 - All applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
 - Mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- C. Compliance with Office of Management and Budget Circulars.** As applicable, Contractor shall comply with the following Office of Management and Budget Circulars:
- A-21 (2 CFR 220), Cost principles for Educational Institutions
 - A-87 (2 CFR 225), Cost Principles for State, Local, and Indian Tribal Governments
 - A-122 (2 CFR 230), Cost Principles for Non-Profit Organizations
 - A-133, Audit of States, Local Governments, and Non-Profit Organizations
 - A-102, Grants and Cooperative Agreements with State and Local Governments
 - A-110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Learning, Hospitals, and Other Non-Profit Organizations

27. DEBARMENT AND SUSPENSION.

- A. Contractor Federal Certification.** In accordance with federal Executive Order 12549, Debarment and Suspension, Contractor shall agree and certify that neither it, nor its

principals, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency; and, that the Contractor shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction.

- B. Contractor Commission Certification.** Upon execution of this Contract by the Contractor, the Contractor shall complete, sign and return to the Commission's Contract Manager a completed copy of Attachment B, "Certifications and Assurances." This includes the Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

28. PROHIBITION AGAINST LOBBYING

- A. Contractor Certification – Payments to Influence.** The Contractor certifies that no federally appropriated funds have been paid or will be paid, on or after December 22, 1989, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding, renewal, amending or modifying of any Federal contract, grant, or cooperative contract. If any non-federal funds are used for lobbying activities as described above in connection with this Contract, the Contractor shall submit Standard Form-LLL, "Disclosure Form to Report Lobbying", and shall file quarterly updates of any material changes. The Contractor shall require the language of this certification to be included in all subcontracts, and all subcontractors shall certify and disclose accordingly.
- B. Contractor – Refrain from Subcontracting with Certain Organizations.** Pursuant to the Lobbying Disclosure Act of 1995, the Contractor agrees to refrain from entering into any subcontracts under this Contract with any organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, unless such organization warrants that it does not, and will not, engage in lobbying activities prohibited by the Act as a special condition of the subcontract.
- C. Prohibition against Using Contract Funds for the Purpose of Lobbying.** In accordance with Section 216.347, F.S., the Contractor is hereby prohibited from using funds provided by this Contract for the purpose of lobbying the Legislature, the judicial branch or a state agency. Upon request of the Commission's Inspector General, or other authorized State official, Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility.
- D. Contractor Completion of Certifications and Assurances.** Upon execution of this Contract by the Contractor, the Contractor shall complete, sign and return to the Commission's Contract Manager a completed copy of Attachment B, "Certifications and Assurances." This includes the Certification Regarding Lobbying.

29. CONTRACT-RELATED PROCUREMENT.

- A. PRIDE.** In accordance with Section 946.515(6), F.S., if a product or service required for the performance of this Contract is certified by or is available from Prison Rehabilitative

Industries and Diversified Enterprises, Inc. (PRIDE) and has been approved in accordance with Subsection 946.515(2), F.S., the following statement applies:

It is expressly understood and agreed that any articles which are the subject of, or required to carry out, this contract shall be purchased from [PRIDE] in the same manner and under the same procedures set forth in Subsections 946.515(2) and (4), F.S.; and for purposes of this contract the person, firm or other business entity carrying out the provisions of this contract shall be deemed to be substituted for this agency insofar as dealings with such corporation are concerned.

The above clause is not applicable to subcontractors unless otherwise required by law. Additional information about PRIDE and the products it offers is available at <http://www.pride-enterprises.org>.

- B. Respect of Florida.** In accordance with Subsection 413.036(3), F.S., if a product or service required for the performance of this Contract is on the procurement list established pursuant to Subsection [413.035](#)(2), F.S., the following statement applies:

It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, F.S., in the same manner and under the same procedures set forth in Subsections 413.036(1) and (2), F.S.; and for purposes of this contract, the person, firm or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the state agency insofar as dealings with such qualified nonprofit agency are concerned.

Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.

- C. Procurement of Recycled Products or Materials.** Contractor agrees to procure any recycled products or materials which are the subject of or are required to carry out this Contract in accordance with Section 403.7065, F.S.

30. PURCHASE OR IMPROVEMENT OF REAL PROPERTY.

Choose an item.

The Contractor shall comply with Section 287.05805, F.S. This section requires the Contractor to grant a security interest in the property to the State of Florida, the type and details of which are provided for in the Scope of Work.

31. PROFESSIONAL SERVICES.

- A. Architectural, Engineering, Landscape Architectural, or Survey and Mapping.** If this Contract is for the acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services, and is therefore subject to Section 287.055, F.S., the following provision applies:

The architect (or registered surveyor and mapper or professional engineer, as applicable) warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure this contract and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this contract.

- B. Termination for Breach.** For the breach or violation of this provision, the Commission shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the Contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.
- 32. INDEMNIFICATION.** If Contractor is a state agency or subdivision, as defined in Subsection 768.28(2), F.S., pursuant to Subsection 768.28(19), F.S., neither Party indemnifies nor insures the other Party for the other Party's negligence. If Contractor is not a state agency or subdivision as defined above, Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and the Commission, 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 personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors, provided, however, that Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or the Commission.
- 33. NON-DISCRIMINATION.**
- A. Non-Discrimination in Performance.** No person, on the grounds of race, creed, color, national origin, age, sex, or disability, shall be excluded from participation in, be denied the proceeds or benefits of, or be otherwise subjected to discrimination in performance of this Contract.
- B. Discriminatory Vendor List.** In accordance with Section 287.134, F.S., an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity. Contractor has a continuing duty to disclose to the Commission whether they appear on the discriminatory vendor list.
- 34. SEVERABILITY, CHOICE OF LAW, AND CHOICE OF VENUE.** This Contract has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Contract shall be prohibited

or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Contract. Any action in connection herewith, in law or equity, shall be brought in Leon County, Florida, to the exclusion of all other lawful venues.

35. **NO THIRD PARTY RIGHTS.** The parties hereto do not intend nor shall this Contract be construed to grant any rights, privileges or interest to any person not a party to this Contract.
36. **JURY TRIAL WAIVER.** As part of the consideration for this Contract, the parties hereby waive trial by jury in any action or proceeding brought by any party against any other party pertaining to any matter whatsoever arising out of or in any way connected with this Contract, or with the products or services provided under this Contract, including but not limited to any claim by the Contractor of *quantum meruit*.
37. **PROHIBITION OF UNAUTHORIZED ALIENS.** In accordance with federal Executive Order 96-236, the Commission shall consider the employment by the Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this Contract if the Contractor knowingly employs unauthorized aliens.
38. **EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY).**
- A. **Requirement to Use E-Verify.** Executive Order 11-116, signed May 27, 2011, by the Governor of Florida, requires Commission contracts in excess of nominal value to expressly require the Contractor to: 1.) utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Contractor during the Contract term; and, 2.) include in all subcontracts under this Contract, the requirement that subcontractors performing work or providing services pursuant to this Contract utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of the subcontract.
- B. **E-Verify Online.** 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. The Department of Homeland Security's E-Verify system can be found online at http://www.dhs.gov/files/programs/gc_1185221678150.shtm
- C. **Enrollment in E-Verify.** If Contractor does not have an E-Verify MOU in effect, the Contractor must enroll in the E-Verify system prior to hiring any new employee after the effective date of this Contract.
- D. **E-Verify Recordkeeping.** The Contractor further agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the Commission or other authorized state entity consistent with the terms of the Contractor's enrollment in the program. This includes maintaining a copy of proof of the Contractor's and subcontractors' enrollment in the E-Verify Program (which can be

accessed from the “Edit Company Profile” link on the left navigation menu of the E-Verify employer’s homepage).

E. Employment Eligibility Verification. Compliance with the terms of the Employment Eligibility Verification provision is made an express condition of this Contract and the Commission may treat a failure to comply as a material breach of the Contract.

- 39. 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 Contract 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 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 Contract. If the delay is excusable under this paragraph, the delay will not result in any additional charge or cost under the Contract to either Party. In the case of any delay Contractor believes is excusable under this paragraph, Contractor shall notify the Commission’s Contract Manager in writing of the delay or potential delay and describe the cause of the delay either: (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if Contractor could reasonably foresee that a delay could occur as a result; or (2) within five (5) calendar days after the date Contractor first had reason to believe that a delay could result, if the delay is not reasonably foreseeable. **THE FOREGOING SHALL CONSTITUTE CONTRACTOR’S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. The Commission, in its sole discretion, will determine if the delay is excusable under this paragraph and will notify Contractor of its decision in writing. No claim for damages, other than for an extension of time, shall be asserted against the Commission. Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Commission 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 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, Contractor shall perform at no increased cost, unless the Commission determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the Commission or the State, in which case, the Commission may do any or all of the following: (1) accept allocated performance or deliveries from Contractor, provided that Contractor grants preferential treatment to the Commission with respect to products or services subjected to allocation; (2) purchase from other sources (without recourse to and by Contractor for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Contract quantity; or (3) terminate the Contract in whole or in part.
- 40. TIME IS OF THE ESSENCE.** Time is of the essence regarding the performance obligations set forth in this Contract. Any additional deadlines for performance for Contractor’s obligation to timely provide deliverables under this Contract including but not limited to timely submittal of reports, are contained in the Scope of Work.
- 41. ENTIRE CONTRACT.** This Contract with all incorporated attachments and exhibits represents the entire Contract of the parties. Any alterations, variations, changes, modifications or waivers of provisions of this Contract shall only be valid when they have been reduced to writing, and duly signed by each of the parties hereto, unless otherwise provided herein. In the event of

Attachment C, RFP 13/14-51
Contract Terms and Conditions

conflict, the following order of precedence shall prevail; this contract and its attachments, the terms of the solicitation and the contractor's response to the solicitation.

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IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed through their duly authorized signatories on the day and year last written below.

CONTRACTOR NAME

**FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION**

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to form and legality by FWC Attorney:

Name: _____

Date: _____

Attachments and Exhibits in this Contract include the following:

- | | | |
|------------|---|---|
| Attachment | A | Scope of Work |
| Attachment | B | Certifications and Assurances |
| Attachment | C | Contractor's Response to FWC's solicitation (if applicable) |