STATE OF ALABAMA **AGREEMENT NO:**

MONTGOMERY, ALABAMA

**GRANT AGREEMENT**

**Alabama Research and Development Enhancement Fund Program**

THIS AGREEMENT (hereinafter referred to as the “Agreement”) is effective as of this  day of ,  by and between the , (“Grantee”) and the Alabama Department of Economic and Community Affairs (“ADECA” or “Department”). This Agreement consists of seven (7) printed pages, Attachment (A) Scope of Work, Attachment (B) Project Budget, and the Proposal or Application, incorporated by reference, as described below.

1. **PURPOSE:** The purpose of this Agreement is to implement the project described in the Alabama Research and Development Enhancement Fund Program application entitled “     ,” which is hereby incorporated by reference as part of this Agreement.
2. **DURATION OF AGREEMENT**: The Grantee shall commence performance of this Agreement on the **day of** and shall complete performance to the satisfaction of the Department not later than the **day of            .**
3. **FUNDING:**  In no event shall the total amount to be paid by the Department to the Grantee under this Agreement exceed **$**for full and complete satisfactory performance unless there is a signed Amendment to this Agreement, see 25. CHANGES.
4. **DISALLOWED COSTS:** (a) Expenditures which exceed the total amounts authorized under the provision of the above item shall be the responsibility of the Grantee and will not be reimbursed by the Department; (b) expenditures which are not within the allowable costs categories approved in the Agreement’s Budget shall not be reimbursed by the Department. All other expenditures not meeting State, Federal or local rules and regulations, guidelines, policies and procedures, and similar guidance may be disallowed.
5. **UNEXPENDED FUNDS:** No funds reimbursed to the Grantee under the terms of this Agreement shall be obligated after the termination of the Agreement. For clarification, this shall be either the termination date set forth in this Agreement or in subsequent amendments; an earlier date mutually agreed upon by the two parties; or a termination date set forth by the Department for non-compliance with provisions of this Agreement. In any event, the Grantee shall be allowed thirty (30) days after the termination of this Agreement for the settlement of all claims and obligations incurred in the performance of the agreement, provided such claims and obligations are not made after performance end date of agreement.All unexpended funds shall be returned to the Department as soon as possible after the termination thereof, but not to exceed thirty (30) days from the date of the termination of this Agreement.
6. **AVAILABILITY OF FUNDS:** Any commitment of funds shall be contingent upon the receipt and availability of funds under the program for which this Agreement is made. Payments made by the Department under the terms of this Agreement shall not constitute final approval of documents submitted by the Grantee or of procedures used in formulating requests for payment to the Grantee. Funds appropriated and obligated to this award are available for reimbursement of costs until the end of the performance period set forth in this Agreement.
7. **SCHEDULE OF PAYMENT:** The Grantee will operate its program on a reimbursement basis. Expenditure reports are to be submitted in the form and under procedures identified by the Department. The total amount of funds to be reimbursed under this Agreement shall not exceed **$**. The Grantee shall be paid on a periodic basis over the duration of the Agreement upon receipt and approval by the Department of an invoice of actual expenditures by cost categor­ies. Source documentation for incurred expenditures must accompany all invoices. The Grantee must submit a final invoice due no later than forty-five (45) days after the completion of this Agreement.
8. **TERMINATION:** The following provisions apply to termination under this Agreement, whether termination by the Department or by the Grantee. The performance of work under this agreement may be terminated in whole or in part for the following circumstances:

Termination for Convenience. This agreement may be terminated by either party with thirty (30) days written notice. Said notice shall specify the reasons for requesting such termination. If the Department determines that continuation of the work will serve no useful public purpose, this Agreement may be terminated by the Department and the Grantee shall be entitled to necessary expenses incurred through the date of termination or the date services are last provided, whichever occurs first.

Termination for Cause. If, through any cause, the Grantee shall fail to fulfill in a timely manner its obligations under this Agreement, or if the Grantee shall violate any of the covenants, agreements or stipulations of this Agreement, and such failure or violation is not corrected within fifteen (15) days after such notice is given by the Department to the Grantee, the Department shall thereupon have the right to immediately terminate or suspend this Agreement by giving written notice to the Grantee of such termination or suspension and specifying the effective date thereof.

In the event of termination, for either convenience or cause, all property, finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, computer tapes, computer programs, and reports prepared by the Grantee under this Agreement shall, at the option of the Department, and if in accordance with applicable State and Federal regulations, become the property of the Department. The Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, the Grantee shall not be relieved of liability to the Department for damages sustained by the Department by virtue of any breach of the Agreement by the Grantee and the Department may withhold any payments to the Grantee for the purpose of setoff until such time as the exact amount of damages due the Department from the Grantee is determined.

1. **HEARING ON APPEAL:** The Grantee shall have the right to appeal any determination to terminate made by the Department; however, if the Grantee has failed to submit its appeal, in writing, within ten (10) calendar days from written notice of the termination and/or has failed to request and receive approval from the Department for extension of such, then the Grantee shall have no further right of appeal.

A hearing shall be conducted at the Department’s offices in Montgomery, Alabama, or any other appropriate location at the Department’s discretion, with a written notification of the time, place, and subject matter by the Department to the Grantee.

1. **DEBARMENT AND SUSPENSION:** The Grantee certifies, by entering into this Agreement, that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed from debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency, or political subdivision of the State of Alabama. The term “principal” for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Grantee.

The Grantee certifies that it has verified the suspension and debarment status for all subcontractors receiving funds under this Agreement and shall be solely responsible for any recoupments or penalties that might arise from non-compliance. Grantees shall immediately notify the Department if any sub-contractor becomes debarred or suspended, and shall, at the Department’s request, take all steps required by the Department to terminate its contractual relationship with the sub-contractor for work to be performed under this Agreement.
2. **NOT TO CONSTITUTE A DEBT OF THE STATE:** It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Ala. Const. art. XI, § 213.
3. **CONFLICTING PROVISION:** If any provision of this Agreement shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this Agreement, be enacted, then that conflicting provision in the Agreement shall be deemed null and void.
4. **IMMUNITY AND DISPUTE RESOLUTION:** The parties to this agreement recognize and acknowledge that the Department is an instrumentality of the State of Alabama, and as such, is immune from suit pursuant to Ala. Const. art. I, § 14. It is further acknowledged and agreed that none of the provisions and conditions of this Agreement shall be deemed to be or construed to be a waiver by the Department of such Constitutional Immunity.

In the event of any dispute between the parties, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail and the dispute involves the payment of money, a party’s sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama.

For all other disputes arising under the terms of this agreement which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center for Dispute Resolution of the Alabama State Bar.

1. **DISCLAIMER:** ADECA specifically denies liability for any claim arising out of any act or omission by any person or agency receiving funds from ADECA whether by contract, grant, loan, or by any other means.

No Grantee, contractor, or agency performing services under any agreement, contract, grant, or any other understanding, oral or written, other than an actual employee of the Department, shall be considered an agent or employee of the State of Alabama or the Department or any division thereof. The State of Alabama, the Department, and their agents and employees assume no liability to any Grantee, contractor, or agency, or any third party, for any damages to property, both real and personal, or personal injuries, including death, arising out of or in any way connected with the acts or omissions of any Grantee, contractor or agency, or any other person.

1. **ACCESS TO RECORDS:** The Director of the Department, the Comptroller General of the United States (if federal funds), the Chief Examiner of Public Accounts, or any of their duly authorized representatives shall have the right of access to any pertinent books, documents, papers, and records of the Grantee for the purpose of making audits, financial reviews, examinations, excerpts and transcripts. This right also includes timely and reasonable access to Grantee personnel for the purpose of interview and discussion related to such agreement. This right of access is not limited to the required retention period but shall last as long as the records are retained.
2. **ASSIGNABILITY:** The Grantee shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the Department thereto. Provided, however, that claims for money due, or to become due to the Grantee from the Department under this Agreement may be assigned to a bank, a trust company, or other financial institution through a valid court order and without such approval. Notice of such assignment or transfer shall be furnished promptly to the Department.
3. **CONFLICT OF INTEREST:** A conflict of interest, real or apparent, will arise when any of the following has a financial or other interest in the firm or organization selected for award: (1) the individual, (2) any member of the individual’s immediate family, (3) the individual’s partner, or (4) an organization which employs or is about to employ any of the above. The Grantee certifies by signing this agreement that no person under its employ or control who presently performs functions, duties, or responsibilities in connection with the Department of grant-funded projects or programs has any personal and/or financial interest, direct or indirect, in this agreement nor will the Grantee hire any person having such conflicting interest. The Grantee further certifies that it will maintain a written code of standards governing the performance of persons engaged in the award and administration of contracts and subawards.
4. **AUDIT REQUIREMENTS:** All grantees of Federal funds must follow the Audit Requirements in the Office of Management and Budget Uniform Administrative Requirements (2 C.F.R. Part 200, subpart F). Grantees that expend $750,000 or more during their fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of 2 C.F.R. Part 200. All entities that have a single audit must submit the reporting package and data collection form to the Federal Audit Clearinghouse in accordance with 2 C.F.R. § 200.512. Additionally, if any grantee receives more than $500,000, collectively, in State General Fund appropriations in its fiscal year, from ADECA, it must have an audit in accordance with Government Auditing Standards (the Yellow Book) and Generally Accepted Auditing Standards established by the American Institute of Certified Public Accountants.

Nothing contained in this Agreement shall be construed to mean that ADECA cannot utilize its auditors regarding limited scope audits of various ADECA funds. Audits of this nature shall be planned and carried out in such a way as to avoid duplication or not to exceed the audit coverage limits as stated in the said Uniform Administrative Requirements.

Copies of all required audits must be submitted to ADECA and the Alabama Department of Examiners of Public Accounts. Copies may be transmitted by email or traditional mail, at the following addresses:

audit@adeca.alabama.gov Alabama Department of Economic and Community Affairs

                                              ATTENTION: Chief Auditor

                                              401 Adams Avenue

                                              P.O. Box 5690

                                              Montgomery, AL 36103-5690

 central.records@examiners.alabama.gov Alabama Department of Examiners of Public Accounts

 ATTENTION: Audit Report Repository

 P.O. Box 302251

 Montgomery, AL 36130-2251.

1. **AUDIT EXCEPTIONS/UNRESOLVED QUESTIONED COSTS/OUTSTANDING DEBTS:** The Grantee certifies by signing this agreement that it does not have any unresolved audit exceptions, unresolved questioned costs or finding of fiscal inadequacy as a result of project monitoring. It further certifies that no money is owed to any division of ADECA or to the Federal government under any program where it has not arranged a repayment plan.
2. **SUSPENSION OF PAYMENTS:** Payments under this Agreement may be suspended in the event that there is an outstanding audit exception under any program administered by any division of ADECA , or in the event there is an amount owing to any division of ADECA , or an amount owing to the Federal government under any program administered by any division of ADECA that is not received in a reasonable and timely manner.

Should the Grantee incur an unresolved audit exception or have unresolved questioned costs or finding of inadequacy as a result of any project monitoring by any division of ADECA, then ADECA shall not enter into any other contract, agreement, grant, etc., with said Grantee until the audit exception or questioned cost or finding of fiscal inadequacy has been resolved.

ADECA shall not enter into another contract, agreement, grant, etc., with any individual, agency, company, or government under any program administered by any division of ADECA that has not arranged a repayment schedule.

1. **DISCLOSURE STATEMENT:** Unless otherwise exempt under § 41-16-82, Code of Alabama 1975, a disclosure statement must be submitted to ADECA for any and all proposals, bids, contracts or grant proposals in excess of $5,000.
2. **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS:** In addition to the provisions provided herein, the Grantee shall be responsible for complying with any and all other applicable laws, ordinances, codes and regulations of the Federal, State and local governments, including, but not limited to, the Alabama Competitive Bid Law (§ 41-16-1 *et seq*, Code of Alabama 1975), the Alabama Public Works Law (§ 39-1-1 *et seq*, Code of Alabama 1975), any State permitting requirements, the Alabama Open Meetings Act (§ 36-25a-1 *et seq*, Code of Alabama 1975), and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act (§ 31-13-1, *et seq*, Code of Alabama 1975).

For all contracts governed by the Alabama Public Works Law (§ 39-1-1 *et seq*, Code of Alabama 1975) or the Alabama Competitive Bid Law (§ 41-16-1 *et seq*, Code of Alabama 1975), the following shall apply: In compliance with Act 2016-312, the contractor hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

By signing this Agreement, the parties affirm, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

1. **NONDISCRIMINATION:** The Grantee shall be and is prohibited from discriminating based on race, color, religion, sex, age, handicap, or national origin.
2. **CHANGES:** The Department or Grantee may, from time to time, request changes in the scope of the services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Grantee’s compensation which are mutually agreed upon between the Department and Grantee, must be incorporated in written Amendments to this Agreement and approved by the Department prior to implementation and require the Grantee to submit a revised Scope of Work and Project Budget.
3. **REPORTING REQUIREMENTS:** The Grantee shall submit to the Department quarterly reports on program­matic and fiscal operations. These reports shall be submitted in the form and manner determined by the Department. In addition, annual reports and a final narrative report are also required. These reports shall be submitted in the form and manner determined by the Department. It is expressly agreed that full compliance with programmatic, fiscal, and reporting requirements is a condition for the continuation of funds under this Agreement.
4. **RECORD RETENTION:** Records shall be kept for a period of three (3) years from the submittal of the final financial report or receipt of final payment with the exception of the following qualification, whichever is the latest: If any litigation, claim or audit is started before the expiration of the three-year (3) period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. The Grantee will provide the Department, the Comptroller General of the United States or any of their authorized representatives access to any pertinent books, documents, papers or other records in order to make audits, examinations, excerpts and transcripts. NOTE: Retention of records involving competitive bids should comply with Code of Alabama § 41-16-54 (e), as applicable, which requires a retention period of at least seven (7) years.

IN WITNESS WHEREOF, THE DEPARTMENT AND THE GRANTEE HAVE EXECUTED THIS AGREEMENT AS EVIDENCED BY THE SIGNATURES BELOW:

**Alabama Department of** **Economic**

 **and Community Affairs**

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Kenneth W. Boswell, Director Date Authorized Official Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title

*This Agreement has been reviewed for*

*content, legal form, and complies with all*

*applicable laws, rules, and regulations of the*

*State of Alabama governing these matters.*

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Ashley W. Toole, General Counsel

**ATTACHMENT A**

**SCOPE OF WORK**

The Grantee shall perform the following tasks:

1.
2. Submit invoice(s) as referenced in the Grant Agreement
3. Prepare and submit quarterly reports as referenced in the Grant Agreement
4. Prepare and submit annual reports as referenced in the Grant Agreement
5. Prepare and submit a final narrative report as referenced in the Grant Agreement
6. Any and all provisions contained in the proposal as submitted, or negotiated, and not specifically referenced by this Scope of Work

**ATTACHMENT B**

**PROJECT BUDGET**

|  |  |  |  |
| --- | --- | --- | --- |
| Cost Categories | Project Award Amount | Non State-Funded Contribution | Total Project Amount |
| Personnel | $0.00 | $0.00 | $0.00 |
| Fringe Benefits | $0.00 | $0.00 | $0.00 |
| Supplies & Materials | $0.00 | $0.00 | $0.00 |
| Contractual  | $0.00 | $0.00 | $0.00 |
| Travel | $0.00 | $0.00 | $0.00 |
| Equipment | $0.00 | $0.00 | $0.00 |
| Other  | $0.00 | $0.00 | $0.00 |
| Indirect Cost | $0.00 | $0.00 | $0.00 |
| **TOTAL** | **$0.00** | **$0.00** | **$0.00** |