

STATE OF ALABAMA)
MONTGOMERY, ALABAMA)

AGREEMENT NO. **20-RT-54-03**

AGREEMENT

THIS AGREEMENT is effective as of this **14th** day of **August, 2019**, by and between the **City of Foley** (herein called "Subrecipient") and the Alabama Department of Economic and Community Affairs (herein called "ADECA" and "Pass-through Entity").

Subrecipient's Name: City of Foley

Subrecipient's DUNS Number: 072630544

Federal Award Identification Number ("FAIN"): 693JJ22030000Z940ALRT20304

Federal Award Date: August 14, 2019

Subaward Period of Performance Start Date and End Date: August 14, 2019 through August 31, 2021

Amount of Federal Funds Obligated by this Agreement: \$198,915.20

Total Amount of Federal Funds Obligated to Subrecipient: \$198,915.20

Total Amount of Federal Award: \$198,915.20

Total Project: \$248,644.00

Subrecipient Amount: \$49,728.80

ADECA Percentage: 80%

Subrecipient Percentage: 20%

Project Name: Memorial Tree Trail Improvements

Federal Award Project Description: Expand the Memorial Tree Trail by constructing approximately 1,250 lf of ADA accessible boardwalk at the Graham Creek Nature Preserve.

Name of Federal Awarding Agency: U. S. Department of Transportation, Federal Highway Administration

Pass-through Entity: Alabama Department of Economic and Community Affairs
(ADECA)

Contact Information for Pass-through Entity's Official: Kenneth W. Boswell, ADECA
Director

Identification of Whether Subaward is Research and Development: No

Indirect Cost Rate for Federal Award: 0%

WITNESSETH THAT:

WHEREAS, ADECA desires to engage the Subrecipient to carry out certain activities or services hereinafter described in connection with an undertaking which is expected to be financed or partially financed through the Federal Assistance authorized under the State's Recreational Trails Program (RTP).

NOW THEREFORE, the parties hereto do mutually agree as follows:

ADECA hereby agrees to engage the Subrecipient, and the Subrecipient hereby agrees to carry out the activities hereinafter set forth in connection with the State's Recreational Trails Program administered by ADECA, under RTP Project Number **20-RT-54-03** made to the Subrecipient from the federal award (FAIN **693JJ22030000Z940ALRT20304**) identified herein above.

The Subrecipient, in assisting ADECA during the period of this Agreement and with the Federal Assistance provided for in this Agreement, shall perform all the necessary services stated in this Agreement.

Upon execution of this Agreement, ADECA agrees to provide to the Subrecipient the Federal Assistance under Public Law 105-178, as amended. The funding agency is the U.S. Department of Transportation, Federal Highway Administration. The award of funds is made under the Recreational Trails Program Legislation: 23 USC 206, as amended. Such Federal Assistance is subject to the terms and conditions of this Agreement, all applicable laws, and regulations, and all other requirements of ADECA, the State, or the U.S. Department of Transportation, now or hereafter in effect. This Agreement is effective with respect to such Federal Assistance as of the date specified above, and consists of (1) the Letter of Award and submissions made with respect thereto; (2) the Subrecipient's ADECA-approved Application specified herein, including any assurances, certifications, maps, schedules, and other submissions; (3) the Recreational Trails Program Legislation: 23 USC 206 as amended, and State Policies; (4) the *ADECA Recreational Programs Administrative Manual* to include any addendums thereto; (5) the following General Terms and Conditions; and (6) the provisions included in Attachment A.

A. DEFINITIONS

Except to the extent modified or supplemented by this Agreement, any term defined in 23 USC 206, as amended, shall have the same meaning when used herein.

1. "Agreement" means this Agreement as described above, and any amendments or supplements hereto.

2. "Applicant" means the entity designated as such in the Letter of Award and herein as the Subrecipient.

3. "Application" means the Subrecipient's Application for Federal Assistance that has been approved by ADECA and designated as such per the Letter of Award.

4. "Certifications" means the certifications submitted with the grant application and the certifications listed in the Letter of Award.

5. "Federal Assistance" means the Federal assistance, grant(s), funds, and any loan(s) secured by loan guarantee(s), provided by ADECA to the Subrecipient under this Agreement.

6. "Federal Award" means the Federal grant awarded from the Federal awarding agency to the State of Alabama and administered by ADECA as the State Administering Agency, and which is identified by its "Federal Award Identification Number" (FAIN). Herein this Agreement, the Federal Award is FAIN **693JJ22030000Z940ALRT20304**.

7. "Program" means the Recreational Trails Program, project, or other activities, including the administration thereof, with respect to which Federal Assistance is being provided under this Agreement.

8. "State" means the State of Alabama.

9. "Subrecipient" means the entity signing this Agreement who is the Applicant or entity designated as a recipient for grant or loan assistance in the Letter of Award.

B. SCOPE OF SERVICES

1. The Subrecipient agrees to do, perform, and carry out in an expedient, satisfactory, and proper manner, as determined by ADECA, the work activities and administrative services described in the Subrecipient's ADECA-approved Application submitted for Federal Assistance under this RTP project and the terms of this Agreement. The Subrecipient further agrees that all activities carried out under the terms of this Agreement shall satisfy all requirements of ADECA and shall be as described in the Subrecipient's ADECA-approved Application unless otherwise expressly directed by ADECA.

2. The Subrecipient agrees to permit and to facilitate reviews by ADECA of the work activities and administrative services described in the Subrecipient's ADECA-approved Application and herein this Agreement at Montgomery or at other places as ADECA may determine.

3. The Subrecipient shall submit to ADECA progress reports describing the progress of the work activities and administrative services on a quarterly basis and when requested by ADECA.

4. The Subrecipient agrees to accept responsibility for ensuring compliance by second-tier subrecipient entities to which it makes funding assistance hereunder available.

C. CHANGES

1. ADECA or the Subrecipient may, from time to time, request changes in the scope of services to be performed by the Subrecipient under this Agreement. Such changes, including any increase or decrease in the amount of the Subrecipient's compensation, which are mutually agreed upon by and between ADECA and the Subrecipient, shall follow ADECA's governing policy and be incorporated in written amendments to this Agreement.

2. Notwithstanding the terms stated in Section C.1. herein this Agreement, ADECA may, from time to time, approve a revision to the Subrecipient's budget document and/or scope for the RTP project under this Agreement without a formal written amendment to this Agreement. However, for such revision to be valid, it shall be approved by ADECA. In no case shall the revision change the total amount of compensation identified under the terms stated in Section F. herein this Agreement without a formal amendment to this Agreement.

D. PERSONNEL

1. It shall be the responsibility of the Subrecipient, when necessary, to hire personnel or to contract or subcontract for the work to be performed as set out in the Scope of Services, to include the work activities and administrative services described in the Subrecipient's ADECA-approved Application and herein this Agreement. All persons so hired or under contract or subcontract shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

2. The Subrecipient shall provide to ADECA a sampling of all contracts and subcontracts for said work or services as and when requested by ADECA.

E. TIME OF PERFORMANCE

The Subrecipient shall commence performance of this Agreement on **August 14, 2019**. The full Grant amount shall be expended by **August 31, 2021**.

1. ADECA retains the right to rescind all or any part of the Federal Assistance committed by this Agreement and the Letter of Award. Such right may be exercised if action or the lack of action by or on behalf of the Subrecipient indicates to ADECA that the work activities and administrative services described in the Subrecipient's ADECA-approved Application, and/or the terms of this Agreement, are not adhered to or are not progressing according to this Agreement.

2. The Subrecipient, by execution of this Agreement, certifies that the Subrecipient will implement the work activities and administrative services described in the Subrecipient's ADECA-approved Application and the terms of this Agreement substantially in compliance with this Agreement, and that failure to do so may affect the Subrecipient's continued capacity to participate in ADECA's future Federal Assistance and other funding decisions.

F. METHOD OF PAYMENT

1. ADECA and the Subrecipient have agreed upon a total payment of RTP funds not to exceed **\$198,915.20**.
2. The Subrecipient will be paid on an advance payment basis provided that it maintains a cash management plan, maintains or demonstrates the willingness and ability to maintain both written procedures to minimize the transfer of funds and their disbursement by the Subrecipient and financial management systems that meet the standards for fund control and accountability in accordance with 2 CFR §200.305. If the advance requested exceeds thirty (30) days, the Subrecipient must provide a written explanation with the invoice requesting advance funds and is subject to approval by ADECA. Source documentation and a follow-up invoice must be submitted to account for the actual expenditures made against advances.
3. The Subrecipient will be paid on a reimbursement basis when the above requirements for advances cannot be met, the federal awarding agency has specific conditions per 2 CFR §200.305, or the Subrecipient requests, in writing, payment by reimbursement.
4. The Subrecipient agrees to match the expenditures incurred in the execution of activities stated herein with matching cash or "in-kind" services as shown in the approved RTP Project Cost Estimate (original or revised). Payment of funds are subject to and dependent upon the availability of Federal funds awarded to ADECA for the program purposes herein stated.
5. This Agreement, authorized by the State of Alabama on **August 14, 2019**, under the Letter of Award of State RTP funds for RTP Project Number **20-RT-54-03** is hereby accepted by the Subrecipient.
6. The Subrecipient agrees to comply with, and to accept responsibility for compliance by any public or private entity carrying out RTP grant activity on behalf of the Subrecipient in accordance with, the terms and conditions of this Agreement, applicable laws, applicable regulations, and all requirements of ADECA, the State, or the U.S. Department of Transportation, now or hereafter in effect, pertaining to the Federal Assistance provided.
7. The Subrecipient must invoice no less than quarterly but may invoice as often as once a month. All invoices must be cleared within sixty (60) days of the close of the Agreement and appropriate back-up data must be furnished with each invoice in accordance with ADECA's RTP policy.
8. In addition to the above clauses, the Subrecipient and its Contractors, Subcontractors, and Vendors shall agree with, and shall adhere to, the terms stated in Section K. herein this Agreement and Attachment A to this Agreement.

G. CLOSEOUT PROCEDURES

Within 60 days of the project completion date (when all work on a project is completed, or the date the project expires, whichever comes first), the Subrecipient shall follow the ADECA Community and Economic Development Division's established RTP closeout procedures when closing the RTP project under this Agreement. The Subrecipient may access ADECA's RTP closeout documents from the ADECA Community and Economic Development Division's RTP staff and on the ADECA website at www.adeca.alabama.gov.

H. RECORD RETENTION

1. Financial records, supporting documents, statistical records, and all other non-Federal entity (to include ADECA, the Subrecipient, Contractors, Subcontractors and Vendors) records pertinent to a Federal award (to include the RTP project under this Agreement) must be retained for a period of at least three years from the date of ADECA's submission of the final expenditure report on this Federal Award to the U.S. Department of Transportation, or for Federal awards that are renewed quarterly or annually, from the date of ADECA's submission of the quarterly or annual financial report, respectively, as reported to the U.S. Department of Transportation (as the Federal awarding agency) or pass-through entity (the State, and ADECA) in the case of the Subrecipient.

2. Because Federal agencies (to include the U.S. Department of Transportation) may have different record retention requirements, each of ADECA's Divisions will have its own record retention requirements so as to comply with the appropriate Federal record retention requirements. For the ADECA Community and Economic Development Division's Recreational Trails Program record retention requirements applicable to this Federal Award and the RTP project under this Agreement, the following record retention requirements are applicable:

The Subrecipient is required to keep all financial records, supporting documents, statistical records, and all other records pertinent to this award in accordance with 2 CFR Part 200 for a period of three years; except the records shall be retained beyond the three-year period if audit findings have not been resolved. The retention period begins from the date of the final expenditure report for the project.

3. When applicable, the Subrecipient, Contractors, Subcontractors and Vendors shall comply with the Alabama Competitive Bid Law (codified at §41-16-54, *Code of Alabama 1975*), which requires that all original bids, together with all documents pertaining to the award of a contract, shall be retained in accordance with a record retention period of at least seven years.

I. INCORPORATION OF SUBMISSIONS MADE UNDER THE LETTER OF AWARD

The submissions made pursuant to the Letter of Award are incorporated into this Agreement by reference to said Letter. The Subrecipient, by execution of this Agreement, further certifies that:

1. The Subrecipient has complied with all applicable requirements of 23 CFR 771.105, and the Subrecipient's applicable environmental review forms will be submitted for approval by ADECA.

2. The Subrecipient has complied with Section 106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C. 300101) and Executive Order 11592.

3. Where applicable, the Subrecipient has consulted with other State agencies, as appropriate, and has obtained applicable permits and/or has satisfied other conditions imposed from those State agencies which have authority to review RTP project applications, and/or issue permits, and/or retain other responsibilities in regard to local or State projects.

J. OFFICE OF MANAGEMENT AND BUDGET (OMB) UNIFORM GUIDANCE FOR FEDERAL AWARDS

For any and all contracts or grants made by a non-Federal entity under a Federal award, the non-Federal entity must comply with 2 CFR Part 200, the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which includes but is not limited to, Subpart B (2 CFR 200.100), General Provisions; Subpart C (2 CFR 200.200), Pre-Federal Awards Requirements and Contents of Federal Awards; Subpart D (2 CFR 200.300), Post Federal Award Regulations; Subpart E (2 CFR 200.400), Cost Principles; Subpart F (2 CFR 200.500), Audit Requirements; and all accompanying Appendices.

For any and all contracts made by a non-Federal entity under a Federal award, 2 CFR 200.326 requires provisions covering the following (as found in Appendix II to Part 200) be included and adhered to as applicable and unless specifically excluded by other Federal regulations:

1. TERMINATION OF AGREEMENT

(a) A clause addressing a termination for cause and convenience must be included in all contracts in excess of \$10,000. The following provisions apply to termination under this grant agreement, whether termination by ADECA or by the Subrecipient. The performance of work under this agreement may be terminated in whole or in part for the following circumstances:

(1) **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 ADECA determines that continuation of the work will serve no useful public purpose, then this Agreement may be terminated by ADECA, and the Subrecipient shall be entitled to necessary expenses incurred through the date of termination or the date services are last provided, whichever occurs first.

(2) **Termination for Cause.** If, through any cause, the Subrecipient shall fail to fulfill in a timely manner its obligations under this Agreement, or if the Subrecipient 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 ADECA to the Subrecipient, then ADECA shall thereupon have the right to immediately terminate or suspend this Agreement by giving written notice to the Subrecipient of such termination or suspension and specifying the effective date thereof.

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

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

2. HEARING ON APPEAL

(a) The Subrecipient shall have the right to appeal any determination to terminate made by ADECA; however, if the Subrecipient 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 ADECA for extension of such, then the Subrecipient shall have no further right of appeal.

(b) A hearing shall be conducted at ADECA's offices in Montgomery, Alabama, or any other appropriate location at ADECA's discretion, with a written notification of the time, place, and subject matter provided by ADECA to the Subrecipient.

3. EQUAL EMPLOYMENT OPPORTUNITY

In accordance with 41 CFR 60-1.4(b) and Executive Order 11246 (as amended by Executive Order 11375), for any federally assisted construction contract as defined by 41 CFR 60-1.3, the contractor, during the performance of this Agreement, hereby agrees as follows:

(a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized

in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Subrecipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the Subrecipient so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Subrecipient agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Subrecipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

In addition, the Subrecipient agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Subrecipient under the program with respect to which the failure or refund occurred until satisfactory assurance of future

compliance has been received from such Subrecipient; and refer the case to the Department of Justice for appropriate legal proceedings.

4. COPELAND "ANTI-KICKBACK" ACT

For all prime construction contracts in excess of \$2,000, the Subrecipient or Contractor shall comply with the Copeland "Anti-kickback" Act, 40 U.S.C. 3145, as supplemented by U.S. Department of Labor regulations (29 CFR Part 3), which prohibits a Contractor or Subrecipient from inducing any person employed in the construction, completion, or repair of a public work from giving up any compensation to which he or she is entitled to receive. In the event of a suspected or reported violation of the Copeland "Anti-Kickback" Act, ADECA shall report such violation to the Federal awarding agency [U.S. Department of Transportation].

5. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

In the event this contract or grant award is for an amount in excess of \$100,000 and involves the employment of mechanics and laborers, the Subrecipient or Contractor shall comply with the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701-3708, specifically 40 U.S.C. 3702 and 3704, as supplemented by U.S. Department of Labor regulations (29 CFR Part 5). Said Act includes provisions which provide that a contractor must compute the wages of mechanics and laborers on the basis of a standard 40-hour work week. If an employee works in excess of 40 hours during a work week, the employee must be compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours. Further, neither a laborer nor a mechanic can be required to work in unsanitary, hazardous or dangerous conditions.

6. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the Federal award meets the definition of "funding agreement" under 37 CFR 401.2(a) and ADECA or the Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment of performance of experimental, developmental, or research work under that "funding agreement," ADECA or the Subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the Federal awarding agency [U.S. Department of Transportation].

7. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

In the event this contract or grant award is for an amount in excess of \$150,000, the Subrecipient or Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401-7671q, and the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387. ADECA shall report any suspected or reported violation

to the Federal awarding agency [U.S. Department of Transportation] and to the Environmental Protection Agency.

8. ENERGY CONSERVATION

The Subrecipient or Contractor shall comply with all 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, 42 U.S.C. 6201 *et seq.*

9. DEBARMENT AND SUSPENSION

(a) The Subrecipient is prohibited from using any contractor or subcontractor or vendor that has been debarred, suspended, or otherwise excluded from participation in federal assistance programs (Executive Orders 12549 and 12689).

(b) The Subrecipient shall require participants in lower tier covered transactions to include the certification on Government-wide Debarment and Suspension (Non-Procurement) for it and its principals in any proposal submitted in connection with such lower tier covered transactions (see 2 CFR Part 180.300). The Excluded Parties List System is available for access from the System of Award Management website at <https://www.SAM.gov>.

(c) The Subrecipient certifies, by entering into this Agreement, that neither it nor its principals, nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement or any contract or subcontract hereto related, by any federal agency or by ADECA and/or any department, agency, or political subdivision of the State. 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 Subrecipient.

(d) The Subrecipient certifies that it has verified the suspension and debarment status for all subcontractors receiving funds under this Agreement, and that it shall be solely responsible for any recoupments or penalties that might arise from non-compliance. The Subrecipient shall immediately notify ADECA if any subcontractor becomes debarred or suspended, and shall, at ADECA's request, take all steps required by ADECA to terminate its contractual relationship with that subcontractor for work to be performed under this Agreement.

10. BYRD ANTI-LOBBYING ACT

In the event this contract or grant award is for an amount equal to, or in excess of, \$100,000, the Subrecipient or Contractor shall comply with the Byrd Anti-Lobbying Act, 31

U.S.C. 1352, and shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award (ADECA).

The Subrecipient will require that the language of the paragraph above be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements).

11. PROCUREMENT OF RECOVERED MATERIALS

2 CFR 200.322 provides that a non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency at 40 CFR 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of completion, where the purchase price of the item exceeds \$10,000.00 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000.00; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the Environmental Protection Agency guidelines.

K. OTHER APPLICABLE FEDERAL AND STATE LAWS

In addition to the above Sections, the Subrecipient agrees that the Subrecipient and its Contractors, Subcontractors, and Vendors shall agree with, and shall adhere to, the following:

1. TOBACCO SMOKE

Public Law 103-227, Title X, Part C, also known as the Pro-Children Act of 1994 (20 U.S.C. 6083) prohibits smoking in any portion of any indoor facility owned or leased or contracted for by an entity used routinely or regularly for the provision of health, daycare, education, or library services to children under the age of 18 if the services are funded by federal programs either directly or through State or local governments by federal grant, contract, loan, or loan guarantee.

2. DRUG-FREE WORKPLACE REQUIREMENTS

In accordance with the provisions of Title V, Subtitle D of Public Law 100-690 or Public Law 111-350 (41 U.S.C. 8101 *et. seq.*), the "Drug-Free Workplace Act of 1988," all

grantees (to include ADECA, the Subrecipient, Contractors, Subcontractors and Vendors) must maintain a drug-free workplace and must publish a statement informing employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and establishing the actions that will be taken against employees violating these prohibitions. Failure to comply with these requirements may be cause for debarment.

3. **TRANSPARENCY ACT**

Awards under Federal programs are included under the provisions of Public Law 109-282, the "Federal Funds Accountability and Transparency Act of 2006" ("FFATA"). Under this statute, the State is required to report information regarding executive compensation and all subgrants, contracts and subcontracts in excess of \$25,000 through the Federal Subaward Reporting System (<https://www.fsrs.gov/>) and in accordance with the terms found in Federal regulations at 2 CFR Part 170, including Appendix A. Therefore, the Subrecipient, Contractors, Subcontractors and Vendors who meet this threshold will be required to furnish this information to the ADECA Community and Economic Development Division which is funding the Subrecipient through this Agreement. Specific reporting processes will be provided by the applicable ADECA Division to the Subrecipient. Active enrollment in the System for Award Management is a condition of payment under Section F. herein this Agreement.

4. **POLITICAL ACTIVITY**

The Subrecipient shall comply with the Hatch Act (5 U.S.C. 1501, *et seq.*) regarding political activity by public employees or those paid with Federal funds. None of the funds, materials, property, or services contributed by the Subrecipient or ADECA under this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate in public office.

5. **HUMAN TRAFFICKING PROVISIONS**

The award is subject to the requirements of Section 106(g) of the "Trafficking Victims Protection Act of 2000", as amended (2 CFR 175.15).

6. **PURCHASES OF AMERICAN-MADE EQUIPMENT AND PRODUCTS**

(a) **Buy American** - As stated in Section 507 of Public Law 103-333, it is the sense of Congress that to the extent practicable, all equipment and product purchases with funds from this Agreement should be American made.

(b) **Buy America** - The Subrecipient agrees to abide by the Buy America law as identified in 23 USC 313 and comply with the FHWA's regulatory policy regarding Buy America identified in 23 CFR 635.410.

7. MANDATORY DISCLOSURES

Pursuant to 2 CFR 200.113, the Subrecipient must disclose, in a timely manner, in writing to ADECA, all violations of Federal criminal law involving fraud, bribery, or gratuity violations.

8. NOT TO CONSTITUTE A DEBT OF THE STATE

It is agreed that the terms, conditions, and commitments contained herein this Agreement shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment No. 26.

9. 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 this Agreement shall be deemed null and void.

10. IMMUNITY AND DISPUTE RESOLUTION

(a) The parties to this Agreement recognize and acknowledge that ADECA is an instrumentality of the State of Alabama, and as such, is immune from suit pursuant to Article I, Section 14, Constitution of Alabama 1901. 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 ADECA of such Constitutional Immunity.

(b) 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.

(c) For any and all 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.

11. DISCLAIMER

(a) 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 this Agreement, a contract, a grant, a loan, or by any other means.

(b) No Subrecipient, Contractor, or agency performing services under any agreement, contract, grant, or any other understanding, oral or written, other than an actual employee of ADECA, shall be considered an agent or employee of the State of Alabama or ADECA or any Division thereof. The State of Alabama, ADECA, and their agents and employees assume no liability to any Subrecipient, 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 Subrecipient, Contractor, or agency, or any other person.

12. ACCESS TO RECORDS

The ADECA Director, 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 Subrecipient for the purpose of making audits, financial reviews, examinations, excerpts and transcripts. This right also includes timely and reasonable access to the Subrecipient's personnel for the purpose of interview and discussion related to such agreement. This right of access is not limited to the required record retention period but shall last as long as the applicable records are retained.

13. ASSIGNABILITY

The Subrecipient 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 ADECA thereto. Provided, however, that claims for money due, or to become due to the Subrecipient from ADECA 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 ADECA.

14. CONTINGENCY CLAUSE

(a) It is expressly understood and mutually agreed that any ADECA commitment of funds herein shall be contingent upon receipt and availability by ADECA of funds under the Recreational Trails Program for which this Agreement is made. If this Agreement involves Federal funds, the amount of this Agreement will be adjusted by the amount of any federal recessions and/or deferrals.

(b) Payments made by ADECA under the terms of this Agreement shall not constitute final approval of documents submitted by the Subrecipient or of procedures used in formulating requests for payment to the Subrecipient.

15. CONFLICT OF INTEREST

(a) 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: (i) the individual, (ii) any member of the individual's immediate family, (iii) the

individual's partner, or (iv) an organization which employs or is about to employ any of the above.

(b) The Subrecipient certifies by signing this Agreement that no person under the Subrecipient's employ or control who presently performs functions, duties, or responsibilities in connection with ADECA of grant-funded projects or programs has any personal and/or financial interest, direct or indirect, in this Agreement, nor will the Subrecipient hire any person having such conflicting interest.

(c) The Subrecipient certifies that it will maintain a written code of standards governing the performance of persons engaged in the award and administration of contracts and subgrants.

16. INDIRECT COST

In accordance with 2 CFR 200.331(a)(1)(xiii) and (a)(4), and 2 CFR 200.414, subrecipients of federal awards may charge indirect costs to the award unless statutorily prohibited by the federal program and in accordance with any applicable administrative caps on federal funding. ADECA will not negotiate indirect cost rates with subrecipients but will accept a federally negotiated indirect cost rate or the 10% de minimis rate of the modified total direct cost (MTDC) as defined in 2 CFR 200.68. If requesting the 10% de minimis rate, subrecipients must submit a certification that the entity has never received a federally approved indirect cost rate. Subrecipients are allowed to allocate and charge direct costs through cost allocation. However, in accordance with 2 CFR 200.403, costs must be consistently charged as either indirect or direct costs but not charged as both or inconsistently charged to the federal award. Once chosen, the method must be used consistently for all federal awards until such time as a negotiated rate is approved by the subrecipients' federal cognizant agency.

17. AUDIT REQUIREMENTS

(a) All Subrecipients of federal funds must follow the Audit requirements identified in the Office of Management and Budget Uniform Administrative Requirements, 2 CFR Part 200, Subpart F – Audit Requirements. Additionally, if any Subrecipient receives more than \$500,000, collectively, in State General Fund appropriations in their fiscal year, from ADECA, they must have an audit in accordance with Government Auditing Standards (the Yellow Book) and Generally Accepted Auditing Standards established by the AICPA.

(b) 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.

- (c) Copies of all required audits must be submitted to:

Alabama Department of Economic and Community Affairs (ADECA)
ATTENTION: Chief Audit Executive
401 Adams Avenue
P.O. Box 5690
Montgomery, Alabama 36103-5690

And an additional copy to:

Alabama Department of Examiners of Public Accounts
ATTENTION: Audit Report Repository
P. O. Box 302251
Montgomery, Alabama 36130-2251.

- (d) 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 CFR Part 200, Subpart F §200.512.

**18. AUDIT EXCEPTIONS / UNRESOLVED QUESTIONED COSTS /
OUTSTANDING DEBTS**

The Subrecipient 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.

19. SUSPENSION OF PAYMENTS

(a) 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.

(b) Should the Subrecipient incur an unresolved audit exception or have unresolved questioned costs or finding of fiscal 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 the Subrecipient until the audit exception or questioned cost or finding of fiscal inadequacy has been resolved.

(c) 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.

20. 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 \$5,000.00.

21. COMPLIANCE WITH OTHER APPLICABLE FEDERAL, STATE, AND LOCAL LAWS

(a) In addition to the provisions provided herein, the Subrecipient 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*).

(b) 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.

(c) By signing this Agreement, the parties affirm that for the duration of this Agreement 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 this Agreement and shall be responsible for all damages resulting therefrom.

(d) The Subrecipient agrees that ADECA shall not be liable for the failure on the part of the Subrecipient and/or any Contractor, Subcontractor or Vendor, to perform the said work activities and administrative services and the terms of this Agreement in accordance with all applicable laws and regulations.

(e) The Subrecipient agrees that work on the project will begin within 180 days following the receipt of notification that funds have been approved. The Subrecipient must provide a written request for an extension for the 180-day period within the first 120 days following the notification that funds have been approved.

(f) The Subrecipient agrees that it possesses legal authority to apply for the grant, and to finance and construct the proposed facilities. A resolution, motion, or similar action has been duly adopted or passed authorizing the filing of the Application, including all understandings and assurances contained herein, and

directing and authorizing the person identified as the Chief Elected Official/Executive Director/President to act in connection with the Application and to provide such additional information as may be required.

(g) The Subrecipient agrees that property acquired with RTP funds will remain open to the public for trail use in perpetuity. Should the property cease to be open to the public for trail use, the Subrecipient must repay the RTP share (specified in this Agreement) of the fair market value of the property at the time of the change in use.

(h) The Subrecipient agrees that development projects located on an easement, on leased land, or on applicant owned property will remain open to the public for trail use for a minimum of twenty-five (25) years unless otherwise stated in the ADECA-approved Application.

(i) The Subrecipient agrees to comply with the terms of Title II and Title III, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), 94 Stat. 1894 (1970), and the applicable regulations and procedures implementing such Act for all real property acquisitions and where applicable shall assure that the Act has been complied with for property to be developed with assistance under this Agreement.

(j) The Subrecipient agrees that Form FHWA-1273, "Required Contract Provisions, Federal-aid Construction Contracts (Attachment A), will be physically incorporated (not referenced) in all contracts, subcontracts, and lower-tier subcontracts (excluding purchase orders, rental agreements, and other agreements for supplies or services related to a construction contract).

(k) The Subrecipient agrees that facilities will be designed to comply with the Architectural Barriers Act of 1968 (Public Law 90-480) and the U.S. Department of Transportation Section 504 Regulations (49 CFR Part 27).

(l) The Subrecipient will provide for and maintain competent and adequate architectural/engineering supervision and inspection at the construction site to ensure that the completed work conforms with the approved plans and specifications.

(m) The Subrecipient agrees to comply with the provisions of: Executive Order 11988, relating to evaluation of flood hazards; Executive Order 11288, relating to the prevention, control, and abatement of water pollution; and Executive Order 11990 relating to the protection of wetlands.

(n) The Subrecipient agrees to comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires the purchase of flood insurance in communities where such insurance is available, as a condition for the receipt of any Federal financial assistance for construction or

acquisition purposes, for use in any area that has been identified as an area having special flood hazards by the Flood Insurance Administration of the Federal Emergency Management Agency. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

(o) The Subrecipient agrees to comply with "Minority Business Enterprises" and "Women's Business Enterprises" pursuant to Executive Orders 11625, 12138, and 12432 as follows:

(1) Place qualified small and minority businesses and women's business enterprises on solicitation lists.

(2) Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.

(3) Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority owned businesses, and women's business enterprises.

(4) Establish delivery schedules, where the requirement permits, which encourage participation by small and minority owned business, and women's business enterprises.

(5) Notify ADECA's Office of Minority Business Enterprise of all procurement opportunities to include the purchase of equipment, construction activities, and/or professional services.

(6) Comply with applicable Disadvantaged Business Enterprise (DBE) Program which complies with the U.S. Department of Transportation's standards set forth in 49 CFR Part 26. Notify the Alabama Department of Transportation's DBE Program staff of all procurement opportunities to include the purchase of equipment, construction activities, and/or professional services.

(7) Require prime contractors, if subcontracts are to be let, to take the affirmative steps listed in (1) through (6).

(p) Property Standards. The Subrecipient shall comply with Property Acquisition and Management Standards of 2 CFR Part 200.

(q) The Subrecipient agrees to comply with the following applicable regulations, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this federally funded project, including:

(1) 49 CFR Part 20, New Restrictions on Lobbying.

(2) FAR Clause 52.203-12, Paragraphs (a) and (b), Limitation on Payments to Influence Certain Federal Transactions.

(3) 2 CFR Part 25, System for Award Management (www.SAM.gov) and Data Universal Numbering System (DUNS).

(4) 2 CFR Part 170, "Reporting Subawards and Executive Compensation".

(r) The Subrecipient agrees to comply with all applicable standards, orders, or requirements issued under the Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

(s) Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights:

(1) The Subrecipient agrees this award and employees working on this financial assistance agreement will be subject to the whistleblower rights and remedies in the pilot program on Award Recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.

(2) The Subrecipient shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712.

(3) The Subrecipient shall insert the substance of this clause, including this paragraph (3), in all subawards or subcontracts over the simplified acquisition threshold, 48 CFR 52.203-17 (as referenced in 48 CFR 3.908-9).

22. CIVIL RIGHTS ASSURANCE

(a) The Subrecipient certifies that, as a condition to receiving any Federal assistance from the Department of the Transportation, it will comply with all Federal laws relating to nondiscrimination. These laws include, but are not limited to: Title VI of the Civil Rights Act of 1964 (49 CFR 21), which prohibits discrimination on the basis of race, color, or national origin; Section 504 of the Rehabilitation Act of 1973, as amended (49 CFR 27), which prohibits discrimination on the basis of handicap; the Age Discrimination in Employment Act of 1975, as amended (42 U.S.C. 6101 et seq.), which prohibits discrimination on the basis of age; Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.); ADA Title II at 28 CFR 35; ADA

Accessibility Guidelines at 28 CFR 36; Limited English Proficiency (E.O. 13166) at 28 CFR 42.104(b)(2); ADA Amendments Act of 2008 (Public Law 110-325, 42 U.S.C. 12101); Title IX of the Education Amendments of 1972 (20 U.S.C. 1681); and applicable regulatory requirements to the end that no person in the United States shall, on the grounds of race, color, national origin, handicap or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the applicant. THE SUBRECIPIENT HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this Agreement.

(b) THIS ASSURANCE shall apply to all aspects of the Applicant's operations including those parts that have not received or benefited from Federal financial assistance.

(c) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Subrecipient by ADECA, this assurance shall obligate the Subrecipient, or in the case of any transfer of such property, any transferee, for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Subrecipient for the period during which the Federal financial assistance is extended to it by ADECA.

(d) THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Subrecipient by ADECA, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date.

(e) The Subrecipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Subrecipient, its successors, transferees, assignees, and subrecipients and the person whose signature appears on the Agreement and who is authorized to sign on behalf of the Subrecipient.

23. PROGRESS REPORTS

The Subrecipient agrees to submit quarterly progress reports to ADECA and at any other time as requested by ADECA. The quarterly reports must include project activities that occurred during the quarter for which you are reporting and the project activities you anticipate occurring during the following quarter. The reports must be signed and dated by the chief elected official, President, Commissioner, or Executive Director. The reporting schedule is as follows:

Quarter Ending	Report Due Date
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

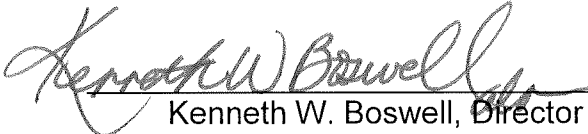
IN WITNESS WHEREOF, ADECA and the Subrecipient have executed this Agreement as evidenced by their signatures below:

ADECA

SUBRECIPIENT

Alabama Department of Economic
and Community Affairs

City of Foley


Kenneth W. Boswell, Director

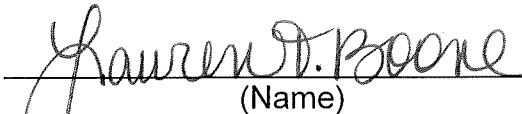
Authorized Official

10/1/2019
(Date)

(Date)

ATTEST:

ATTEST:


(Name)
Executive Secretary
(Title)

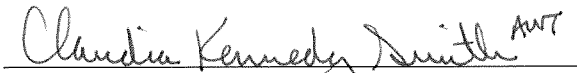
(Name)

(Title)

10/1/19
(Date)

(Date)

This contract/grant has been reviewed
for content, legal form, and complies
with all applicable laws, rules and
regulations of the State of Alabama
governing these matters.


Claudia Kennedy Smith
General Counsel for ADECA