

GRANT AGREEMENT

This Grant Agreement is entered into by and between the Alabama Department of Economic and Community Affairs (hereinafter called the "Department") and the **City of Foley**, (hereinafter called the "Subrecipient").

1. PURPOSE: The funds will be provided to the South Baldwin Regional Workforce Development Authority for the ongoing economic development project, specifically for the establishment and operations of the Gateway Workforce Education Career Campus in the City of Foley.
2. FUNDING AND COMPENSATION: This project is awarded **\$500,000**. Payment will be made upon submission of a "payment request." Department reserves the right to withhold payments or reduce grant in the absence of appropriate expenditure rate. Payment is subject to change if proration of the State General Fund is declared.

Department, at its discretion, may cancel any warrant issued to Subrecipient pursuant to this agreement and not cashed by Subrecipient within forty-five days of the issue date of the warrant. **Payment requests must be received on or before September 30, 2024. Any funds not requested by September 30, 2024, will not be paid.**

Payments made by Department under the terms of this Agreement shall not constitute final approval of documents submitted or procedures used in formulating requests for payment.

3. GRANT PERIOD: This Agreement is effective as of **October 1, 2023**, and unless authorized in writing by the Department Director will end **September 30, 2024**.
4. AMENDMENTS: The Department or the Subrecipient may, from time to time, request amendment to various provisions of this Grant Agreement. Such amendments, which are mutually agreed upon by the Department and the Subrecipient, must be incorporated as written amendments to this Grant Agreement and approved by all signatory authorities prior to implementation.
5. REPORTING: The Subrecipient shall provide a performance report every quarter showing expenditure of funds and project progress. Within 30 days after the final expenditure of funds, a final report must be provided documenting full expenditures and grant accomplishments. Any unexpended funds must be remitted to the Department with the final report.

6. TERMINATION: The following provisions apply to termination under this grant agreement, whether termination by the Department or by the Subrecipient. 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 Subrecipient 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 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 the Department to the Subrecipient, the Department 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.

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 Subrecipient 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 Subrecipient shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, the Subrecipient 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 Subrecipient and the Department may withhold any payments to the Subrecipient for the purpose of setoff until such time as the exact amount of damages due the Department from the Subrecipient is determined.

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

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 Code of Federal Regulations, 2 C.F.R. Part 180.300). The Excluded Parties List System is available for access from the System of Award Management website at <https://www.SAM.gov>.

The Subrecipient 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. 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 Recipient.

The Subrecipient 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. Subrecipients shall immediately notify the Department if any subcontractor 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.

8. 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.
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 the Agreement shall be deemed null and void.
10. IMMUNITY AND DISPUTE RESOLUTION: 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 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 ADECA 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 any and 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.

11. 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 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 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 Subrecipient for the purpose of making audits, financial reviews, examinations, excerpts, and transcripts. This right also includes timely and reasonable access to Subrecipient 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.

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 the Department thereto. Provided, however, that claims for money due, or to become due to the Subrecipient 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.

14. CONTINGENCY CLAUSE: It is expressly understood and mutually agreed that any Department commitment of funds herein shall be contingent upon receipt and availability by the Department of funds under the program for which this Grant Agreement is made. If this agreement involves Federal funds, the amount of this Grant Agreement will be adjusted by the amount of any federal recessions and/or deferrals. Payments made by the Department 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. Funds appropriated and obligated to this award are available for reimbursement of costs until the end of the performance period set forth in the Grant Agreement.

15. 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 Subrecipient 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 Subrecipient hire any person having such conflicting interest. The Subrecipient 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 subgrants.

16. AUDIT REQUIREMENTS: All subrecipients 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). Subrecipients 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 subrecipient 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

ADECA
ATTENTION: Chief Auditor
401 Adams Avenue
P.O. Box 5690
Montgomery, AL 36103-5690

central.records@examiners.alabama.gov

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

17. 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.

18. 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 Subrecipient 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 Subrecipient 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.

19. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS: 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, Alabama procurement law (Ala. Code § 41-16-1 *et seq.*; Ala. Code § 41-4-130 *et seq.*), the Alabama Public Works Law (Ala. Code § 39-1-1 *et seq.*), any State permitting requirements, the Alabama Open Meetings Act (Ala. Code § 36-25A-1 *et seq.*), and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act (Ala. Code § 31-13-1 *et seq.*).

For all contracts governed by the Alabama Public Works Law or Alabama procurement law, 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 grant, 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.

20. **NONDISCRIMINATION:** The Subrecipient shall be and is prohibited from discriminating based on race, color, religion, sex, age, handicap, or national origin.

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

ADECA

Subrecipient

Alabama Department of Economic
and Community Affairs

City of Foley



Kenneth W. Boswell, Director

2/14/2024

(Date)

Mayor

(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.



Meg Williams Fiedler, General Counsel
for ADECA