

MEMORANDUM

October 28, 2013

TO: Honorable Mayor and City Commissioners

VIA: Kenneth Fields, City Manager

FROM: Margaret Swanson, Director of Planning and Development

RE: Funding and Program Agreement – FL Department of Economic Opportunity
“Premier Streets” Community Appearance Grant

SYNOPSIS: Florida Dept. of Economic Opportunity offered funds of \$25,000 to undertake the “premier streets” project proposed by the Planning & Development Department and Parks and Community Appearance Advisory Board. The project is to devise an action plan for improving the appearance of major streets leading to and surrounding the downtown historic district. Central Ave., First St., and the downtown streets will be included. Requested, is approval of an agreement between the City and the granting agency.

RECOMMENDATION

Recommended is approval of the grant agreement.

The agreement has been reviewed by the City Attorney and Finance Director.

BACKGROUND

The agreement with the Florida Department of Economic Opportunity is for a \$25,000 technical assistance grant to develop an action plan to improve the appearance of key streets leading to and surrounding the downtown historic district.

The Scope of Work is detailed in Exhibit A (page 13) of the agreement. Work must be completed by May 2014. Use of the funds is restricted to planning and design.

A proto type sign and landscaping concept for city entrances will be developed as part of the project. Improving the appearances of gateways to the city is a priority of the Economic Development Council, and additional funding may be provided by the Council.

Community appearance is an important factor in attracting business and residents to the community. As stated in the application for funds:

“Premier Streets” are the most important local streets in a community. These streets are responsible for the first impression of our community for visitors when they leave the

highway and wend their way to the downtown or a residential neighborhood. And these streets are experienced time and time again by residents and regular visitors.

Streets to be included are Central Ave. from SR 60 (Clark's Corner) to Lake Wailes, First St. from SR 60 to Wiltshire, and the streets within and surrounding the downtown historic district.

Application for the funds was made by the Planning and Development to thoroughly analyze what needs to be done to improve the appearance of the focal area rather than continue with a scattershot approach. As actions are taken based on the plan, progress and success can be evaluated. If successful, the approach might be used in other areas of the City.

As stated in the Scope of Work:

The proposed project will provide the city with a feasible action plan to transform the tired, uncared-for spots on the streets around the gem of the historic downtown. It will build upon concepts in the City of Lake Wales Assessment Report (2005) and The Downtown Lake Wales Master Plan (2008), both by Martin & Vargas. While previous reports provided large concepts for the future, the proposed project will identify immediate and practical actions that can be taken towards the goals of those plans.

The product of the work will be a photo presentation with an accompanying action plan. The photo presentation will document problem areas, and "mock up" photos of selected areas will illustrate what could be done to improve the appearance of the problem area. The action plan will identify responsibility for taking the recommended actions.

Planning staff and the members of the Parks and Community Appearance Advisory Board will work closely with the consultant to identify issues and develop the action plan. A photo presentation will be made to the City Commission upon completion of the project.

OTHER OPTIONS

The City Commission does not wish to move forward with the project, the offer can be declined.

FISCAL IMPACT

No matching funds are required for the grant. Considerable time will be required of Planning staff to undertake the project.

ATTACHMENT

Funding and Program Agreement

**STATEMENT OF FISCAL IMPACT
DEPARTMENT OF ECONOMIC OPPORTUNITY (DEO)
PLANNING - PREMIER STREETS
(FEDERAL FUNDS)**

PREPARED BY

**CITY OF LAKE WALES
FINANCE DEPARTMENT**

Nature of Statement and Information Disclosed

This is a statement of fiscal impact has been performed as required by and in accordance with Section 2-802, Article VIII of the City of Lake Wales Code of Ordinances. It is a statement solely for the purpose of analyzing and reporting the fiscal impact on the City of either applying or not applying for this grant, using certain assumptions as indicated herein. No attempt is made to evaluate the Grant Application for suitability to City objectives.

In order to provide an unqualified statement of fiscal impact that can be certified as reasonably full and complete by the Finance Department, certain information must be provided permitting Finance Department personnel to produce a full and complete determination as to all anticipated fiscal impacts. This impact statement was produced using:

- **Funding and Program Agreement - DEO**
- **E-mail from Margaret Swanson – 10/28/13 4:21pm**

This impact statement represents, in our unqualified opinion, a valid estimate of known present or future impacts anticipated to result from the acceptance of the aforementioned grant.

In some cases, the nature of a fiscal impact is described rather than stated using specific dollar amounts or figures. This is done in order to provide information on the nature of the expected fiscal impact where there simply is not enough information to quantify the impact, or whether the exact amount of the impact depends on the exact type of future events or conditions.

General Assumptions

A fiscal impact statement constitutes a forward-looking statement on the acceptance of grant funds and the proper execution of all requirements as set forth in any grant application, agreement, covenants attached to real or tangible property, or other duly enforceable stipulations. In order to produce such a statement, assumptions about future events and conditions must be made.

In any case where a reasonable expectation of a future condition or event has been disclosed or is already known to Finance Department personnel, that information has been used as an Assumption in the fiscal impact statement. Expectations not known or not considered reasonably expected to occur have been excluded from the fiscal impact statement. If an event or condition may occur which would have a material and *direct* fiscal impact, but is not reasonably expected to occur, it is disclosed in the fiscal impact statement.

General Assumptions are made in this fiscal impact statement that the City Staff executing the grant program already possess the required knowledge and expertise to expertly perform all of the requirements of the grant, and that the information provided to prepare this impact statement is true and correct. It is also assumed that no outside events will create a positive or negative influence on the grant program, and that there will be no changes in the legal, operational, or economic environment in which the grant program, and the City as whole, operates, except as disclosed herein.

Current Fiscal Impacts

Impacts on Revenue

Grant request for \$25,000 with no city match requirement.

Impacts on Expenditures

The Planning Department will hire a consultant to provide technical assistance to city staff. The project goal is to create an action plan to upgrade the appearance of “premier streets” in the City. The amount of the project budget will be \$25,000. The Planning Department has provided assurance, e-mail dated 10/28/2013, that the project will not exceed the budgeted amount of \$25,000.

Future Fiscal Impacts

Impacts on Revenue

N/A

Impacts on Expenditures

N/A

Other Future Commitments

N/A

Disclosures of Possible Material Future Events

N/A

Certification

We hereby certify that this fiscal impact statement is, to the best of our knowledge, a valid estimate of known present or future impacts anticipated to result from the application and acceptance of the aforementioned grant.

Approved By:



Dorothy Ecklund, CPA
Finance Director
City of Lake Wales

FUNDING AND PROGRAM AGREEMENT
BETWEEN
THE DEPARTMENT OF ECONOMIC OPPORTUNITY
AND
CITY OF LAKE WALES

THIS FUNDING AND PROGRAM AGREEMENT (“Agreement”), by and between the DEPARTMENT OF ECONOMIC OPPORTUNITY (herein after referred to as the “DEPARTMENT”) located at 107 East Madison Street, Tallahassee, Florida 32399-4120, and the City of Lake Wales (herein after referred to as the “RECIPIENT”), located at 201 West Central Avenue, Lake Wales, Florida 33853, is made and entered into as of the date last signed below (the “Effective Date”). The DEPARTMENT and the RECIPIENT are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the 2013 Legislature appropriated recurring funds (the “Funds”) from the Grants and Donations Trust Fund for the purpose of providing technical assistance to local governments for implementation of growth management planning efforts; and

WHEREAS, the RECIPIENT acknowledges that this is a performance based funding program and represents that it possesses the requisite skills, knowledge, qualifications and experience to perform the tasks described herein; and

WHEREAS, the DEPARTMENT and the RECIPIENT desire to enter into this Agreement with regard to the implementation of the funding and programs described herein;

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, the Parties agree as follows:

1. PARTIES:

The Parties and their respective addresses for purposes of this Agreement are as follows:

For the DEPARTMENT:
Department of Economic Opportunity
Division of Community Development
107 East Madison Street, MSC 160
Tallahassee, Florida 32399-4120
Telephone Number (850) 717-8475
Facsimile Number (850) 717-8522

For the RECIPIENT:
City of Lake Wales
Post Office Box 132
Lake Wales, Florida 33859
Phone: (863) 678-4182
Email: kbangley@cityoflakewales.com

2. AGREEMENT MANAGERS:

The Parties each hereby appoint an Agreement Manager to facilitate the terms of this Agreement. All written approvals referenced in this Agreement must be obtained from the Parties' Agreement Managers or their designees. The DEPARTMENT Agreement Manager is Beth Frost and may be reached at telephone number (850) 717-8487. The RECIPIENT Agreement Manager is Kathy Bangley and may be reached at telephone number (863) 678-4182, extension 714. Either Party may change its Agreement Manager at any time by written notice to the other.

3. TERM:

This Agreement will commence as of the date last signed below (the "Effective Date") and, unless earlier terminated pursuant to the terms hereof, will expire on June 30, 2014. The RECIPIENT acknowledges this Agreement is subject to the availability of funds, legislative appropriations, statutory changes, and further conditioned upon its satisfactory performance of all duties and obligations hereunder, as determined by the DEPARTMENT.

4. NOTICES:

- a. All notices provided under or pursuant to this Agreement shall be in writing delivered to the Agreement Manager identified in paragraph 2 of this Agreement. Any such notice, demand, request, or other communication shall be effective only if and when it is received by the Agreement Manager.
- b. If the RECIPIENT is unable to perform any service or is unable to make use of any funds awarded for a service provided for under this Agreement, the RECIPIENT shall share this information with the DEPARTMENT within five (5) working days of the RECIPIENT's discovery of the shortfall.

5. AMENDMENT AND MODIFICATION:

- a. This Agreement may not be altered, modified, amended, or changed in any manner, except pursuant to a written agreement executed and delivered by each of the Parties. Additionally, any such modification, amendment or change shall be effective on the date of delivery or such later date as the Parties may agree therein.
- b. Modification of this Agreement or any notices permitted or required under this Agreement may be made by facsimile or other electronic transmission. Receipt of the facsimile transmission shall for the purposes of this Agreement be deemed to be an original, including signatures.

6. EXHIBITS:

Attached to and made a part of this Agreement are the following Exhibits; each of which is incorporated into and is an integral part of this Agreement:

Exhibit A	Scope of Work
Exhibit B	Payment Plan
Exhibit C	Audit Requirements

7. DUTIES AND OBLIGATIONS:

- a. The RECIPIENT shall develop and implement programs and strategies, including but not limited to, those services, programs, and activities more particularly described in Exhibit A, *Scope of Work*.
- b. The RECIPIENT shall avoid duplication of existing state and local services and activities and make a diligent effort to coordinate with other components of state and local economic development initiatives in connection with the development and implementation of the services, programs, and activities under this Agreement.
- c. Advertisements or other promotional materials funded by this Agreement will include reference and credit to the DEPARTMENT.

8. PAYMENT:

a. Payments under this Agreement will be made to the RECIPIENT in accordance with applicable Florida laws and the General Appropriations Act for Fiscal Year 2013/14. The RECIPIENT acknowledges and agrees that only costs incurred on or after the Effective Date are eligible for payment under the funding of this Agreement. The RECIPIENT acknowledges that all funding under this Agreement shall be expended pursuant to this Agreement. Funding shall be distributed pursuant to the schedule shown in Exhibit B, *Payment Plan*. All payments shall be subject to the terms of this Agreement, including the Exhibits and the terms governing sanctions. With regard to the use of funding provided under this Agreement, the RECIPIENT agrees as follows:

1. The funds shall be used to provide the deliverables identified in Exhibit A, *Scope of Work*.
2. The funds shall be used only for allowable expenditures.
3. The RECIPIENT shall refund to the DEPARTMENT any balance of unobligated funds which have been advanced or paid to the RECIPIENT.
4. The RECIPIENT shall refund to the DEPARTMENT all funds paid in excess of the amount to which the RECIPIENT or its subcontractors are entitled under the terms and conditions of this Agreement

b. Payments may be made to the RECIPIENT upon receipt and approval by the DEPARTMENT of: (1) an original invoice; (2) deliverables as described in Exhibit A, *Scope of Work*; and (3) any additional documents required by this Agreement to have been submitted.

c. Financial Consequences: In the event one or more of the proceeding conditions are not met, the DEPARTMENT shall provide to the RECIPIENT a statement that includes the reasons for which payment is not being made as requested per the invoice. If applicable, such a statement shall also identify the additional actions the RECIPIENT must accomplish before payment will be made, which actions may require the RECIPIENT to agree to revision of the deliverables. Failure to submit any report or required supporting documentation for each deliverable will result in a penalty of \$50 per business day for each missing item until received. Upon the RECIPIENT's completion of such additional actions, if applicable, and the DEPARTMENT's reasonable approval of the same, the DEPARTMENT shall disburse to the RECIPIENT an amount equal to the amount requested for disbursement in the invoice or such other amount as the DEPARTMENT deems to be consistent with the deliverables provided, whether or not revised, wholly within the DEPARTMENT'S discretion.

9. REPORTS:

a. The RECIPIENT shall submit to the DEPARTMENT all reports and information, required in Exhibit A, *Scope of Work*. The documents, reports, and services called for in Exhibit A, *Scope of Work*, and other documents or information required by this Agreement must be received and accepted by the DEPARTMENT before payments to the RECIPIENT shall be due or payable.

b. The DEPARTMENT expressly reserves the right to withhold payment to the RECIPIENT until the documents, reports, and services required under this Agreement and by law are complete and acceptable to the DEPARTMENT. If this Agreement is extended or renewed beyond the original Agreement period, additional documents, reports, and services in accordance with the requirements of Exhibit A, *Scope of Work*, and other documents requested by the DEPARTMENT to cover the extended Agreement period shall be submitted by the RECIPIENT.

10. AVAILABILITY OF FUNDS:

The DEPARTMENT's performance and obligation to pay under this Agreement is contingent upon an appropriation by the Legislature of the State of Florida for the specific purpose of funding the DEPARTMENT's obligations under this Agreement. In the event of a state revenue shortfall, the total funding may be reduced accordingly. The DEPARTMENT, in accordance with direction from the Governor and Legislature, shall be the final determiner of the availability of any funds.

11. BUDGET:

Upon Agreement execution, the RECIPIENT shall submit to the DEPARTMENT for review, a line item budget for the project described in Exhibit A, *Scope of Work*, specifying the intended uses of the State's operating investment.

12. WOMEN AND MINORITY VENDORS:

The RECIPIENT is encouraged to use small businesses, including minority and women-owned businesses as subcontractors or sub-vendors under this Agreement. The directory of certified minority and women-owned businesses can be accessed from the website of the Department of Management Services, Office of Supplier Diversity. The RECIPIENT shall report on a quarterly basis its expenditures with minority and women-owned businesses. The report shall contain the

names and addresses of the minority and women-owned businesses; the aggregate dollar figure disbursed that quarter for each business; the time period; type of goods or services; and the applicable code. If no expenditures were made to minority or women-owned businesses, The RECIPIENT shall submit a statement to this effect.

13. SUBCONTRACTS:

a. The RECIPIENT shall be responsible for all work performed and all expenses incurred in connection with the development and implementation of the services, programs, and activities under this Agreement.

b. The RECIPIENT may, as appropriate and in compliance with applicable law, subcontract the performance of the services set forth in this Agreement, including entering into subcontracts with vendors for services and commodities, *provided, however*, that the RECIPIENT shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract. The RECIPIENT shall not enter into subcontracts in which the DEPARTMENT could be held liable to a subcontractor for any expenses or liabilities. THE RECIPIENT shall defend and hold the DEPARTMENT harmless of any liabilities incurred under any of the subcontracts entered into by the RECIPIENT. The RECIPIENT shall be liable for all work performed and all expenses incurred as a result of any subcontract.

c. Any and all contracts that the RECIPIENT executes with a person or organization under which such person or organization agrees to perform economic development services or similar business assistance services on behalf of the RECIPIENT shall include provisions requiring that such person or organization report on performance, account for proper use of funds provided under the contract (including the provision of audit rights pursuant to Section 19, AUDITING RECORDS, Section 20, ACCESS TO RECORDS, and Exhibit C, AUDIT REQUIREMENTS when applicable), coordinate with other components of state and local economic development systems, and avoid duplication of existing state and local services and activities.

d. Any and all contracts that the RECIPIENT executes with a person or organization shall include provisions whereby the RECIPIENT and the subcontractors expressly agree to abide by all local, state, and federal laws.

e. The RECIPIENT will provide the DEPARTMENT with a list and copies of all material subcontracts, which means those entered into necessary to the performance of the RECIPIENT's functions and duties related to its core mission, issued in conjunction with the projects undertaken and funds expended in the performance of this Agreement. The RECIPIENT need not provide, unless specifically requested by the DEPARTMENT, non-material contracts entered into for the normal operation of the RECIPIENT.

14. INDEPENDENT CAPACITY OF CONTRACTOR:

a. The Parties agree that the RECIPIENT, its officers, agents, and employees, in performance of this Agreement, shall act in the capacity of an independent contractor. The RECIPIENT agrees to take such steps as may be necessary to ensure that each subcontractor of the RECIPIENT will be deemed to be an independent contractor and will not be considered or permitted to be an agent of the State of Florida.

b. The RECIPIENT shall not pledge the State of Florida's nor the DEPARTMENT's credit nor make the State of Florida or the DEPARTMENT a guarantor of payment or surety for any contract, debt, obligation, judgment lien, or any form of indebtedness.

15. LIABILITY:

The DEPARTMENT shall not assume any liability for the acts, omissions to act, or negligence of the RECIPIENT, its agents, servants, or employees. In all instances, the RECIPIENT shall be responsible for any injury or property damage resulting from any activities conducted by the RECIPIENT.

16. INDEMNIFICATION: (NOTE: If Recipient is a state agency or subdivision, as defined in subsection 768.28(2), F.S., pursuant to subsection 768.28(19), F.S., neither Party indemnifies or insures the other Party for the other Party's negligence.

The RECIPIENT, shall indemnify and hold the DEPARTMENT harmless to the extent permitted by section 768.28, F.S., from and against any and all claims or demands for damages resulting from personal injury, and damage to real or personal tangible property. Without exception, the RECIPIENT will indemnify and hold harmless the State of Florida and its employees and agents from liability of any nature or kind, including costs and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured by the RECIPIENT.

17. NON-EXCLUSIVE RELATIONSHIP:

The relationship between the Parties is a non-exclusive one which allows the RECIPIENT to engage in other activities, provided that all of the terms and conditions under this Agreement are strictly observed, including the avoidance of conflicts of interests.

18. RESPONSIBILITIES OF GOVERNING BOARD OR AUTHORITIES:

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

19. AUDITING RECORDS:

a. The RECIPIENT shall retain and maintain all records and make such records available for an audit as may be requested. Records shall include independent auditor working papers, books, documents, and other evidence, including, but not limited to, vouchers, bills, invoices, requests for payment, and other supporting documentation, which, according to generally accepted accounting principles, procedures and practices, sufficiently and properly reflect all program costs expended in the performance of this Agreement. The records shall be subject at all times to inspection, review, or audit by state personnel of the Office of the Auditor General, Chief Financial Officer, Office of the Chief Inspector General, or other personnel authorized by the DEPARTMENT and copies of the records shall be delivered to the DEPARTMENT upon request.

b. The RECIPIENT agrees to comply with the audit requirements of Section 215.97, Florida Statutes, and those found in Exhibit C, *Audit Requirements*. This provision is applicable because the RECIPIENT qualifies as a non-state entity as defined in Section 215.97(2)(m), Florida Statutes.

c. The RECIPIENT shall include the audit and record keeping requirements described above and in Exhibit C in all subcontracts and assignments with sub-recipients of State funds according to Section 215.97, Florida Statutes. For purposes of this Agreement, “subrecipient” shall be defined in accordance with Section 215.97(2)(x), Florida Statutes.

d. The RECIPIENT shall maintain financial records related to funds paid by the RECIPIENT to any parties for work on the matters that are the subject of this Agreement as required by law. The RECIPIENT shall submit a written independent audit report to the DEPARTMENT specifically covering the period of Agreement expenditures pursuant to Sections 215.97 and 11.45, Florida Statutes, and other relevant laws.

e. The RECIPIENT must provide copies of any audit referencing this Agreement, the audit transmittal letter, and any response to such audit to the DEPARTMENT within thirty (30) days of receipt by the RECIPIENT.

f. Expenditures of state funds in accordance with this Agreement shall be in compliance with all laws, rules and regulations applicable to expenditures of state funds that are in effect at the time of any such expenditure, including, but not limited to, the Reference Guide for State Expenditures found at <http://www.fldfs.com/aadir/reference-guide/reference-guide.htm>.

g. The DEPARTMENT may be charged only with allowable costs resulting from obligations incurred during the term of the Agreement. Any balance of unobligated cash that has been advanced or paid that is not authorized to be retained for direct program costs in a subsequent period must be refunded to the state.

h. The RECIPIENT shall inform the DEPARTMENT of the type of FINAL AUDIT REPORT that will be delivered at the end of the Agreement. Acceptable audits include:

1. Within forty-five (45) days following the completion of all of the Activities the RECIPIENT shall cause to be prepared at the RECIPIENT's expense and delivered to the DEPARTMENT a final audit report of an independent certified public accountant (or a firm thereof) licensed to practice in the State of Florida, stating the professional opinion that the RECIPIENT has complied with this Agreement (the Final Audit Report).
2. In lieu of providing the Final Audit Report in such manner, if the RECIPIENT has an annual audit by an independent certified public accountant (or a firm thereof) licensed to practice in the State of Florida, or if the RECIPIENT has a state single audit or state project-specific audit pursuant to Section 215.97, Florida Statutes (the Florida Single Audit Act), prepared for the fiscal year in which this Agreement concludes, the RECIPIENT may provide to the DEPARTMENT at the time when such audit is completed (but not more than nine (9) months following the end of the fiscal year of the RECIPIENT a report stating a professional opinion that the RECIPIENT has complied with this Agreement.

20. ACCESS TO RECORDS:

a. The DEPARTMENT may perform on-site reviews to independently validate any information or reports submitted to the DEPARTMENT. The RECIPIENT shall allow the DEPARTMENT's Agreement Manager and other DEPARTMENT-authorized personnel access to any information and any other documents requested by the DEPARTMENT for purposes of monitoring the RECIPIENT's performance.

b. The RECIPIENT shall, subject to the provisions of Chapter 119, Florida Statutes, and other relevant laws, permit public access to all documents or other materials prepared, developed or received by it in connection with the performance of its obligations or the exercise of its rights under this Agreement. This Agreement may be terminated by the DEPARTMENT if the RECIPIENT fails to allow such public access.

21. GOVERNING LAW:

This Agreement is executed and entered into in the State of Florida, and shall be construed, performed, and enforced in all respects in accordance with the laws and rules of the State of Florida. Any litigation arising under this Agreement shall be brought in the appropriate court in Leon County, Florida, applying Florida Law.

22. STRICT COMPLIANCE:

The RECIPIENT agrees that all acts to be performed by it in connection with this Agreement must be performed in strict conformity with all local, state and federal laws and regulations.

23. BREACHES AND REMEDIES:

a. In the event that the RECIPIENT fails to comply with any of the terms of this Agreement, the DEPARTMENT may exercise any remedies available at law or in equity, including, without limitation the right to (i) withhold and/or reduce funding to the RECIPIENT, and (ii) terminate this Agreement in accordance with the terms hereof.

b. In the event that the Department determines that a material default by Recipient of the performance of a duty, obligation, covenant, or agreement imposed on it or made by it in this Agreement or by law has occurred, the Department will provide notice and an opportunity to cure. Unless the notice states otherwise, based upon the Department's determination that the default must be cured immediately, the notice shall provide fifteen (15) calendar days following the date of notice within which to initiate action to correct the default and thirty (30) calendar days following the date of notice of default to either cure the default or demonstrate to the Department's satisfaction that corrective action is being taken that will likely result in curing the default within a period of time that the Department agrees is reasonable. In the event that the Recipient fails to cure the default within the timeframe established above, the Department may exercise any remedy available to it under the law or in equity, including, without limitation the right to terminate this Agreement immediately upon notice to the Recipient.

c. Subject to compensation due the RECIPIENT for any work satisfactorily completed prior to any notice of termination, following the termination of this Agreement, all funds which as of that date were previously provided by the DEPARTMENT and not expended by the RECIPIENT shall revert to the State of Florida General Revenue Fund. The requirement for the return of and method of repayment of any remaining funds shall be at the sole discretion of the DEPARTMENT.

24. DISPUTE RESOLUTION:

The Parties agree they will seek to resolve any disputes between them regarding their responsibilities as soon as possible and at the lowest level reasonable, in order to conserve the resources of the Parties. The Parties further agree to use their best efforts to assure speedy and non-confrontational resolution of any and all disputes between them. If informal efforts are unsuccessful, the Parties agree to engage a mutually accepted volunteer mediator to assist them in resolving any outstanding issues. If, within a reasonable time after engaging a mutually accepted volunteer mediator, the Parties are unable to resolve any outstanding issues, the Parties agree that formal resolution, including but not limited to any remedies available at law or in equity may be sought. This paragraph shall not be construed as a limitation on paragraph 16, INDEMNIFICATION.

25. SEVERABILITY:

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

26. PRESERVATION OF REMEDIES:

No delay or omission to exercise any right, power, or remedy accruing to either Party upon breach or default under this Agreement will impair any such right, power, or remedy of either Party, nor will such delay or omission be construed as a waiver of any such breach or default or any similar breach or default.

27. DISCRIMINATORY VENDOR:

The RECIPIENT affirms that it is aware of the provisions of Section 287.134(2)(a), Florida Statutes, and that at no time has the RECIPIENT been placed on the Discriminatory Vendor List. The RECIPIENT further agrees that it shall not violate such law during the term of this Agreement. The RECIPIENT shall insert a provision in accordance with this Section, in all subcontracts for services in relation to this Agreement.

28. NON-DISCRIMINATION:

The RECIPIENT shall not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, race, sex, creed, color, handicap, national origin, or marital status

29. HARASSMENT-FREE WORKPLACE:

The RECIPIENT shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management. The RECIPIENT shall insert a provision in accordance with this Section, in all subcontracts for services in relation to this Agreement.

30. PUBLIC ENTITY CRIMES:

The RECIPIENT affirms that it is aware of the provisions of Section 287.133(2)(a), Florida Statutes, and that at no time has the RECIPIENT been convicted of a Public Entity Crime. The RECIPIENT agrees that it shall not violate such law and further acknowledges and agrees that any conviction during the term of this Agreement may result in the termination of this Agreement in accordance with Section 287.133(4). The RECIPIENT shall insert a provision in accordance with this Paragraph in all subcontracts for services in relation to this Agreement.

31. UNAUTHORIZED ALIENS

The DEPARTMENT will consider the knowing employment of unauthorized aliens, as described in Section 274A(e) of the Immigration and Nationality Act, by any RECIPIENT, cause for termination of this Agreement. Paragraph 23.b. does not apply regarding the employment of unauthorized aliens. The RECIPIENT shall insert a provision in accordance with this Section in all subcontracts for services in relation to this Agreement

32. LOBBYING:

a. The RECIPIENT shall not use any funds received pursuant to this Agreement for lobbying the Florida Legislature, the judicial branch, or any state agency. Pursuant to section 11.062, Florida Statutes, the RECIPIENT shall insert a provision in accordance with this Section in all subcontracts for services in relation to this Agreement.

b. The RECIPIENT will keep the DEPARTMENT apprised on a current basis regarding requests for testimony or its participation in Congressional, Legislative, and/or other state or federal hearings, agency meetings, committees, task forces, etc. The RECIPIENT will include reports of its participation in such events in the quarterly reports described in Exhibit A.

33. ATTORNEY FEES:

Unless authorized by law and agreed to in writing by the DEPARTMENT, the DEPARTMENT shall not be liable to pay attorney fees, interest, or costs.

34. NON-ASSIGNMENT:

a. Except as otherwise provided in this Agreement, the RECIPIENT may not assign, delegate, nor otherwise transfer its rights, duties, or obligations under this Agreement without the prior written consent of the DEPARTMENT, which consent will not be unreasonably withheld. Any assignment, delegation, or transfer in violation of this paragraph is void ab initio. The RECIPIENT hereby agrees that it shall remain responsible for all work performed and all expenses incurred in connection with this Agreement, regardless of any and all assignment, delegation, or transfer.

b. The DEPARTMENT shall at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental agency in the State of Florida, upon giving prior written notice to the RECIPIENT.

35. ENTIRE AGREEMENT:

This Agreement and the attached Exhibits A, B, and C, constitute a complete and exclusive statement of the terms and conditions of the Agreement and supersede and replace any and all prior negotiations, understandings and agreements, whether oral or written, between the Parties with respect thereto. Except as expressly provided in this Agreement, no term, condition, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the provisions of this Agreement shall be effective or binding upon the Parties unless agreed to in writing by the party against whom enforcement is sought.

Remainder of page intentionally left blank.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

THE DEPARTMENT:

DEPARTMENT OF ECONOMIC OPPORTUNITY

WILLIAM B. KILLINGSWORTH
Director, Division of Community Development

DATE: _____

WITNESS

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

**OFFICE OF GENERAL COUNSEL
DEPARTMENT OF ECONOMIC OPPORTUNITY**

By: _____

THE RECIPIENT:

CITY OF LAKE WALES

Print/Type Name

Title

DATE: _____

WITNESS

Exhibit A

Scope of Work

Background

The project goal is to create an action plan to upgrade the appearance of “premier streets” in the city. “Premier Streets” are the most important local streets in a community. These streets are responsible for the first impression of our community for visitors when they leave the highway and wend their way to the downtown or a residential neighborhood. And these streets are experienced time and time again by residents and regular visitors.

The City will hire a design professional to prepare a plan that will focus on creating a feasible action plan to transform the tired, un-cared for spots along the streets leading to and around the gem that is our downtown. The plan will identify immediate and practical actions that can be taken to achieve premier streets.

Streets to be included in the Premier Streets Lake Wales Project:

1. Central Ave. – the City’s “Main Street” – Approx. 1.5 mi. from SR 60 east to Lake Wales

From SR 60 eastward across US Highway 27, past the Municipal Building, Fire Station, and Polk State College, past downtown, and including major intersections at First Street and the Ridge Scenic Highway, and continuing eastward to Lakeshore Blvd., which circles Lake Wales. Central Ave. has a mixed appearance, with some very attractive properties and some abandoned buildings. The block between Martin Luther King Blvd. and Wetmore is particularly bleak.

Issues include: Abandoned unsightly building at SR 60 entrance, lack of continuous sidewalks, need for crosswalks at some intersections, lack of landscaping along some blocks, several empty buildings, outdated and hazardous planters along roadway, no consistency in plantings, unscreened dumpsters, sign code violations, non-compliant and unpaved parking.

2. First Street – City entrance from SR 60 – Approx. 1 mi. from SR 60 to Wiltshire Blvd.

From SR 60 northward, past the Polk Ave. School, through an older commercial area, to downtown, crossing Central Ave. and historic district streets Stuart and Park Ave. and the historic Grand Hotel and Post Office Block, and continuing north through older commercial and residential areas.

Issues include: No entrance feature or treatment at SR 60, unpaved parking and tired appearance at Polk Ave. School’s First St. and Polk Ave. frontages, no landscaping along street or on older commercial properties, hodge-podge of signage, need for streetscape upgrade at downtown intersections.

3. Downtown streets – Park, Stuart, Orange, and Crystal Aves. from Third St. (east of the Scenic Highway) to Martin Luther King Blvd. – Approx. 2 miles total.

With the exception of Park and Stuart between the Scenic Highway and First St., downtown streets have significant appearance issues.

Issues include: several empty buildings and parking lots, almost complete lack of landscaping, unscreened dumpsters, abandoned and overgrown private parking areas, several empty buildings, deteriorated public parking lots (north side of Orange Ave., southeast corner of Wetmore and Stuart, and east of the railroad south of Stuart Ave.), abandoned signs, sidewalk and ADA issues, and poor property maintenance.

Tasks

1. A multi-phased plan illustrated in a photo presentation. Presentation will include “before” pictures and mocked-up “after” views of proposed improvements to the streetscape, including landscaping, sign regulation and control, entrance features, intersection treatments, and lighting, as well as clean-up and improvements to private property along the streets. Each set of views will include a description or discussion of the site or area and the needed changes depicted.

Deliverable: Electronic copy of the photo presentation. (due March 1, 2014)

2. Written action plan to support the photo presentation. The written plan will include recommendations for immediate, low-cost improvements in addition to more ambitious capital projects for the future and incentives for encouraging private improvements and public-private cooperation. A table describing the proposed action items and recommended implementation strategies will be included in the action plan. The plan will include identification of recommended regulations for code enforcement.

Deliverable: Electronic copy of the draft action plan. (due May 1, 2014)

Exhibit B

Payment Plan

Payments shall be made in accordance with the Scope of Work (Exhibit A), based on acceptance and approval of deliverables by the Department of Economic Opportunity according to the schedule below. No partial or pro-rated payments will be made without prior written modification in accordance with Section 5 of this Agreement.

Deliverable	Due Date of Deliverable	Payment Amount
Task 1: Electronic copy of the photo presentation as described in Task 1 of the Scope of Work (Exhibit A)	March 1, 2014	\$15,000
Task 2: Electronic copy of the draft action plan as described in Task 2 of the Scope of Work (Exhibit A)	May 1, 2014	\$10,000
TOTAL		\$25,000

Exhibit C

AUDIT REQUIREMENTS

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

MONITORING

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

AUDITS

PART I: FEDERALLY FUNDED

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

1. In the event that the recipient expends \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. EXHIBIT 1 to this agreement indicates Federal resources awarded through DEO by this agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from DEO. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, will meet the requirements of this part.
2. In connection with the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.
2. If the recipient expends less than \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the recipient expends less than \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid

from non-Federal resources (i.e., the cost of such an audit must be paid from the recipient resources obtained from other than Federal entities).

3. Although the audit provisions of OMB Circular A-133 ordinarily do not apply to for-profit sub recipients, in the case of Federal funding provided by the U.S. Department of Health and Human Services, Circular A-133 does apply. See 45 C.F.R. 74.26 for further details.
4. A web site that provides links to several Federal Single Audit Act resources can be found at: <http://harvester.census.gov/sac/sainfo.html>

PART II: STATE FUNDED

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

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such recipient (for fiscal years ending September 30, 2004 or thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this agreement indicates state financial assistance awarded through DEO by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from DEO, other state agencies, and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$500,000 in state financial assistance in its fiscal year (for fiscal years ending September 30, 2004 or thereafter), an audit conducted in accordance with the provisions of section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of section 215.97, F.S., the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. Additional information regarding the Florida Single Audit Act can be found at: <http://www.myflorida.com/fsaa/statutes.html>.

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of state financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

N/A

PART IV: REPORT SUBMISSION

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

- A. DEO at each of the following addresses:

Inspector General
Department of Economic Opportunity
Caldwell Building
107 East Madison St.
Tallahassee, FL 32399-6545

Financial Management Systems Assurance Section (FMSAS)
Department of Economic Opportunity
Caldwell Building
107 East Madison St.
Tallahassee, FL 32399-6545

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

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

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

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

Inspector General

Department of Economic Opportunity
Caldwell Building
107 East Madison St.
Tallahassee, FL 32399-6545

Financial Management Systems Assurance Section (FMSAS)
Department of Economic Opportunity
Caldwell Building
107 East Madison St.
Tallahassee, FL 32399-6545

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

- A. DEO at each of the following addresses:

Inspector General
Department of Economic Opportunity
Caldwell Building, 107 East Madison St.
Tallahassee, FL 32399-6545

Financial Management Systems Assurance Section (FMSAS)
Department of Economic Opportunity
Caldwell Building, 107 East Madison St.
Tallahassee, FL 32399-6545

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

Auditor General's Office
Room 401, Pepper Building
111 West Madison Street
Tallahassee, FL 32399-1450

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

- A. DEO at each of the following addresses:

N/A

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

indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION

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

- End of Exhibit C -

EXHIBIT – 1

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

NOTE: If the resources awarded to the recipient represent more than one Federal program, provide the same information shown below for each Federal program and show total Federal resources awarded.

Not Applicable

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

Not Applicable

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

MATCHING RESOURCES FOR FEDERAL PROGRAMS:

Not Applicable

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

NOTE: If the resources awarded to the recipient represent more than one State project, provide the same information shown below for each State project and show total state financial assistance awarded that is subject to Section 215.97, Florida Statutes.

State Awarding Agency:	Department of Economic Opportunity
State Project:	Growth Management Implementation
CSFA #:	40.024
Award Amount:	\$25,000

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

NOTE: List applicable compliance requirements in the same manner as illustrated above for Federal resources. For matching resources provided by DEO for Federal programs, the requirements might be similar to the requirements for the applicable Federal programs. Also, to the extent that different requirements pertain to different amounts of the non-Federal resources, there may be more than one grouping (i.e., 1, 2, 3, etc.) listed under this category.

Activities are limited to those in the Scope of Work

NOTE: Section .400(d) of OMB Circular A-133, as revised, and Section 215.97(5), Florida Statutes, require that the information about Federal Programs and State Projects included in Exhibit 1 be provided to the recipient.