

LEASE AGREEMENT

THIS AGREEMENT is made and entered into the date of last signature below, by and between Brevard County, Florida, a political subdivision of the State of Florida, hereinafter referred to as the "County," and the State of Florida Department of Environmental Protection, with a mailing address of 3800 Commonwealth Blvd, MS 60, Tallahassee, FL 32399, hereinafter referred to as the "State."

WITNESSETH

WHEREAS, the State is desirous of using certain property owned by the County, which is located at 2575 N. Courtenay Parkway, Suite 104a, Merritt Island, Florida, hereinafter referred to as the "Property," which is more specifically identified in **Exhibit A**, attached hereto and incorporated herein by this reference, for office space in order to conduct governmental operations; and

WHEREAS, the County finds that leasing the Property to the State serves a public purpose, is in the best interest of Brevard County, the Property is not needed for County purposes in the future, and the Property will be used in a manner compatible with County purposes.

NOW, THEREFORE, in consideration of the covenants and premises contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Term; Renewals:** The term of this Lease Agreement shall commence on the date of last signature below, hereinafter referred to as the "Lease Date," and continue for a period of ten (10) years, provided however, that either party may terminate this Agreement upon providing written notice to the other Party sixty (60) days in advance.

To renew this Lease for an additional term of ten (10) years, the State must notify the County in writing of the State's election to renew this lease at least sixty (60) days prior written notice to the County prior to the expiration date of the Lease.

2. **Lease Payment:** The State agrees to pay the County as rent, for the use and occupancy of the Property, the sum of one dollar and no cents (\$1.00) per year, payable in advance together with all applicable sales or other taxes due under State law for the lease of the Property for which the State is subject to pay. Checks shall be made payable to the Board of County Commissioners of Brevard County, Florida, and mailed to Brevard County Facilities Department, Attn: Operations Manager, 2725 Judge Fran Jamieson Way, Viera, Florida 32940. **THE STATE OF FLORIDA'S PERFORMANCE**

AND OBLIGATION TO PAY UNDER THIS CONTRACT IS CONTINGENT UPON AN ANNUAL APPROPRIATION BY THE LEGISLATURE.

3. **Utilities:** The State shall financially contribute to the payment of any applicable utility and/or service costs. At this time, those utilities include water, electric, and janitorial services. The County shall provide written notification to the State once any additional charges or fees become known. Payment shall be made pursuant to Florida's Prompt Payment Law. Checks shall be submitted in accordance with the information provided for in Section 2 above.

The County has water and electric accounts for the Property in its name. It is anticipated that the cost for water and electric services will be \$941.76 per year. The janitorial expense is anticipated to be \$10.32 per year. The total amount (\$952.08) shall be deposited with the County prior to the State entering the Property. These amounts are subject to change. The State agrees to reimburse the County for any charges, fees, or other costs associated with such services. The County agrees to refund to the State any unused balance. After the first year, on a quarterly basis, the County shall send to the State an invoice of the charges incurred over the previous three-month period by certified mail to the individual listed below in Section 19. The State shall pay such invoice within thirty (30) days of receipt of such notice.

Advanced Pay

Advance Pay is authorized under this Lease, upon written request from the Lessor, if approved by the State Chief Financial Officer, Department of Financial Services. The request shall include justification for said request, and if written approval from the State Chief Financial Officer is received, the Lessee may provide an advance payment to the Lessor. If Advance Pay is not permitted or otherwise granted for this Lease, then the County shall be reimbursed by the State for any charges, fees, or other costs incurred by the County associated with the above-referenced services.

4. Repairs and Maintenance:

- (a) The State acknowledges that the Property is leased in as-is condition.
- (b) The County shall ensure that the building conforms to all fire, building, and other codes. The County shall maintain the structural portions of the Property, including the roof, exterior walls, and structural foundation, in good order and conditions, as well as the mechanical equipment installed in the Property as of the Lease Date, including the HVAC system, except for damage occasioned by act or omission of the State, or its contractors, agents, invitees, licensees, or employees, the repair of which damage

shall be paid by the State. The County shall be responsible for providing grounds maintenance, exterior pest control, and maintaining fire extinguishers.

- (c) The State shall be responsible for any repairs as a result of the actions of the State, its officers, employees, agents, or invitees. The State shall also be responsible for interior pest control and refuse removal to the designated trash point for the facility for removal by the County's janitorial services contractor. The State agrees to keep and maintain the Property in its present condition, and to return same to the County at the end of the term in the same condition as it was received, reasonable wear and tear excepted.
- (d) Damage and Obligation to Restore. The State shall give immediate written notice to the County of any damage caused to the building by fire or other casualty. In the event the Property shall be partially or totally damaged by fire or other natural disaster in such manner that the State cannot use the Property, the County, in its sole discretion, will determine if the damaged or destroyed portions of the Property may be replaced, or whether the Parties will have to terminate this Agreement. Should the County elect to terminate this Agreement it shall give written notice of such election to the State within thirty (30) days after the County is notified of the occurrence of such casualty.
- (e) Prior to or upon either the expiration of the Lease Term or the termination of this Agreement, the State shall be obligated to restore the Property to materially the same condition as existed prior to the State's use of the Property.

5. **Improvements:** The plans and specifications and location for all improvements, structures, fixtures and equipment, landscaping and facilities made by the State to the Property shall be submitted to and approved by the Public Works Director, or designee, prior to construction or installation of such improvement, structure, landscaping or facility. Any improvements shall comply with all zoning, building, construction, and other applicable codes enforced by the County, or any other regulatory agency with jurisdiction. The State shall be responsible for applying for, paying for, and obtaining any permits required by any governmental entity for the performance of any work on the Property. The Public Works Director is authorized to cooperate in providing necessary approvals needed by the State to obtain required permits upon the Director's approval of the plans/specifications. It is hereby mutually

agreed and understood that any improvements affixed or constructed on the Property, and permanently attached thereto, shall become the Property of the County upon termination of this Agreement, whether by breach or expiration of its natural term.

6. **Use of Property:** The State shall use the Property for its governmental operations. The State hereby agrees and understands that the use herein set forth shall be the only use allowed for the Property, and failure to comply with this provision shall be considered a material breach of this Agreement, whereupon the County shall be entitled to immediately re-enter and retake possession of the Property and terminate this Agreement.

The State shall obtain and pay for any permits required for the State's occupancy of the Property and shall promptly take all actions necessary to comply with all applicable statutes, ordinances, rules, regulations, and orders otherwise impacting the State's use of the Property.

The Parties agree that the rights granted under this Agreement are permissive rights only and shall not create or vest any real property rights or interests to the State.

7. **Condition of Property:** The State accepts the Property as of the execution of this Agreement in its existing condition as of such date as-is, where-is, and with all faults, without representation or warranty of any kind, express or implied, including, but not limited to, with respect to such matters as title, zoning use, economic feasibility, and soil, environmental and other physical conditions, subject to all recorded matters, laws, ordinances, and governmental regulations and orders. The State hereby acknowledges that it has been afforded full opportunity to and has fully investigated such matters to its full satisfaction prior to entering into this Agreement or will investigate such matters fully and is entering into this Agreement based solely upon such investigations. Except as provided herein, the State acknowledges that the County has not made any representations or warranties to the State as to the condition of the Property or the suitability of the Property for the State's intended use.

8. **Illegal, Unlawful, or Improper Use(s):** The State shall make no illegal, improper, immoral, or unlawful use of the Property nor will the State allow the use of the Property for any purpose other than that herein above set forth. Failure of the State to comply with this provision shall be considered a material default under this Agreement, and may, in the sole discretion of the County, result in the termination of the same.

9. **Indemnification/Hold Harmless:** Each Party hereto agrees that it shall be solely responsible for the negligent or wrongful acts or omissions of its respective

trustees, officers, employees, and agents, hereinafter referred to as "personnel". However, nothing contained herein shall constitute a waiver by either Party of its sovereign immunity or the provisions of Section 768.28, Florida Statutes. Further, nothing herein shall be construed as consent by either Party to be sued by third parties in any matter arising out of this Agreement which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

No provision in this Agreement shall require the County to hold harmless or indemnify FDEP, insure or assume liability for FDEP's negligent or wrongful acts or omissions, waive the County's sovereign immunity under the laws of Florida, or otherwise impose liability on the County for which it would not otherwise be responsible. Any provision, implication, or suggestion to the contrary is null and void.

The Parties acknowledge specific consideration has been exchanged for this provision. This indemnification section shall survive the termination of this Contract.

10. **Encumbrances and Liens:** The State shall not encumber and/or lien the Property in any form or fashion whatsoever, without prior written consent of the County. As applicable, the State shall pay, when due, all claims for labor and material furnished to the Property when contracted for by the State. The State shall give the County at least twenty (20) days prior written notice of the commencement of any work on the Property, regardless of whether the County's consent to such work is required.

11. **Right of Entry by the County:** The County, or its officers, employees, or agents, may at reasonable times, enter in and on the Property for the purpose of inspecting the Property or performing other duties as required by the terms of this Lease Agreement and the rules and regulations, ordinances or laws of the appropriate governmental agencies.

12. **Compliance with Statutes:** The State shall comply with all Federal, State, County, and local laws, ordinances, rules, and regulations (including but not limited to the Americans with Disabilities Act, as amended) affecting or respecting the use or occupancy of the Property by the State, or the business at any time thereon transacted by the State, and the State shall comply with all rules which may be hereafter adopted by the County for the protection, welfare and orderly management of the building and its occupants and visitors.

13. **Covenants Against Assignments and Subletting:** The State will not assign or sublet any of the Property nor allow the same to be assigned by operation of law or otherwise, without the express written consent of the County Manager, or designee. Sublease tenants must meet the requirements established by State and

County laws, rules, and regulations. Such sublease tenants shall also be subject to the terms and conditions identified herein.

14. **Default:** The State understands and agrees that this Agreement is made upon the express condition that should the State fail or neglect to perform or observe any or all of the covenants herein contained, or fail to make any constructive use, for the purpose(s) designated herein, of the Property for a period of thirty (30) days, this Agreement shall, at the option of the County, become null and void upon thirty (30) days written notice to the State.

Time is of the essence in the performance of all covenants and conditions. The State shall be in material default under this Lease (a) if the State abandons the Property or if the State's vacation of the Property results in the cancellation of any insurance described herein; (b) if the State fails to pay rent or any other charge when due; or (c) if the State fails to perform any of the State's material non-monetary obligations under this Lease; provided that if more than thirty (30) days are required to complete such performance, the State shall not be in default if the State commences such performance within the thirty-day period and thereafter diligently pursues its completion. On the occurrence of any material default by the State, the County may, at any time thereafter, with or without notice or demand, without limiting the County in the exercise of any right or remedy which the County may have: (a) terminate the State's right to possession of the Property by any lawful means, in which case this Lease shall terminate and the State shall immediately surrender possession of the Property to the County; (b) maintain the State's right to possession in which case, this Lease shall continue in effect whether or not the State has abandoned the Property; or (c) pursue any other remedy now or hereafter available to the County under the laws of judicial decisions of the State of Florida.

15. **Miscellaneous Provisions:** The State promises, and it is a condition to the continuance of this Lease, that there will be no discrimination against or segregation of any person or group of persons on the basis of race, color, sex, creed, national origin, ancestry or disability in the occupancy, tenure or use of the Property or any portion thereof.

16. **ADA Compliance:** The County represents and warrants that the Property will conform to the current requirements of the American with Disabilities Act, as may be amended.

17. **Attorneys' Fees:** In the event of any legal action to enforce the terms of this Agreement, each Party shall bear its own attorney's fees and costs.

18. **Surrender:** Upon the last day of the Lease Term, the State shall peaceably and quietly leave the Property in good order and repair.

19. **Notice:** Notice under this Lease Agreement shall be by certified mail and given to the following contacts:

FOR BREVARD COUNTY
Contracts Supervisor
2725 Judge Fran Jamieson Way
Building A, Room 201
Viera, FL 32940
321-617-7202

FOR STATE
Darinda McLaughlin
3800 Commonwealth Blvd
MS 60
Tallahassee, FL 32399
850-245-2504

20. **Severability:** If any section or provision of this Agreement is determined to be invalid by a court of competent jurisdiction, all other sections and provisions of this Agreement will remain in full force and effect

21. **Governing Laws:** This Agreement shall be construed and interpreted under the laws of the State of Florida. Any action brought pursuant to this Agreement shall be in accordance with Florida law.

22. **Venue:** Venue for any action brought pursuant to this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida.

23. **No Waiver:** No section or provision of this Agreement shall be deemed to have been waived by the County unless such waiver shall be in writing and signed by the Landlord. The failure of the County to insist upon the strict performance of this Agreement, or the failure of the County to exercise any right, option or remedy herein contained shall not be construed as a waiver of any other right, option or remedy the County may have under this Agreement or as a waiver of a subsequent breach thereof.

24. **Audit.** In the performance of this Agreement, the State shall keep books, records, and accounts of all activities, related to the Agreement, in compliance with generally accepted accounting procedures. Books, records and accounts related to the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the County and shall be retained by the Tenant for a period of three years after termination of the Agreement. All records, books and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes.

25. **Entire Agreement.** This Agreement, including any Exhibits, Riders, and/or Addenda, if any, attached hereto, sets forth the entire agreement between the Parties. This Agreement shall not be modified unless reduced to writing and signed by all Parties.

26. **Hazardous Substances.** The State shall not cause or permit any hazardous substance (as hereinafter defined) to be used, stored, generated, or disposed of on or in the Property. If hazardous substances are used, stored, generated, or disposed of on or in the Property by the State, or its officers, employees, agents, contractors, or invitees, or if the Property becomes contaminated in any manner through the acts or omissions of the State, or its officers, employees, agents, contractors, or invitees, the State shall be responsible for any and all necessary actions, investigations, remediations, monitoring, restoration activities, cleanup, or decontamination necessary to return the Property to the condition existing prior to the presence of any such hazardous substance in accordance with all applicable laws. As used herein, "hazardous substance" means any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Florida, or the United States Government. "Hazardous substance" includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to Federal, State, or local government law. "Hazardous substance" includes but is not restricted to asbestos polychlorobiphenyls ("P.C.B.s"), and petroleum. The obligation of the State contained in this paragraph shall survive the termination or expiration of this Agreement.

27. **Radon Notice Pursuant to Florida Law.** Radon gas is naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the Brevard County Health Department.

28. **Asbestos Notice.** A common building material that is sometimes present in many buildings that were built before 1981 is asbestos. The presence of asbestos materials does not create a health risk to residents according to the E.P.A. Only when asbestos materials are disturbed or dislodged causing the asbestos fibers to be released are there health risks involved. Some activities of concern are sanding, scraping, pounding, and any other remodeling activity that may release dust into the air and cause asbestos particles to be released. Federal law requires that certain precautions be taken to minimize the chances of damaging or disturbing materials that contain asbestos. The E.P.A. does not require asbestos material to be removed.

By execution of this Agreement, the State hereby acknowledges that this Asbestos disclosure is a warning that the Property may contain asbestos and due to this the State may be exposed to a chemical that is known to cause cancer. The State also hereby agrees that there are to be no modifications, repairs, and alterations to the premises without the advanced written approval of the County, and this approval will be based upon the acceptance of a written plan of protection from the possible release of or exposure to the asbestos substance.

The State is hereby on notice that asbestos has been detected in the building materials at this facility in surveys performed by Professional Services Industries, Inc. in 1991 and 2000. The State acknowledges that it has received, or is able to receive, copies of the survey reports from the County. It is unclear from the public record if all items identified have been abated. The State shall be responsible for any reinspection costs and, if abatement activities are required, the County may, in its sole discretion, terminate this Lease.

Any and all asbestos abatement must be performed by a licensed and insured abatement contractor and must be completed per E.P.A. guidelines.

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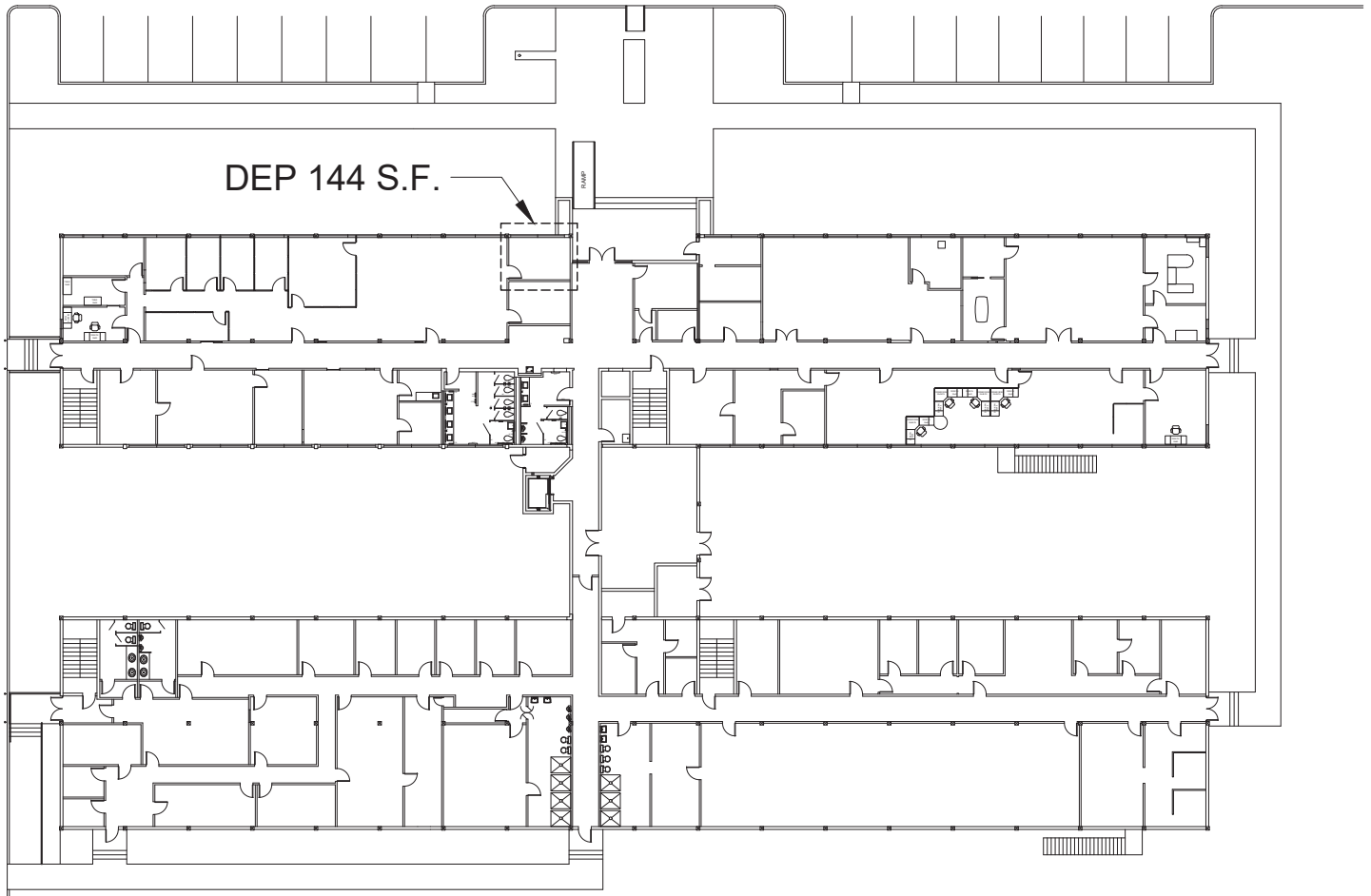


Exhibit A

COUNTY SERVICE COMPLEX
MERRITT ISLAND 1st FLOOR



4-14-23

SCALE: 1/8" = 1'-0"