

This instrument prepared by:
David E. Todd
Atlanta Regional Counsel
U.S. Department of Commerce
Economic Development Administration
401 West Peachtree Street NW
Suite 1820
Atlanta, GA 30308-3510

AMENDED AND UPDATED

COVENANT OF PURPOSE, USE AND OWNERSHIP

[See paragraph 22 for explanation for this amended Covenant]

This Covenant of Purpose, Use and Ownership (“Covenant”) dated this _____ day of _____ March, 2021, is made by the Board of Trustees of Florida Gateway College, a collegiate body of the State of Florida (Recipient”) with an address of 149 SE College Place, Lake City, Florida 32025-2007 for the benefit of the United States Department of Commerce, Economic Development Administration located at 1401 Constitution Avenue, NW, Washington, DC 20230 with a regional office at 401 West Peachtree Street NW, Suite 1830, Atlanta, GA 30308-3510 (“EDA”):

RECITALS:

WHEREAS, pursuant to the Public Works and Economic Development Act of 1965 (42 U.S.C. § 3121 *et seq.*) (“PWEDA”), Recipient has applied to, received and accepted from EDA a Financial Assistance Award dated October 1, 2019 (“Award”), in the amount of Two Million, Three Hundred Ninety-two Thousand, Eight Hundred and No/100 Dollars (\$2,392,800.00) (EDA Award Amount”) for EDA Award No. 04-79-07399; and

WHEREAS, the Award is subject to certain terms and conditions pursuant to which Recipient agreed to comply with, *inter alia*, the applicable requirements of EDA’s regulations at 13 C.F.R. Chapter III and government-wide regulations set out at 2 C.F.R. part 200; and

WHEREAS, pursuant to the application submitted by Recipient requesting said Award, which includes all forms, documentation, and any information submitted to EDA as part and in furtherance of the request for the Award, including any information submitted after the initial application (“Grant Application”) and pursuant to the Award, the EDA Award Amount is to be used for the purpose of financing the acquisition of and/or improvements to the real property described in “Exhibit A,” attached hereto and made a part hereof (the “Project Property”) consisting of the construction of a Commercial Vehicle Driving Facility (the “Project”); and

WHEREAS, twenty (20) years from [the trigger date (e.g., date of award, construction end date, etc.)], as determined by EDA, is the Estimated Useful Life, as defined in 13 C.F.R. § 314.1, of the improvements made to the Project Property pursuant to the Project; and

WHEREAS, the Award provides, *inter alia*, that Recipient will not sell, lease, transfer, convey, encumber, mortgage, or otherwise alienate any right to or interest in the Project Property, or use the Project Property for purposes other than, or different from, those purposes set forth in the Award and the Grant Application made by Recipient therefor (“Project Purposes”), such alienation or use being prohibited by 13 C.F.R. part 314 and by 2 C.F.R. part 200; and

WHEREAS, in accordance with PWEDA, EDA is not authorized to permit transfer or conveyance of Project Property to parties that are not eligible to receive EDA grants unless EDA is repaid the Federal Share as defined at 13 C.F.R. § 314.5 (“Federal Share”) or unless the authorized purpose of the Award is to develop land in order to lease or sell the land for a specific use, approved in advance by EDA, in which case EDA may authorize a lease or sale of the Project Property or a portion thereof if certain conditions are met; and

WHEREAS, Recipient, as owner of the Project Property agreed to record this Covenant in the appropriate office for the recording of public records affecting real property so as to constitute notice to all persons of any and all restrictions on title to and use of all or part of the Project Property.

NOW THEREFORE, in consideration of financial assistance rendered and/or to be rendered by EDA and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and to ensure that the benefits of the Project will accrue to the public and be used as intended by both EDA and Recipient consistent with the Project Purposes, Recipient hereby covenants and agrees as follows:

1. COMPLIANCE WITH AWARD AND REGULATIONS

Recipient shall comply with the terms and conditions of the Award and the regulations set forth in 13 C.F.R. Chapter III and 2 C.F.R. part 200.

2. RESTRICTIONS DURING ESTIMATED USEFUL LIFE

For the Estimated Useful Life set forth above, Recipient will not sell, lease, transfer, convey, encumber or mortgage any interest in the Project Property, nor shall Recipient use the Project Property for purposes other than the Project Purposes without the prior written approval of EDA.

3. LEASE OF PROJECT PROPERTY

If the Grant Application provides for and the Award authorizes Recipient to lease Project Property, each lease arrangement shall be subject to the prior written approval of EDA during the Estimated Useful Life. EDA must determine that the applicable lease arrangement is consistent with the Grant Application and authorized general and special purpose(s) of the Award; will provide adequate employment and economic benefits for the area in which Project Property is located; is consistent with EDA policies concerning, but not limited to, non-discrimination, non-relocation, and environmental requirements; and that the proposed lessee is providing adequate compensation, as defined in 13 C.F.R. § 314.1, to Recipient for said lease.

4. PROJECT PURPOSES AND TRANSFER OF PROJECT PROPERTY

Recipient further covenants that in the event the Project Property is used for purposes other than the Project Purposes, or is sold, leased, transferred, conveyed, encumbered or mortgaged without the prior written approval of EDA, Recipient will compensate the Federal Government in the amount of the Federal Share, which amount shall be determined at the sole discretion of EDA, such amount being: (a) EDA's pro-rata share of the fair market value of the Project Property as further set forth in 13 C.F.R. § 314.5, as that provision may be amended from time to time, (b) the EDA Award Amount, or (c) the amount of grant funds actually disbursed.

5. CHARGES; LIENS

Recipient shall protect the title and possession of all Project Property and pay when due all taxes, assessments, mechanic and/or materialmen liens, and other charges, fines, and impositions now existing or hereafter levied or assessed upon the Project Property.

6. HAZARD INSURANCE

Recipient shall insure and keep insured all improvements now or hereafter created upon Project Property against loss or damage by fire and windstorm and any other hazard or hazards included within the term "extended coverage." The amount of insurance shall be the full insurable value of said improvements but in no event less than the full replacement value of the

improvements. Any insurance proceeds received by Recipient due to loss shall be applied to restoration or repair of any damaged Project Property, provided such restoration or repair is economically feasible. If such restoration or repair is not economically feasible, Recipient shall use said insurance proceeds to compensate EDA for its Federal Interest, as defined at 13 C.F.R. § 314.2 ("Federal Interest"). EDA's Federal Interest shall be satisfied when the amount received is equal to the Federal Share as that term is defined at 13 C.F.R. § 314.5.

7. PRESERVATION AND MAINTAINANCE OF PROJECT PROPERTY

Recipient shall keep Project Property in good condition and repair during the Estimated Useful Life and shall not permit or commit any waste, impairment, or deterioration of Project Property, but shall give written notice thereof to EDA without delay.

8. INDEMNIFICATION

To the extent permitted by law, Recipient agrees to indemnify and hold the Federal Government harmless from and against all liabilities that the Federal Government may incur as a result of providing an award to assist, directly or indirectly, in the preparation of the Project Property or construction, renovation, or repair of any facility on the Project Property, to the extent that such liabilities are incurred because of toxic or hazardous contamination of groundwater, surface water, soil, or other conditions caused by operations of the Recipient or any of its predecessors (other than the Federal Government or its agents) on the Project Property. *See also* 13 C.F.R. § 302.19 ("Indemnification").

9. INSPECTION

EDA may make or cause to be made reasonable entries upon and inspection of Project Property by EDA or an authorized representative of EDA.

10. CONDEMNATION

The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of Project Property, or any part thereof, or for any conveyance in lieu of condemnation shall be used by Recipient to compensate EDA for EDA's Federal Share. EDA's Federal Share of said condemnation proceeds shall be equal to that percentage which the EDA Award Amount bore to the total project costs under the Award for which the condemned property was acquired or improved. *See also* 13 C.F.R. § 314.5 ("Federal Share").

11. REMEDIES

Upon Recipient's breach of any term or condition of the Award or term or condition of this Covenant, then EDA, its designees, successors, or permitted assigns may declare the amounts owed to EDA (i.e., the Federal Share) with interest thereon at the rate set forth in 31 U.S.C. § 3717, immediately due and payable, such amounts being: (a) EDA's pro-rata share of the fair market value of the Property as further set forth in 13 C.F.R. § 314.5, as that provision may be amended from time to time, (b) the EDA Award Amount, or (c) the amount of the grant funds actually disbursed (the "Indebtedness"). The amount shall be determined at the sole discretion of EDA in accordance with EDA's authorities and regulations, and Recipient agrees that the Indebtedness shall be due and payable by Recipient to EDA upon the termination of the Award for material noncompliance or upon any attempt to use, transfer or alienate any interest in the Project Property in violation of the Award or of the regulations in 13 C.F.R. Chapter III or 2 C.F.R. part 200 and does, moreover, agree that such Indebtedness shall be extinguished only through and upon the full payment of the Indebtedness to the Federal Government.

12. REMEDIES CUMULATIVE

EDA may enforce any and all remedies afforded by law or equity, including seeking and obtaining a judicial determination(s) compelling Recipient to comply with the terms and conditions of the Award and this Covenant, which may be exercised concurrently, independently or successively.

13. FOREBEARANCE NOT A WAIVER

Any forbearance by EDA in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by EDA shall not be a waiver of EDA's rights under this Covenant.

14. RELEASE

EDA and the Recipient agree that, so long as the possession and use of Project Property by Recipient has been only for the purposes set forth in the Award and the Grant Application, then after the Estimated Useful Life of the improvements to Project Property, Recipient may request a release of the Federal Interest in accordance with 13 C.F.R. part 314, which will not be withheld except for good cause, as determined in EDA's sole discretion; provided, however, that in accordance with 13 C.F.R. part 314, restrictions upon the religious use or discriminatory practices in connection with the use of Project Property shall survive this Covenant and any release thereof, which shall be evidenced by a separate recorded covenant.

15. GOVERNING LAW; SEVERABILITY

This Covenant shall be governed by applicable federal law, if any, and if there is no applicable federal law by state law, and nothing contained herein shall be construed to limit the rights EDA, its designees, successors, or assigns are entitled to under applicable federal or state law. In the event that any provision or clause of this instrument conflicts with applicable law, such conflict shall not affect other provisions of this instrument which can be given effect without the conflicting provision, and to this end the provisions of this instrument are declared to be severable.

16. RECORDING COVENANT AGAINST TITLE

Pursuant to 13 C.F.R. part 314, Recipient further agrees that Recipient shall execute and place on record against the title to the Project Property acquired or improved in whole or in part with the Award, this Covenant of Purpose, Use and Ownership. Recipient shall furnish EDA with the original, recorded Covenant as executed. Recipient further agrees that whenever the Project Property is sold, leased or otherwise conveyed pursuant to 13 C.F.R. part 314, Recipient or transferor shall add to the document conveying such interest in and to the real estate an express reference to this Covenant, satisfactory to EDA, whereby the purchaser or tenant expressly accepts and agrees to be bound by this Covenant.

17. NOTICE

Any notice from EDA to Recipient provided for in this Covenant shall be sent by certified mail to Recipient's last known address or at such address as Recipient may designate to EDA, except for any notice given to Recipient in the manner as may be prescribed by applicable law as provided hereafter in this Covenant. Likewise, any notice from Recipient to EDA shall be sent by certified mail to EDA's address.

18. PARTIES BOUND BY THIS COVENANT

This Covenant and this Covenant's rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the parties hereto, together with their respective successors and permitted assigns.

19. RESTRAINT ON TITLE

It is stipulated and agreed that the terms hereof constitute a reasonable restraint on alienation of use, control, and possession of or title to the Project Property given to evidence and secure the Federal Interest expressed herein.

20. COVENANT RUNS WITH LAND

This Covenant shall run with the land.

21. AUTHORITY TO EXECUTE COVENANT

Recipient represents and warrants to and covenants with EDA that Recipient has been duly authorized by Recipient's governing body by all necessary action and has received all necessary third-party consents to enter into this Covenant.

22. PRIOR COVENANT OF USE PRUPOSE AND OWNERSHIP

Florida Gateway College gave EDA a prior Covenant of Use, Purpose and Ownership dated February 12, 2020 and recorded February 19, 2020 as Instrument # 20200000141 in the Official Records of Barker County, Florida (hereinafter the "Prior Covenant".) The Prior Covenant was executed by Florida Gateway College in its individual capacity and not by the Board of Trustees of Florida Gateway College. This Covenant is given to obtain the execution of EDA's Covenant of Use Purpose and Ownership by The Board of Trustees of Florida Gateway College.

The Prior Covenant contains specially and specifically negotiated provisions set forth under the "Recitals" in "Whereas" clauses 5, 6 and 8 and in Paragraphs 2, 3 and 8 which specially and specifically negotiated provisions of the Prior Covenant are hereby reaffirmed, shall remain in full force and effect and are incorporated in this Covenant by this reference. Therefore, to extent of any inconsistency between the terms and provisions of this Covenant and the terms and provisions of the Prior Covenant the terms and provisions of the Prior Covent shall control.

IN WITNESS WHEREOF, Recipient has hereunto set its hand as of the day and year first above written by its duly authorized officer.

RECIPIENT

The Board of Trustees of Florida Gateway College,
a collegiate body of the State of Florida

By: _____
[Insert Name] _____
Title: As its: _____

Attest:

By: _____
[Insert Name] _____
Title: As its: _____

Attorney for Recipient

“This approval by Recipient’s counsel shall be in addition to and in no way a restriction or limitation of said Attorney’s separate written legal opinion regarding this Covenant.”

STATE OF FLORIDA)
) ss.
COUNTY OF _____) ss.)

The foregoing instrument was acknowledged before me, a Notary Public in and for said County and State, this _____ day of _____, 2021, by _____ on behalf of the Board of Trustees of _____

Florida Gateway College, a collegiate body of the State of Florida as its

_____.

Notary Public

My commission expires: _____

DESCRIPTION

Tuesday, September 17, 2019
Revised: Wednesday, September 25, 2019
Revised: Thursday, November 07, 2019
Revised: Friday, November 08, 2019

FOR: Florida Gateway College – 22.15 acres

BEGIN at the Northeast corner of the Southeast 1/4 of Section 30, Township 3 South, Range 19 East, Baker County, Florida and run South 01°22'25" East along the East line of said Section 30 a distance of 752.68 feet; thence South 89°56'15" West a distance of 985.93 feet; thence North 01°47'51" West a distance of 914.64 feet to a point on the Southerly Right-of-Way line of U.S. Highway 90; thence North 82°53'06" East along said Southerly Right-of-Way line of U.S. Highway 90 a distance of 993.98 feet to a point on the East line of Section 30; thence South 02°04'11" East along said East line of Section 30 a distance of 283.95 feet to the POINT OF BEGINNING. Containing 22.15 acres, more or less.

SUBJECT TO an easement for ingress and egress purposes across the West 30 feet thereof.

ALSO SUBJECT TO an easement for ingress and egress and utility purposes across the East 30 feet thereof.

TOGETHER WITH the following easement for septic tank and system, dosage system and septic drainfield and ingress and egress for the construction, repairs, and maintenance of the facilities: COMMENCE at the Northeast corner of the Southeast 1/4 of Section 30, Township 3 South, Range 19 East, Baker County, Florida and run South 01°22'25" East along the East line of said Section 30 a distance of 752.68 feet; thence South 89°56'15" West a distance of 763.93 feet to the POINT OF BEGINNING; thence South 00°06'28" West a distance of 487.79 feet; thence South 89°56'15" West a distance of 62.00 feet; thence North 00°00'35" West a distance of 487.78 feet; thence North 89°56'15" East a distance of 63.00 feet to the POINT OF BEGINNING.

PREPARED BY:
Donald F. Lee & Associates, Inc.
140 NW Ridgewood Avenue
Lake City, Florida 32055
Donald@dfla.com

EXHIBIT "A"

SKETCH IN SECTION 30
TOWNSHIP 3 SOUTH, RANGE 19 EAST
BAKER COUNTY, FLORIDA

LEGEND

- CMF=CONCRETE MONUMENT FOUND
- S=PROFESSIONAL LAND SURVEYOR
- 7/8=RIGHT-OF-WAY
- CENTER LINE
- RD=NO IDENTIFICATION
- L.A.=ALSO KNOWN AS
- R=STATE ROAD
- S.C.=SECTION
- =RANGE
- =TOWNSHIP
- CO.=CORNER
- NE=NORTHEAST
- N=NORTHWEST
- SW=SOUTHWEST
- E=SOUTHEAST
- D=DECREASED BUSINESS
- P.O.B.=POINT OF BEGINNING
- D.=FOUND

U.S. HIGHWAY 90
(A.K.A. STATE ROAD 10)

N 82°53'06" E

993.98'

CMF NO ID.

S 2°04'11" E 283.95'

CMF NO ID.

50.03'

S. R/W LINE OF US-90 (SR-10)

COMMENCE P.O.B.

NE COR. OF SE 1/4 OF SEC. 30
CMF NO ID. DISTURBED

30'INGRESS / EGRESS & UTILITY EASEMENT

S 1°22'23" E

EAST LINE OF SEC. 30

CMF U.S. FOREST DEPT. SEC. 30, T-3-S, R-1

752.68'

22.15 ACRES

N 1°47'51" W
30'INGRESS / EGRESS EASEMENT
914.64'

S 89°56'15" W

985.93'

SECTION 30

SECTION 29

P.O.B. EASEMENT

W. 82°00'35" S
62.785'
EASEMENT
N. 0°00'35" W
487.78'

63.00'

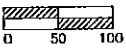


EXHIBIT "A"

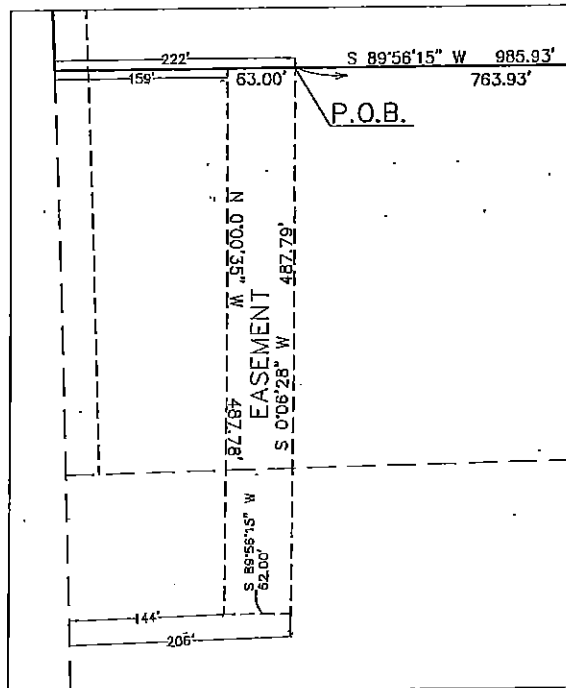
DESCRIPTION:

BEGIN at the Northeast corner of the Southeast 1/4 of Section 30, Township 3 South, Range 19 East, Baker County, Florida and run South 01°22'25" East along the East line of said Section 30 a distance of 752.68 feet; thence South 89°56'15" West a distance of 985.93 feet; thence North 01°47'51" West a distance of 914.64 feet to a point on the Southerly Right-of-Way line of U.S. Highway 90; thence North 82°53'06" East along said Southerly Right-of-Way line of U.S. Highway 90 a distance of 993.98 feet to a point on the East line of Section 30; thence South 02°04'11" East along said East line of Section 30 a distance of 283.95 feet to the POINT OF BEGINNING. Containing 22.15 acres, more or less.

SUBJECT TO an easement for ingress and egress purposes across the West 30 feet thereof.

ALSO SUBJECT TO an easement for ingress and egress and utility purposes across the East 30 feet thereof.

TOGETHER WITH the following easement for septic tank and system, dosage system and septic drainfield and ingress and egress for the construction, repairs, and maintenance of the facilities: COMMENCE at the Northeast corner of the Southeast 1/4 of Section 30, Township 3 South, Range 19 East, Baker County, Florida and run South 01°22'25" East along the East line of said Section 30 a distance of 752.68 feet; thence South 89°56'15" West a distance of 763.93 feet to the POINT OF BEGINNING; thence South 00°06'28" West a distance of 487.79 feet; thence South 89°56'15" West a distance of 62.00 feet; thence North 00°00'35" West a distance of 487.78 feet; thence North 89°56'15" East a distance of 63.00 feet to the POINT OF BEGINNING.



REVISED: 11/08/2019 Legal revised.
 REVISED: 11/05/2019 Easement added & legal revised.
 REVISED: 09/25/2019 Easement added & legal revised. CAD FILE: 7183B.DWG



Donald F. Lee and Associates, Inc.

SURVEYORS — ENGINEERS
 140 Northwest Ridgewood Avenue, Lake City, Florida 32055
 Phone: (386) 755-6166 FAX: (386) 755-6167
 Certificate of Authorization # LB 7042

Date: 09/16/2019
 Drafting: A V G
 Computations: A V G
 Checked: T A D

**FLORIDA GATEWAY
 COLLEGE**

Scale: 1"=100'
 Field Book: ----
 Work Order: 19-7183
 File: A-84-31

Exhibit "A"