

**MEMORANDUM OF AGREEMENT BETWEEN ESCAMBIA COUNTY,  
FLORIDA AND THE ESCAMBIA COUNTY 4-H FOUNDATION, INC.**

**THIS MEMORANDUM OF AGREEMENT** is made by and between Escambia County, a political subdivision of the State of Florida (hereinafter, the "County"), with an administrative address of 221 Palafox Place, Pensacola, FL 32502, and the Escambia County 4-H Foundation, Inc., a Florida not-for-profit corporation (hereinafter, the "Foundation"), FEI/EIN Number 59-3041362, with a principal address of 3740 Stefani Road, Cantonment, FL 32533.

**WITNESSETH:**

**WHEREAS**, the County owns certain real property located at 5701 Highway 99 in Escambia County, Florida, Property Ref # -10-2N-32-2100-000-000 (hereinafter referred to as the "Property"); and

**WHEREAS**, the Foundation currently occupies said Property from the County and has agreed to contribute funds for the design and construction of a Multipurpose Livestock Facility on the Property; and

**WHEREAS**, the County and the Foundation have determined it is in the best interest of the citizens to enter into this Agreement whereby the Foundation shall contribute funding for the County to design and construct a Multipurpose Livestock Facility on the Property as provided herein.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and of the mutual benefits to flow each unto the other, and for other good and valuable consideration, the County and the Foundation agree as follows:

**Section 1. Purpose of Agreement.**

1.1 The recitals contained in the Preamble of this Agreement are declared to be true and correct and are incorporated into this Agreement.

1.2 This Agreement establishes the conditions, extent, and mechanism whereby the Foundation shall contribute funding for the County to design and construct a Multipurpose Livestock Facility on the County's Property in accordance with the Scope of Work, attached hereto as **Exhibit A** (hereinafter referred to as the "Project").

**Section 2. Responsibilities of the Parties.**

2.1 The Foundation agrees to contribute the sum of \$160,000.00 to fund the design and construction of a Multipurpose Livestock Facility on the Property.

2.2 County shall be responsible for initiating, administering, and concluding the public procurement process for the Project.

2.3 Upon the Foundation's request, County shall provide copies of all financial records relating to the Project.

2.4 Upon the completion of the Project, any funds provided by the Foundation which are residual funds remaining unspent or unencumbered by any existing (not contingent) legal obligations related to the Project will be returned to the Foundation in the form of a negotiable instrument.

2.5 Title to all improvements on the Property that are related to the Project shall vest with the County.

### **Section 3. Termination.**

This Agreement may be terminated by either party at any time and for any reason upon thirty (30) days written notice to the other party; provided, however, that termination shall not affect the reimbursement of any costs then owing to the County by the Foundation, or which subsequently are owed to the County by the Foundation as a result of actions concluded following the effective date of termination.

### **Section 4. Liability.**

(a) The parties hereto, their respective elected officials, officers, and employees shall not be deemed to assume any liability for the acts, omissions, or negligence of the other party. The Foundation agrees to be fully responsible for its negligent acts or omissions or tortious acts which result in claims or suits against the County. Escambia County, Florida, as a subdivision of the State of Florida as defined in §768.28, Florida Statutes, agrees to be fully responsible for its negligent acts or omissions or tortious acts which result in claims or suits against the Foundation and agrees to be fully liable for any damages proximately caused by said acts or omissions. Nothing herein is intended to serve as a waiver of sovereign immunity by the County and nothing herein shall be construed as consent by the County to be sued by third parties in any matter arising out of this Agreement.

(b) Each party is responsible for maintaining, in a form acceptable to the parties, all necessary records of personnel and equipment used under this Agreement for a period of five (5) years and each parties' records shall subject to audit after reasonable notice.

### **Section 5. Records.**

The parties acknowledge that this Agreement and any related financial records, audits, reports, plans, correspondence, and other documents may be subject to disclosure to member of the public pursuant to Chapter 119, Florida Statutes, as amended. In the event a party fails to abide by the provision of Chapter 119, Florida Statutes, the other party may, without prejudice to any right or remedy and after giving that party, seven (7)

days written notice, during which period the party fails to allow access to such documents, terminate this Agreement.

**Section 6. Assignment.**

This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties, without the prior written consent of the other party.

**Section 7. Headings.**

Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

**Section 8. Survival.**

All other provisions, which by their inherent character, sense, and context are intended to survive termination of this Agreement, shall survive the termination of this Agreement.

**Section 9. Interpretation.**

(a) For the purpose of this Agreement, the singular includes the plural and the plural shall include the singular. References to statutes or regulations shall include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to. Words not otherwise defined that have well-known technical or industry meanings, are used in accordance with such recognized meanings.

(b) References to persons include their respective permitted successors and assigns and, in the case of governmental persons, persons succeeding to their respective functions and capacities. This Agreement shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all of the terms and provision hereof.

**Section 10. Severability.**

The invalidity or non-enforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance hereof shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision.

**Section 11. Further Documents.**

The parties shall execute and deliver all documents and perform further actions that may be reasonably necessary to effectuate the provision of this Agreement.

**Section 12. Notices.**

All notices required to be given under this Agreement shall be in writing, and shall be sent by first class United States mail, unless some other form of notice is established by the County Administrator, to the respective parties as follows:

Notices shall be sent to:

County Administrator  
Escambia County  
Post Office Box 1591  
Pensacola, Florida 32591

President  
Escambia County 4-H Foundation, Inc.  
3740 Stefani Road  
Cantonment, Florida 32533

Payment to the County will be sent to:

Director of Administrative Services  
P. O. Box 1591  
Pensacola, Florida 32597-1591  
850-595-4960

**Section 13. Prior Agreements Superseded.**

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement, that are not contained in this document. Accordingly, no deviations from the terms and conditions hereof shall be predicated upon any prior representations or agreements, whether oral or written.

It is further agreed that no modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

**Section 14. Governing Law.**

The Agreement shall be interpreted under and its performance governed by the laws of the State of Florida. The parties agree that any action relating to this Agreement shall be instituted and prosecuted in the courts of Escambia County, Florida, and therefore, each party to this Agreement hereby waives the right to any change of venue.

**Section 15. No Waiver.**

The failure of either party to enforce at any time or for any period of time any one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

**Section 16. Effective Date.**

This Agreement shall become effective upon the date last executed by the parties.

**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Agreement on the respective dates under each signature:

**Board of County Commissioners  
Escambia County, Florida**

\_\_\_\_\_  
D. B. Underhill, Chairman

ATTEST: PAM CHILDERS  
Clerk of the Circuit Court

\_\_\_\_\_  
Deputy Clerk

**Escambia County 4-H Foundation, Inc.**

By: *Anne Peterson*  
Anne Peterson, President

ATTEST:

Date: \_\_\_\_\_

\_\_\_\_\_  
Corporate Secretary

[SEAL]

Approved as to form and legal  
sufficiency.

By/Title: *[Signature]*  
Date: 12/23/17