

FUNDING AND PROGRAM AGREEMENT

THIS FUNDING AND PROGRAM AGREEMENT ("Contract") (OTTED Contract Number OT-04-043) is made and entered into in the City of Tallahassee, Leon County, Florida as of January 15, 2004 (the "Effective Date") by and between THE OFFICE OF TOURISM, TRADE AND ECONOMIC DEVELOPMENT ("OTTED"), located at Executive Office of the Governor, Suite 209, The Capitol, Tallahassee, Florida 32399-0001, and SCRIPPS FLORIDA FUNDING CORPORATION ("SFFC"), a not-for-profit Florida corporation, located at 100 SW 20th Street, Gainesville, Florida 32603. OTTED and SFFC are sometimes referred to hereinafter as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the Legislature enacted Section 288.955, Florida Statutes, in order to use a portion of the funds provided by the Federal Government under section 401(b) of the Jobs and Growth Tax Relief Reconciliation Act of 2003 for the essential government service of improving economic opportunities available to the people of this state by attracting new or expanding businesses to, and retaining businesses in, this state, and

WHEREAS, the Legislature further enacted Section 288.955, Florida Statutes, to use the funds so provided to advance the essential government service of improving the health of the people of this state by promoting research and development for the prediction, treatment, prevention and cure of disease, and

WHEREAS, the Legislature intended that the funding provided under Section 288.955, Florida Statutes will serve these essential services and help accelerate the development of biomedical research and development projects in this state, and

WHEREAS, Section 288.955, Florida Statutes, created SFFC, for the purpose of receiving, holding, investing, administering, and disbursing funds appropriated by the Legislature for the establishment and operation of a state-of-the-art biomedical research institution and campus in Florida by The Scripps Research Institute ("TSRI"), and

WHEREAS, the Florida Legislature intended that SFFC safeguard the state's commitment of financial support by ensuring that, as a condition to receive these funds, TSRI meets contractual obligations; and

WHEREAS, the Florida Legislature appropriated the sum of \$310 million to OTTED to carry out these purposes; and

WHEREAS, Section 288.955, Florida Statutes, directs OTTED to enter into a contract with SFFC and to disperse the entire amount to SFFC, under certain terms and conditions; and

WHEREAS, Section 288.955, Florida Statutes, directs SFFC to enter into an agreement with TSRI, or such division or entity of TSRI created for such purpose, for the total disbursement of the \$310 million, plus income thereon less specified administrative expenses, in periodic installments to fund the creation of a biomedical facility and campus in Florida to be known as Scripps Florida, provided that TSRI satisfies certain terms and conditions required by law and the Funding Agreement (for convenience, whenever this Contract references TSRI such reference shall mean the division or entity created by TSRI for establishment of such facility); and

WHEREAS, OTTED and SFFC desire to enter into this Contract with regard to the implementation of the funding program described herein.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, and for other good and valuable consideration, the Parties agree as follows:

ARTICLE 1

CONTRACT MANAGERS

The Parties each hereby appoint Contract Managers to facilitate the terms of this Contract. All written approvals referenced in this Contract must be obtained from the Parties' Contract Managers or their designees. The OTTED Contract Manager is Pamela Dana, Director, telephone number (850) 487-2568. The SFFC Contract Manager is Marshall M. Criser, Jr., Chairman, telephone number (352) 283-2342. Either Party may change its Contract Manager at any time by written notice to the other.

ARTICLE 2

NOTICES AND OTHER COMMUNICATIONS

- 2.1 All notices, demands, requests, and other communications given hereunder shall be made in writing and shall be delivered (i) in person, (ii) by certified mail, return receipt requested, (iii) by receipt-confirmed overnight delivery service, or (iv) via confirmed facsimile. Any such notice, demand, request, or other communication shall be effective only if and when it is received by the Contract Manager at the address of the addressee provided for herein.
- 2.2 The addresses of the Parties are as follows:

For OTTED:

Executive Office of the Governor
Suite 2001, The Capitol
Tallahassee, Florida 32399-0001
Telephone Number: (850) 487-2568
Facsimile Number: (850) 487-3014
Email: Pam.Dana@myflorida.com

For SFFC:

Scripps Florida Funding Corporation
100 Northwest 20 Street
Gainesville, Florida 32603
Marshall M. Criser, Jr., Chairman
Telephone Number: (352) 283-2342
Facsimile Number (352) 392-7676
Email: mcriser@uff.ufl.edu

ARTICLE 3

TERM OF CONTRACT

- 3.1 The term of this Contract will commence as of the Effective Date and, unless earlier terminated pursuant to the terms hereof, will expire twenty (20) years from the Effective Date.
- 3.2 This Contract may be extended by OTTED and SFFC in writing, upon the same terms and conditions contained herein.

ARTICLE 4

DUTIES AND OBLIGATIONS

- 4.1 By January 30, 2004, SFFC shall negotiate and execute a contract ("Funding Agreement") with TSRI for a term of 20 years for the amount of \$310 million, plus any income derived by SFFC from the investment of these funds, less the General and Administrative Expenses allowed herein, in periodic installments to fund the creation of a biomedical facility and campus in Florida to be known as Scripps Florida, provided that TSRI satisfies certain terms and conditions required by Section 288.955, Florida Statutes and the Funding Agreement. The Funding Agreement shall govern the disbursement and use of funds, and contain, at a minimum, the terms, requirements, and performance conditions as mandated herein. SFFC may extend the deadline for entering into the Funding Agreement one time by no more than 45 days.
- 4.2 At least fourteen (14) days before execution of the Funding Agreement, SFFC shall cause TSRI to submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives, an organizational plan for the establishment of a state-of-the-art biomedical research institution and campus in this state. Simultaneously with TSRI's submission of its organizational plan, SFFC shall submit a copy of the proposed Funding Agreement to the Governor, the President of the Senate, the Speaker of the House of Representatives and OTTED.

4.3 Minimum Mandatory Provisions of the Funding Agreement:

- a. The Funding Agreement, at a minimum, must contain provisions:
 - i. Specifying the procedures and schedules that govern the disbursement of funds under this Contract and under Section 288.955, Florida Statutes, specifying the conditions or deliverables that TSRI must satisfy before the release of each disbursement, which procedures shall be substantially in the form of Exhibit "A" (Contract Deliverables).
 - ii. Requiring TSRI to submit to SFFC a business plan in a form and manner prescribed by the SFFC.
 - iii. Prohibiting TSRI from establishing other biomedical science or research facilities in any state other than this state or California for a period of 12 years from the commencement of the Funding Agreement.
 - iv. Governing the ownership of or security interests in real property and personal property, including, but not limited to, research equipment, obtained through the financial support of state or local government, including a provision that in the event of a breach of the Funding Agreement or in the event TSRI ceases operations in this state, such property purchased with state funds shall revert to the state and such property purchased with local funds shall revert to the local governing authority.
 - v. Requiring TSRI to be an equal opportunity employer.
 - vi. Requiring TSRI to maintain a policy of awarding preference in employment at Scripps Florida to residents of this state, as defined by law, except for professional scientific staff positions requiring a doctoral degree, postdoctoral training positions, and graduate student positions.
 - vii. Requiring TSRI to maintain a policy of making purchases for Scripps Florida from vendors in this state, to the extent it is cost-effective and scientifically sound.
 - viii. Requiring TSRI to use the Internet-based job-listing system of the Agency for Workforce Innovation in advertising employment opportunities at Scripps Florida.
 - ix. Requiring TSRI to establish accredited science degree programs at Scripps Florida.
 - x. Requiring TSRI to establish internship programs at Scripps Florida to create learning opportunities for educators and secondary, postsecondary, graduate, and doctoral students.
 - xi. Requiring TSRI to submit data to SFFC on the activities and performance of Scripps Florida during each fiscal year and to provide

- to SFFC an annual accounting of the expenditure of funds disbursed under the Funding Agreement.
- xii. Establishing that SFFC shall review the activities of TSRI to assess its financial and operational compliance with the provisions of the Funding Agreement and with relevant provisions of law.
 - xiii. Authorizing TSRI, when feasible, to use information submitted by it to the Federal Government or to other organizations awarding research grants to TSRI to help meet reporting requirements imposed under the Funding Agreement.
 - xiv. Requiring TSRI during the first 7 years of the Funding Agreement to create 545 positions and to acquire associated research equipment for TSRI's facility in this state, and pay for related maintenance of the equipment, in a total amount of not less than \$45 million.
 - xv. Requiring TSRI to progress in the creation of the total number of jobs prescribed under subparagraph (xiv) of this paragraph on the following schedule: At least 38 positions in the 1st year, 168 positions in the 2nd year, 280 positions in the 3rd year, 367 positions in the 4th year, 436 positions in the 5th year, 500 positions in the 6th year, and 545 positions in the 7th year. The SFFC board may allow TSRI to deviate downward from such employee levels by 25 percent in any year, to allow TSRI flexibility in achieving the objectives set forth in the business plan provided to the SFFC; however, TSRI must have no fewer than 545 positions by the end of the 7th year.
 - xvi. Requiring TSRI to allow SFFC to retain an independent certified public accountant licensed in this state pursuant to chapter 473, Florida Statutes, to inspect the records of TSRI in order to audit the expenditure of funds disbursed to TSRI. The independent certified public accountant shall not disclose any confidential or proprietary scientific information of TSRI.
 - xvii. Requiring TSRI to purchase liability insurance and governing the coverage level of such insurance.
- b. SFFC agrees that an amendment to the Funding Agreement shall not be effective unless it is approved by the affirmative vote of at least seven of the nine members of the SFFC board of directors.
 - c. Performance expectations: In addition to the minimum mandatory contract provisions prescribed in this section, the Funding Agreement between the SFFC and TSRI shall include a provision that TSRI, in cooperation with OTTED, shall report to SFFC on performance expectations that reflect the aspirations of the Governor and the Legislature for the benefits accruing to this state as a result of the funds appropriated pursuant to this Contract and the Funding Agreement. These shall include, but are not limited to, performance expectations addressing:

- i. The number and dollar value of research grants obtained from the Federal Government or sources other than this state.
 - ii. The percentage of total research dollars received by TSRI from sources other than this state which is used to conduct research activities by TSRI in this state.
 - iii. The number or value of patents obtained by TSRI.
 - iv. The number or value of licensing agreements executed by TSRI.
 - v. The extent to which research conducted by TSRI results in commercial applications.
 - vi. The number of collaborative agreements reached and maintained with colleges and universities in this state and with research institutions in this state, including agreements that foster participation in research opportunities by public and private colleges and universities and research institutions in this state with significant minority populations, including historically black colleges and universities.
 - vii. The number of collaborative partnerships established and maintained with businesses in this state.
 - viii. The total amount of funding received by TSRI from sources other than the State of Florida.
 - ix. The number or value of spin off businesses created in this state as a result of commercialization of the research of TSRI.
 - x. The number or value of businesses recruited to this state by TSRI.
 - xi. The establishment and implementation of policies to promote supplier diversity using the guidelines developed by the Office of Supplier Diversity under Section 287.09451, Florida Statutes, and to comply with the ordinances, including any small-business ordinances, enacted by the county and which are applicable to the biomedical research institution and campus located in this state.
 - xii. The designation by TSRI of a representative to coordinate with the Office of Supplier Diversity.
 - xiii. The establishment and implementation of a program to conduct workforce recruitment activities at public and private colleges and universities and community colleges in this state, regardless of size, which request the participation of TSRI.
- d. The Funding Agreement shall require TSRI to provide information on an annual basis to SFFC on its progress in meeting these performance expectations.
 - e. Disbursement Conditions: The Funding Agreement shall include disbursement conditions which must be satisfied by TSRI as a condition

for the continued disbursement of funds under the Funding Agreement. These disbursement conditions shall be negotiated between SFFC and TSRI and shall not be designed to impede the ability of TSRI to attain full operational status. The disbursement conditions may be appropriately varied as to timeframes, numbers, values, and percentages. The disbursement conditions shall include, but are not limited to, the following areas:

- i. Demonstrate creation of jobs and report on the average salaries paid.
- ii. Beginning 18 months after TSRI's occupancy of its permanent facility, TSRI shall annually obtain \$100,000 (ONE HUNDRED-THOUSAND DOLLARS) of non-state funding for each full-time equivalent tenured-track faculty member employed at the Florida facility.
- iii. No later than 3 years after TSRI's occupancy of its permanent facility, TSRI shall apply to the relevant accrediting agency for accreditation of its Florida graduate program.
- iv. TSRI shall purchase equipment for its Florida facility as scheduled in its Funding Agreement with SFFC.
- v. No later than 18 months after occupying its permanent facility, TSRI shall establish a program for qualified graduate students from Florida universities permitting them access to the facility for doctoral, thesis-related research.
- vi. No later than 18 months after occupancy of the permanent facility, TSRI shall establish a summer internship for high school students.
- vii. No later than 3 years after occupancy of the permanent facility, TSRI shall establish a research program for middle and high school teachers.
- viii. No later than 18 months after occupancy of the permanent facility, TSRI shall establish a program for adjunct professors.
- ix. No later than 6 months after commissioning its high throughput technology, TSRI shall establish a program to allow open access for qualified science projects.
- x. Beginning June 2004, TSRI shall commence collaborative efforts with Florida public and private colleges and universities, and shall continue cooperative collaboration through the term of the Funding Agreement.
- xi. Beginning 18 months after TSRI occupies its permanent facility, TSRI shall establish an annual seminar series featuring a review of the science work done by the TSRI and its collaborators at the Florida facility.

- xii. Beginning June 2004, TSRI shall commence collaboration efforts with OTTED by complying with reasonable requests for cooperation in economic development efforts in the biomed/biotech industry. No later than July 2004, TSRI shall designate a person who shall be charged with assisting in these collaborative efforts.
- f. SFFC shall disburse funds to TSRI over a period of 7 calendar years starting in the calendar year beginning January 1, 2004, under the terms and conditions of the Funding Agreement ("Disbursement Period"). SFFC shall complete disbursement of the total amount of funds payable to TSRI under the Funding Agreement by no later than December 31, 2010, unless TSRI fails to satisfy the terms and conditions of the Funding Agreement. Any funds of the SFFC that are not disbursed by December 31, 2010, or such later date as authorized under the Funding Agreement, shall be paid to the Biomedical Research Trust Fund of the Department of Health or any successor fund.
- g. The Funding Agreement shall provide for a reduction or elimination of funding in any year if:
 - i. TSRI is no longer operating in this state;
 - ii. TSRI has failed to commit in writing to maintain operations in this state for the succeeding year; or
 - iii. TSRI commits a material default or breach of the Funding Agreement, as defined and governed by the Funding Agreement. Determination of material default or breach of the Funding Agreement shall require the affirmative vote of at least seven of the nine members of the SFFC board.
- h. Each disbursement by SFFC to TSRI shall be conditioned upon the affirmative approval of at least five of the nine members of the board of directors of SFFC and upon demonstration by TSRI that it has met the particular Funding Agreement contractual deliverables that are the basis for that disbursement.
- i. SFFC shall ensure that funds appropriated in furtherance of the Funding Agreement may not be disbursed or expended for activities that do not principally benefit or that are not directly related to the establishment or operation of TSRI in this state, except upon approval of the affirmative vote of at least seven of the nine members of the SFFC board of directors.
- j. The Funding Agreement shall require TSRI to provide for separate accounts for any funds disbursed pursuant to the Funding Agreement and to maintain separate books and records relating to the Scripps Research Institute's Florida operation, with an adequate cost allocation methodology for funding received under the Funding Agreement to facilitate SFFC's monitoring obligations under this Contract.

- k. With respect to any property that is subject to the security agreement required under this Contract, SFFC shall require TSRI to maintain an inventory of property with a useful life of more than one (1) year and a cost of \$5,000 or more.

- l. Reinvestment of Funds

- i. The Funding Agreement shall require TSRI to reinvest 15 percent of the net royalty revenues, including the revenues from the sale of stock, received by TSRI from the licensing or transfer of inventions, methods, processes, and other patentable discoveries conceived or reduced to practice using TSRI's Florida facilities or Florida employees, in whole or in part, and to which TSRI becomes entitled during the 20 years following the effective date of the Funding Agreement between SFFC and the TSRI. For purposes of this paragraph, the term "net royalty revenues" means all royalty revenues less the cost of obtaining, maintaining, and enforcing related patent and intellectual property rights, both foreign and domestic. The entitlement to reinvestment payments shall accrue and reinvestment payments under this paragraph shall commence no later than 6 months after TSRI has received the final disbursement under the Funding Agreement and shall continue until the maximum reinvestment has been paid. TSRI shall annually submit a schedule of the shares of stock held by it as payment of the royalty and report on any trades or activity concerning such stock.
- ii. The Funding Agreement shall require TSRI to reinvest 15 percent of the gross revenues it receives from naming opportunities associated with any facility it builds in this state. For purposes of this paragraph, the term "naming opportunities" includes charitable donations from any person or entity in consideration for the right to have all or a portion of the facility named for or in the memory of any person, living or dead, or for any entity. TSRI's obligation to make reinvestment payments under this paragraph shall commence upon the execution of the Funding Agreement between SFFC and TSRI.

All reinvestment payments made to SFFC pursuant to the Funding Agreement shall be remitted to the state for deposit in the Biomedical Research Trust Fund or, if such fund has ceased to exist, in another trust fund that supports biomedical research, as determined by law. The maximum reinvestment required of TSRI shall not exceed \$200 million. At such time as the reinvestment payments equal \$155 million or the Funding Agreement expires, whichever is earlier, the board of SFFC shall determine whether the performance expectations and disbursement conditions have been met. If the SFFC board determines that the performance expectations and disbursement conditions have been met, the amount of \$200 million shall be reduced to \$155 million. The Funding Agreement shall provide for TSRI's obligations to survive the expiration or termination of the Funding Agreement.

- 4.4 SFFC shall facilitate and oversee the performance of TSRI under the Funding Agreement with the stated goal and public purpose of expanding the amount and prominence of biomedical research conducted in this state, providing an inducement for high-technology business to locate in the state, creating educational opportunities through access to and partnerships with TSRI, and promoting improved health care through the scientific outcomes of TSRI.
- 4.5 SFFC shall receive and review reports and financial documentation provided by TSRI to ensure compliance with the Funding Agreement. SFFC shall (a) retain an independent certified accounting firm licensed in this state to annually audit TSRI in accordance with Government Auditing Standards after the close of TSRI's fiscal year; and (b) shall conduct periodic onsite fiscal and programmatic monitoring of TSRI's Florida operation commencing at least 90 days prior to the next scheduled annual disbursement to confirm compliance with the disbursement conditions. If at any time during the Disbursement Period, TSRI has been shown to have expended or disbursed funds provided under the Funding Agreement for activities that do not principally benefit or that are not directly related to the establishment or operation of TSRI in this state, without the consent of SFFC, or if TSRI is otherwise declared to be in material default under the Funding Agreement which has not been cured pursuant to the provisions of the Funding Agreement, then SFFC shall adopt procedures to require that its onsite fiscal and programmatic monitoring of TSRI's Florida operation shall be conducted at least once every quarter for the remainder of the Disbursement Period and shall require TSRI to implement a plan of action to take corrective measures to restore compliance with the Funding Agreement. In discharging its monitoring obligations under this paragraph, SFFC shall adopt and use a monitoring instrument substantially in the form of Exhibit A-1 hereto.
- 4.6 SFFC shall prepare an annual report by December 1 of each year and submit it to the Governor and the Legislature. The annual report shall contain:
- a. a description of the activities of SFFC in managing and enforcing the Funding Agreement with TSRI.
 - b. an accounting of the amount of funds disbursed during the preceding fiscal year to TSRI.
 - c. an accounting of expenditures by TSRI during the fiscal year of funds disbursed.
 - d. information on the number and salary level of jobs created by TSRI, including the number and a salary level of jobs created for residents in this state.
 - e. information on the amount and nature of economic activity generated through the activities of TSRI.
 - f. an assessment of factors affecting the progress toward achieving the projected biotech industry cluster associated with TSRI's operations, as projected by economists on behalf of the executive office of the governor.

- g. a compliance and financial audit of records of the SFFC at the end of the preceding fiscal year, conducted by an independent certified public accountant in accordance with the rules of the auditor general.
 - h. a description of the status of the Funding Agreement performance expectations and disbursement conditions.
- 4.7 SFFC shall timely submit to OTTED a copy of :
- a. its proposed Funding Agreement with TSRI no later than 14 days before execution and its executed agreement thereafter.
 - b. TSRI's organizational plan for the establishment of a state-of-the-art biomedical research institution and campus.
 - c. its investment agreement with the State Board of Administration and the investment guidelines established for the investment of its funds.
 - d. its annual report to the Governor and Legislature, together with copies of any monitoring instruments completed in conjunction with SFFC's management or enforcement of the Funding Agreement.
 - e. SFFC's articles of incorporation and bylaws, together with any amendments.
 - f. all other materials reasonably requested by OTTED.
- 4.8 In discharging its financial audit and program compliance reporting obligations under this Contract, SFFC shall follow the Special Audit Requirements attached and incorporated hereto as Exhibit "B".

ARTICLE 5

PAYMENT

- 5.1 Payments under this Contract will be made to SFFC in accordance with Section 288.955, Florida Statutes. SFFC acknowledges and agrees that only costs incurred on or after the Effective Date are eligible for payment under the funding of this Contract. The maximum amount that may be funded to SFFC under this Contract is \$310,000,000 (THREE HUNDRED AND TEN MILLION DOLLARS). Payment shall be subject to the terms of this Contract.
- 5.2 As of the Effective Date, SFFC has received the sum of \$300,000.00 (THREE HUNDRED THOUSAND DOLLARS) for staffing and necessary administrative expenses as provided under Section 288.955, Fla. Stat. From this amount, SFFC agrees to reimburse OTTED for legal fees and expenses incurred by or on behalf of OTTED for the formation of SFFC and preliminary negotiations with TSRI regarding the terms and conditions of the Funding Agreement required by this Contract.

- 5.3 Upon its receipt and approval of the Funding Agreement between the SFFC and TSRI, OTTED shall request disbursement from the Chief Financial Officer of the balance of the appropriation \$309,700,000.00 (THREE HUNDRED AND NINE MILLION AND SEVEN HUNDRED THOUSAND DOLLARS) in one lump sum and shall forthwith transmit such disbursement to SFFC.
- 5.4 To the extent that SFFC receives funding from any source other than OTTED, other than income from the investment of such these funds, SFFC shall maintain a separate account for such other funding sources and report the source and amount of such funds to OTTED in its annual reports.

ARTICLE 6

INVESTMENT OF FUNDS

SFFC shall enter into an agreement ("Investment Agreement") with the State Board of Administration under which funds received by the SFFC from OTTED which are not disbursed to TSRI are invested by the State Board of Administration on behalf of SFFC. Funds shall be invested in suitable instruments authorized under Section 215.47, Florida Statutes, and specified in investment guidelines established and agreed to by the State Board of Administration and SFFC ("Guidelines"). Prior to the disbursement of the funds under Paragraph 5.3, SFFC shall provide to OTTED a copy of the Investment Agreement and Guidelines. In its annual report to OTTED, SFFC shall provide information as to the status of the invested funds. All net income generated from such investments shall be disbursed to TSRI in accordance with the terms of the Funding Agreement and for no other purpose.

ARTICLE 7

ADMINISTRATIVE SUPPORT AND EXPENSES

- 7.1 OTTED shall provide administrative support as requested by SFFC. To the extent mutually agreed by OTTED and SFFC, such administrative support may include, but shall not be limited to, secretarial assistance, mail forwarding, preparation of reports required under this Contract, legal advice and consultation, teleconferencing or videoconferencing facilities, temporary office space at facilities owned or leased by the State of Florida, guidance regarding SFFC's financial reporting obligations under this Contract, and such other support as may be mutually agreed between OTTED and SFFC.
- 7.2 Additionally, SFFC shall hire or contract for all staff necessary to the proper execution of its powers and duties. SFFC shall not expend more than \$300,000 (THREE HUNDRED THOUSAND DOLLARS) in its first year, and no more than \$200,000 (TWO HUNDRED THOUSAND DOLLARS) per year thereafter

for staffing and necessary administrative expenditures, including but not limited to, travel and per diem, legal and audit expenditures ("General & Administrative Expenses"). There will be no reimbursement to SFFC for General & Administrative Expenses in excess of the inclusive funds allocated in this Contract.

- 7.3 Each member of the board of directors of SFFC shall serve without compensation, but shall receive travel and per diem expenses as provided in Section 112.061, Florida Statutes, while in the performance of his or her duties.
- 7.4 SFFC may use funds allocated to General & Administrative Expenses to purchase and maintain insurance for itself and on behalf of SFFC's directors, officers, and employees against any personal accountability or liability for actions taken within the scope of their duties to SFFC, as provided in SFFC's bylaws. SFFC shall use its best reasonable efforts to keep the amount of annual premiums paid for such insurance to no more than 10% of SFFC's annual General & Administrative Expenses.
- 7.5 SFFC's General & Administrative Expenses shall follow the Chief Financial Officer's Reference Guide for State Expenditures with regard to the type of allowable expenses to be incurred. To the extent that SFFC hires fulltime or part-time employees or otherwise contracts for services, all such employees or contractors shall be subject to Section 112.061, Florida Statutes, with regard to reimbursement for travel and other expenses while in the performance of their duties. Any exceptions to this paragraph shall require approval by OTTED.

ARTICLE 8

PUBLIC RECORDS

- 8.1 SFFC shall, subject to the provisions of Section 288.9551, Florida Statutes, permit public access to all public 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 Contract.
- 8.2 The SFFC chairman shall be responsible for ensuring that minutes are kept of the meetings of the SFFC board of directors or any of its committees and is the custodian of all books, documents, and papers of SFFC; the minutes of meetings of the board; and the official seal of the corporation.

ARTICLE 9

LOBBYING

No funds received pursuant to this Contract may be used by either SFFC or TSRI for the purpose of lobbying any branch or agency of state government or any political

subdivision of the state. The Funding Agreement shall contain provisions prohibiting use of funds disbursed under the Funding Agreement for the purpose of lobbying any branch of state government or any political subdivision of the state or for any political purposes.

ARTICLE 10

INDEPENDENT CAPACITY OF RECIPIENT

- 10.1 SFFC is not a unit or entity of state government. The Parties agree that SFFC, its officers, directors, agents, and employees, in performance of this Contract, shall act in the capacity of a private not-for-profit corporation and not as an officer, employee, or agent of the State of Florida. Neither SFFC, nor any of its employees or agents, shall be entitled to receive any benefits of state employment, including retirement benefits and any other rights or privileges connected with employment in the state Career Service. SFFC shall take such steps as may be necessary to ensure that each subrecipient of funds from SFFC or any contractor of SFFC shall be deemed to be an independent contractor and will not be considered or permitted to be an agent of the State of Florida.
- 10.2 SFFC shall not pledge the State of Florida's or OTTED's credit or make the State of Florida or OTTED a guarantor of payment or surety for any contract, debt, obligation, judgment lien, or any form of indebtedness.
- 10.3 OTTED shall not assume any liability for the acts, omissions to act or negligence of the SFFC, its agents, servants or employees; nor shall the SFFC exclude liability for its own acts, omissions to act or negligence to OTTED. No partnership or joint venture shall be deemed to exist between OTTED and SFFC or TSRI as a result of this Contract.

ARTICLE 11

SANCTIONS, BREACHES AND REMEDIES

- 11.1 In the event that SFFC fails to comply with any of the terms of this Contract, OTTED may exercise any remedies available at law or in equity, including the withholding and/or repayment of funding from SFFC, subject to the terms and conditions of the Funding Agreement, or to impose the Sanctions provided in Exhibit C to this Contract. In the event such failure is material to the Contract as a whole and the parties have not been able to resolve their differences in accordance with the alternative dispute procedures provided under this Article 11, OTTED shall have the right to terminate this Contract in accordance with its terms.
- 11.2 In the event of default, the defaulting party shall be entitled to receive written notice specifying the defaults and providing for fifteen (15) calendar days to cure the default. The defaulting party will have fifteen (15) calendar days to cure the

default, unless the nature of the default is such that it must be cured immediately. If the default is of such nature that it cannot be cured within fifteen (15) calendar days, then so long as the defaulting party has commenced to cure the default and is progressing in good faith to cure the default, the notice period shall be extended for an additional thirty (30) calendar days. If the default is not cured within the stated period of time, the non-defaulting party has the option to terminate this Contract and to exercise such other remedies as may be available at law or in equity. The termination under this paragraph 11.2 shall be effective upon no less than five (5) business days written notice. In the event of termination of this Contract by OTTED, SFFC will be reimbursed for expenses reasonably incurred prior to its receipt of notification of termination.

- 11.3 In the event that this Contract is terminated by either party for breach or otherwise after the execution of the Funding Agreement between SFFC and TSRI, OTTED shall have the right to assume the duties, rights and obligations of SFFC under the Funding Agreement. The Funding Agreement shall contain provisions consenting to the assumption by OTTED of SFFC's duties, rights and responsibilities in the event of termination under this Article 11.
- 11.4 Alternative Informal Dispute Resolution: OTTED and SFFC agree that they will seek to resolve any disputes between them regarding their responsibilities under this Contract or any provision of Florida law as soon as possible and at the lowest level reasonable, in order to minimize expenditure of resources. The Parties further agree to use their best reasonable efforts to ensure speedy and non-confrontational resolution of any and all disputes between them. If informal efforts are unsuccessful, the Parties agree to engage a mutually acceptable mediator to assist them in resolving any outstanding issues. First preference will be given to using the services of a volunteer mediator; however, the Parties may jointly agree to retain a professional mediator and to pay an equal share of the fees charged by such mediator.

ARTICLE 12

DISSOLUTION OF CORPORATION

SFFC's articles of incorporation shall provide that, in the event of its dissolution, OTTED shall be the successor in interest to SFFC and shall assume all rights, duties, and obligations of the SFFC under any contract to which SFFC is then a party and under law. All property, real, tangible or intangible, of SFFC shall inure to and become the property of OTTED in the event of such dissolution, subject to existing contractual or other legal obligations of SFFC.

ARTICLE 13
PRESERVATION OF REMEDIES

No delay or omission to exercise any right, power, or remedy accruing to either Party upon breach or default under this Contract 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.

ARTICLE 14
SEVERABILITY

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

ARTICLE 15
GOVERNING LAW

This Contract 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.

ARTICLE 16
NON-ASSIGNMENT

Except as otherwise provided in this Contract, neither party may assign, delegate, nor otherwise transfer its rights, duties, or obligations under this Contract without the prior written consent of the other Party which consent will not be unreasonably withheld. Any delegation, assignment, or transfer otherwise occurring will be null and void. Notwithstanding the foregoing and subject to applicable state law, OTTED shall at all times be entitled to assign, delegate, or transfer its rights, duties, or obligations under this Contract to another governmental agency in the State of Florida, upon giving prior written notice to SFFC.

ARTICLE 17
COUNTERPARTS

This Contract may be executed in counterparts, each of which shall be considered an original for all purposes.

ARTICLE 18
NO WAIVER OF SOVERIGN IMMUNITY

Nothing herein shall be construed as waiving the sovereign immunity of the State of Florida.

ARTICLE 19
FORCE MAJEURE

Notwithstanding any other provision in this Contract (or its Exhibits), if either SFFC or TSRI is prevented from timely achieving any deadlines set forth in Section 288.955, Florida Statutes, this Contract or the Funding Agreement due to TSRI's inability to occupy its permanent Florida facility within two (2) years after entering into the memorandum or agreement pursuant to section 403.973, Florida Statutes, as a result of permitting delays and related administrative or judicial proceedings, acts of God, labor disturbances, or other similar events beyond the control of TSRI, the deadline shall be extended by the number of days by which TSRI was delayed in commencing the occupancy of its permanent Florida facility. In no event shall the extension be for more than 4 years. Upon occurrence of a force majeure event, SFFC shall continue to fund TSRI at a level that permits TSRI to sustain its current level of operations until the force majeure event ceases and TSRI is able to resume the contract schedule governing disbursements. SFFC shall notify OTTED as soon as reasonably possible of such force majeure event and shall, in its periodic reports to OTTED, report on the nature and status of any force majeure event.

ARTICLE 20
NON-DISCRIMINATION AND HARASSMENT-FREE WORKPLACE

- 20.1 SFFC shall not discriminate against any employee or any applicant for employment because of age, race, sex, creed, color, handicap, national origin, or marital status.
- 20.2 SFFC shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by the board of directors.
- 20.3 As part of its reporting obligation under this Contract, SFFC shall report to OTTED its expenditures with minority or women-owned businesses. The report shall contain the names and addresses of the minority or women-owned businesses; the aggregate dollar figure disbursed that quarter for each minority or woman-owned business; the time period; and the type of goods or services. If no expenditures were made to minority or women-owned businesses, SFFC shall submit a statement to this effect.

ARTICLE 21
STRICT COMPLIANCE WITH LAWS

- 21.1 SFFC agrees that all acts to be performed by it in connection with this Contract must be performed in strict conformity with all applicable laws and regulations of the federal government and the State of Florida.

ARTICLE 22
ENTIRE AGREEMENT

This Agreement and the attached Exhibits A, A-1, B and C constitute the complete and exclusive statement of the terms and conditions of this Contract and supersedes and replaces any and all prior negotiations, understandings and agreements, whether oral or written, between the parties with respect thereto. Except as expressly provided in this Contract, 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 Contract shall be effective or binding upon either unless agreed to in writing by the party against whom enforcement is sought.

ARTICLE 23
AMENDMENTS

This Contract may not be altered, modified, amended or changed in any manner, except pursuant to a written agreement executed and delivered by each party. Additionally, any such modification, amendment or change shall be effective on the date of execution and delivery or such later date as the Parties may agree therein.

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

OTTED:

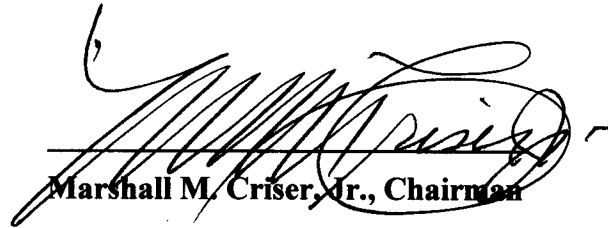
**STATE OF FLORIDA, EXECUTIVE
OFFICE OF THE GOVERNOR, OFFICE
OF TOURISM, TRADE, AND ECONOMIC
DEVELOPMENT**



Pamella J. Dana, Director

SFFC:

**SCRIPPS FLORIDA FUNDING
CORPORATION, a Florida not-for-profit
corporation**



Marshall M. Criser, Jr., Chairman

EXHIBIT A

CONTRACT DELIVERABLES

SFFC agrees to include in its Funding Agreement with TSRI the following specific deliverables, compliance with which by TSRI shall be a condition precedent to additional funding under the Funding Agreement:

- A. Year 1: TSRI shall provide to SFFC for its approval a detailed Business Plan covering the first seven years of the project, which Business Plan shall include a proposed budget including a staffing plan, an equipment purchase budget, and proposed operating expenses. The staffing plan shall identify the number and average salaries of positions to be funded in Florida by means of the initial annual disbursement of federal funds totaling \$20,801,000 to be provided to TSRI by SFFC under the Funding Agreement. Upon the review and acceptance of the proposed budget, a legal opinion from TSRI's counsel in a form to be determined in the Funding Agreement, a fully executed and enforceable agreement for temporary facilities of at least 5,000 square feet in Florida, SFFC shall, within five (5) business days from the effective date of the Funding Agreement, release to TSRI a quarterly installment covering anticipated staffing costs, operating expenses, and equipment purchases expected to be incurred by TSRI during the first quarter of 2004. For the balance of 2004, SFFC shall provide TSRI with quarterly installments of the remaining funds to defray TSRI's anticipated costs for staffing, operating expenses and equipment purchases on May 1, August 1, and November 1, respectively, in accordance with the approved Business Plan. In the event that TSRI finds it necessary to amend its Business Plan during the course of the year, TSRI shall furnish a copy of the amended Plan to SFFC as soon as practicable. Quarterly installments shall be adjusted by SFFC in accordance with the Business Plan, as amended. By August 31, 2004, TSRI will also provide SFFC with an annual report ("Annual Report") required in a form to be prescribed by the Funding Agreement, that shall include, but not be limited to, the following information: an accounting of TSRI's expenditures of funds disbursed under the Funding Agreement; TSRI's progress in meeting its Business Plan; information on the number and salary level of jobs created by TSRI at Scripps Florida; a description of the status of the performance expectations and disbursement conditions required under this Contract; information on the positions and funds required to be committed for equipment for such positions by means of the next annual disbursement under the Funding Agreement; and such other information as SFFC may reasonably require to exercise its fiscal and program monitoring obligations under this Contract.
- B. Year 2: By January 31, 2005, TSRI shall provide SFCC with audited financial statements in a form to be prescribed under the Funding Agreement and with an Annual Science Report for Scripps Florida in a form to be prescribed under the Funding Agreement. If there are material changes to the information furnished by TSRI to SFFC for use in the annual report delivered by SFCC under this Contract

on December 1, 2004, TSRI will, by no later than February 15, 2005, deliver an updated progress report as to those items contained in the Annual Report to be provided by TSRI under the Funding Agreement, which update shall include any proposed budget changes for the proposed expenditure of the Year 2 disbursement of federal funds totaling \$55,309,000 to be provided to TSRI by SFFC. If TSRI believes that its approved Business Plan should be revised, the Report shall identify any proposed changes and the reasons therefor. Upon SFFC's receipt of the audited financial statements, the Annual Science Report, the updated progress report on the Annual Report required by the Funding Agreement (if necessary), and revisions to the approved Business Plan, if any, SFFC shall, on March 15, 2005, release to TSRI a quarterly installment covering staffing costs, operating expenses, and equipment purchases expected to be incurred by TSRI for the initial installment of 2005. For the balance of 2005, SFFC shall provide TSRI with quarterly installments of the remaining funds to defray TSRI's costs for staffing, operating expenses, and equipment purchases on June 15, 2005, September 15, 2005, and December 15, 2005, respectively, in accordance with the approved Business Plan, as amended. TSRI will also provide SFFC with the Annual Report required by the Funding Agreement by August 31, 2005.

- C. Year 3: By January 31, 2006, TSRI shall provide SFCC with audited financial statements in a form to be prescribed under the Funding Agreement and with an Annual Science Report for Scripps Florida in a form to be prescribed under the Funding Agreement. If there are material changes to the information furnished by TSRI to SFFC for use in the annual report delivered by SFCC under this Contract on December 1 of the preceding year, TSRI will, by no later than February 15, 2006, deliver an updated progress report as to those items contained in the Annual Report to be provided by TSRI under the Funding Agreement, which update shall include any proposed budget changes for the proposed expenditure of the Year 3 disbursement of federal funds totaling \$70,360,000 to be provided to TSRI by SFFC. If TSRI believes that its approved Business Plan should be revised, the Report shall identify any proposed changes and the reasons therefor. Upon SFFC's receipt of the audited financial statements, the Annual Science Report, the updated progress report on the Annual Report required by the Funding Agreement (if necessary), and revisions to the approved Business Plan, if any, SFFC shall, on March 15, 2006, release to TSRI a quarterly installment covering staffing costs, operating expenses, and equipment purchases expected to be incurred by TSRI for the initial installment of 2006. For the balance of 2006, SFFC shall provide TSRI with quarterly installments of the remaining funds to defray TSRI's costs for staffing, operating expenses, and equipment purchases on June 15, 2006, September 15, 2006, and December 15, 2006, respectively, in accordance with the approved Business Plan, as amended. TSRI will also provide SFFC with the Annual Report required by the Funding Agreement by August 31, 2006.
- D. Year 4: By January 31, 2007, TSRI shall provide SFCC with audited financial statements in a form to be prescribed under the Funding Agreement and with an Annual Science Report for Scripps Florida in a form to be prescribed under the

Funding Agreement. If there are material changes to the information furnished by TSRI to SFFC for use in the annual report delivered by SFCC under this Contract on December 1 of the preceding year, TSRI will, by no later than February 15, 2007, deliver an updated progress report as to those items contained in the Annual Report to be provided by TSRI under the Funding Agreement, which update shall include any proposed budget changes for the proposed expenditure of the Year 4 disbursement of federal funds totaling \$54,825,000 to be provided to TSRI by SFFC and describe the status of TSRI's Phase II relocation and the progress of Phase III construction activities, including a projected date for TSRI's occupancy of its permanent facility. If TSRI believes that its approved Business Plan should be revised, the Report shall identify any proposed changes and the reasons therefor. Upon SFFC's receipt of the audited financial statements, the Annual Science Report, the updated progress report on the Annual Report required by the Funding Agreement (if necessary), and revisions to the approved Business Plan, if any, SFFC shall, on March 15, 2007, release to TSRI a quarterly installment covering staffing costs, operating expenses, and equipment purchases expected to be incurred by TSRI for the initial installment of 2007. For the balance of 2007, SFFC shall provide TSRI with quarterly installments of the remaining funds to defray TSRI's costs for staffing, operating expenses, and equipment purchases on June 15, 2007, September 15, 2007, and December 15, 2007, respectively, in accordance with the approved Business Plan, as amended. TSRI will also provide SFFC with the Annual Report required by the Funding Agreement by August 31, 2007.

- E. Year 5: By January 31, 2008, TSRI shall provide SFCC with audited financial statements in a form to be prescribed under the Funding Agreement and with an Annual Science Report for Scripps Florida in a form to be prescribed under the Funding Agreement. If there are material changes to the information furnished by TSRI to SFFC for use in the annual report delivered by SFCC under this Contract on December 1 of the preceding year, TSRI will, by no later than February 15, 2008, deliver an updated progress report as to those items contained in the Annual Report to be provided by TSRI under the Funding Agreement, which update shall include any proposed budget changes for the proposed expenditure of the Year 5 disbursement of federal funds totaling \$44,107,000 to be provided to TSRI by SFFC and describe the status of TSRI's Phase III relocation activities, including the status of its occupancy of its permanent facility. If TSRI believes that its approved Business Plan should be revised, the Report shall identify any proposed changes and the reasons therefor. Upon SFFC's receipt of the audited financial statements, the Annual Science Report, the updated progress report on the Annual Report required by the Funding Agreement (if necessary), and revisions to the approved Business Plan, if any, SFFC shall, on March 15, 2008, release to TSRI a quarterly installment covering staffing costs, operating expenses, and equipment purchases expected to be incurred by TSRI for the initial installment of 2008. For the balance of 2008, SFFC shall provide TSRI with quarterly installments of the remaining funds to defray TSRI's costs for staffing, operating expenses, and equipment purchases on June 15, 2008, September 15, 2008, and December 15,

2008, respectively, in accordance with the approved Business Plan, as amended. TSRI will also provide SFFC with the Annual Report required by the Funding Agreement by August 31, 2008.

- F. Year 6: By January 31, 2009, TSRI shall provide SFCC with audited financial statements in a form to be prescribed under the Funding Agreement and with an Annual Science Report for Scripps Florida in a form to be prescribed under the Funding Agreement. If there are material changes to the information furnished by TSRI to SFFC for use in the annual report delivered by SFCC under this Contract on December 1 of the preceding year, TSRI will, by no later than February 15, 2009, deliver an updated progress report as to those items contained in the Annual Report to be provided by TSRI under the Funding Agreement, which update shall include any proposed budget changes for the proposed expenditure of the Year 6 disbursement of federal funds totaling \$44,344,000 to be provided to TSRI by SFFC and describe the status of TSRI's activities in its permanent facility, including its educational and outreach programs. If TSRI believes that its approved Business Plan should be revised, the Report shall identify any proposed changes and the reasons therefor. Upon SFFC's receipt of the audited financial statements, the Annual Science Report, the updated progress report on the Annual Report required by the Funding Agreement (if necessary), and revisions to the approved Business Plan, if any, SFFC shall, on March 15, 2009, release to TSRI a quarterly installment covering staffing costs, operating expenses, and equipment purchases expected to be incurred by TSRI for the initial installment of 2009. For the balance of 2009, SFFC shall provide TSRI with quarterly installments of the remaining funds to defray TSRI's costs for staffing, operating expenses, and equipment purchases on June 15, 2009, September 15, 2009, and December 15, 2009, respectively, in accordance with the approved Business Plan, as amended. TSRI will also provide SFFC with the Annual Report required by the Funding Agreement by August 31, 2009.
- G. Year 7: By January 31, 2010, TSRI shall provide SFCC with audited financial statements in a form to be prescribed under the Funding Agreement and with an Annual Science Report for Scripps Florida in a form to be prescribed under the Funding Agreement. If there are material changes to the information furnished by TSRI to SFFC for use in the annual report delivered by SFCC under this Contract on December 1 of the preceding year, TSRI will, by no later than February 15, 2010, deliver an updated progress report as to those items contained in the Annual Report to be provided by TSRI under the Funding Agreement, which update shall include any proposed budget changes for the proposed expenditure of the Year 7 disbursement of federal funds totaling \$20,254,000 to be provided to TSRI by SFFC and describe the status of TSRI's activities in its permanent facility, including its educational and outreach programs. If TSRI believes that its approved Business Plan should be revised, the Report shall identify any proposed changes and the reasons therefor. Upon SFFC's receipt of the audited financial statements, the Annual Science Report, the updated progress report on the Annual Report required by the Funding Agreement (if necessary), and revisions to the

approved Business Plan, if any, SFFC shall, on March 15, 2010, release to TSRI a quarterly installment covering staffing costs, operating expenses, and equipment purchases expected to be incurred by TSRI for the initial installment of 2010. For the balance of 2010, SFFC shall provide TSRI with quarterly installments of the remaining funds to defray TSRI's costs for staffing, operating expenses, and equipment purchases on June 15, 2010, September 15, 2010, and December 15, 2010, respectively, in accordance with the approved Business Plan, as amended. TSRI will also provide SFFC with the Annual Report required by the Funding Agreement by August 31, 2010.

EXHIBIT A-1

**MONITORING INSTRUMENT
(PARAGRAPH 4.5)**

<u>DELIVERABLE</u>	<u>YES</u>	<u>NO</u>	<u>NOT APPLICABLE</u>
1. Number of jobs created consistent with approved Business Plan?			
2. Number of jobs created verified?			
3. Average salaries of jobs created consistent with approved Business Plan?			
4. Average Salaries verified?			
5. Person designated to assist in collaborative efforts with OTTED (beginning June 2004)?			
6. Compliance with OTTED's requests for cooperation verified by OTTED?			
7. Equipment purchases / contracts consistent with approved Budget?			
8. Equipment purchases / contracts verified?			
9. UCC statement filed / updated for new capital equipment purchased during quarter?			
10. Required quarterly financial information provided?			
11. Liability insurance valid, with SFFC listed as additional insured?			
12. Receipt of non-state funding sources consistent with Budget?			
13. Evidence of collaborative efforts with Florida universities delivered and verified?			
14. Report of dollar and value of grants?			
15. Evidence of workforce recruitment activities at public and private universities provided and verified?			
16. Evidence of policy to promote supplier diversity?			
17. Evidence of policy to use Florida vendors?			
18. Evidence that the Internet-based job listing system of the Agency for Workforce Innovation is being used?			
19. Establishment and implementation of policy of equal employment opportunities?			
20. Establishment and implementation of policy awarding preferences in employment to Florida residents, excluding professional scientific staff positions?			

21. Records made available in timely manner as required by SFFC?			
22. Compliance with required applicable disbursement conditions verified?			
23. Verification that TSRI is in good standing, has not declared bankruptcy, has filed any required tax returns?			
24. Certification by TSRI that Grant Funds have been spent in accordance with Section 288.955, Fla. Stat.?			

EXHIBIT B

SPECIAL AUDIT REQUIREMENTS

The administration of funds awarded by the Office of Tourism, Trade, and Economic Development (OTTED) to SFFC may be subject to audits and/or monitoring by OTTED, as described in this section.

MONITORING

By entering into this agreement, SFFC agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by OTTED in addition to reviews of audits conducted in accordance with OMB Circular A-133, as revised (see “AUDITS” below). These monitoring procedures may include, but not be limited to, on-site visits by OTTED staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. In the event OTTED determines that a limited scope audit of SFFC or Scripps Florida is appropriate, the SFFC agrees to comply with any additional instructions provided by OTTED to SFFC regarding such audit. SFFC further agrees to comply and cooperate with any inspections, reviews, investigations, or audits of SFFC’s compliance with this Contract deemed necessary under Florida law by the Chief Financial Officer, Auditor General, or Chief Inspector General. SFFC shall permit access to records and the independent auditor’s working papers as necessary to comply with the requirements of this Contract.

FEDERAL SINGLE AUDIT ACT

1. In the event that SFFC or TSRI (collectively, “the recipient”) expends \$500,000 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. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from OTTED. The determination of amounts of Federal awards should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient by an independent certified public account in accordance with the provisions of OMB Circular A-133, as revised, will meet the requirements of this part. For the avoidance of doubt, to the extent that TSRI already is subject to the single-audit requirements under OMB Circular A-133, as revised, such audits shall satisfy the requirements of this part.

2. In connection with the audit requirements required under the Contract, SFFC shall ensure that the audit complies with the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.
3. If the recipient expends less than \$500,000 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 \$500,000 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 sources (i.e., the costs of such audit must be paid from recipient resources from sources other than Federal entities).
4. For information regarding the Federal Single-Audit Act of 1984, please see <http://www.whitehouse.gov/omb/circulars/>.

OTHER AUDIT REQUIREMENTS

5. The audit and program compliance requirements set forth in Section 288.955, Florida Statutes, apply to SFFC and TSRI even if the recipient expends less than \$500,000 in Federal awards in its fiscal year. SFFC must include the record keeping requirements found herein in its Funding Agreement with TSRI. SFFC shall provide TSRI the information needed by TSRI to comply with the requirements of the Federal Single Audit Act and OMB Circular A-133, as revised, with regard to Scripps Florida. SFFC shall follow the procedures specified in OMB Circular A-133, as revised, and shall review and monitor TSRI audit reports and perform other procedures as specified in the Funding Agreement, which may include onsite visits. SFFC shall provide that TSRI shall consent to permit the independent auditor named by SFFC access to TSRI's records with respect to Scripps Florida and independent auditor's working papers as necessary to permit SFFC to follow the procedures of the Federal Single Audit Act with respect to the grant funds provided by OTTED. SFFC also shall obtain TSRI's consent to providing access to any records and reports received by SFFC in connection with such audits, and the independent auditors' work papers, to OTTED, the Chief Financial Officer, the Chief Inspector General, and the Auditor General. To the extent that OTTED or SFFC require audits or program compliance monitoring of TSRI with respect to Scripps Florida in addition to audits required under the Federal Single Audit Act, the entity conducting such audits shall arrange for funding the full cost of such audits. All records provided in accordance with this Contract shall be subject to the exemptions and confidentiality provisions applicable under either State or Federal law.
6. As to TSRI, the financial audit and programmatic monitoring obligations under this Contract shall expire upon SFFC's Final Program Report or one year after the final disbursement to TSRI, whichever is later. However, such expiration shall not relieve SFFC or its successor in interest from conducting such financial audits and obtaining such reports from TSRI as are reasonably necessary to verify

TSRI's compliance with its Reinvestment obligations under the Funding Agreement.

REPORT SUBMISSION

Copies of audit reports conducted in accordance with the audit requirements contained herein shall be submitted by or on behalf of the recipient to the parties set out below. The annual financial audit report shall include all management letters issued by the auditor and SFFC's response to all findings, including corrective actions to be taken. The annual financial audit report shall include a schedule of financial assistance specifically identifying all Contract and other revenue by sponsoring agency and Contract number.

As to audits conducted in accordance with OMB Circular A-133, as revised, copies of reporting packages shall be submitted when required by Section .320(d), OMB Circular A-133, as revised, by or on behalf of the recipient directly to:

- A. OTTED at the following address:

Pamella Dana, Director
Office of Tourism, Trade, and Economic Development
Executive Office of the Governor
The Capitol, Suite 2001
Tallahassee, Florida 32399 -0001

- 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.
- D. 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 letters issued by the auditor to OTTED at the address provided above.

Any reports, management letters, or other information required to be submitted to OTTED pursuant to this agreement shall be submitted timely in accordance with OMB Circular A-133, as revised, and the provisions of this Contract.

Recipients, when submitting financial reporting packages to OTTED for audits done in accordance with OMB Circular A-133, as revised, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

RECORD RETENTION

SFFC shall retain all grant records and shall ensure the retention of its independent auditors' working papers for a period of five (5) years from the date of submission of the Final Project Report. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the five (5) year period, 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 five (5) years period, whichever is later. SFFC shall require TSRI to adopt the same record retention periods provided herein, or for such other period provided by Federal law, with respect to Scripps Florida and its use of the funds provided under the Funding Agreement.

EXHIBIT C

SANCTIONS

Sanctions for Reporting and Audit Requirements

- A. OTTED may impose sanctions on the SFFC for any of the following reasons:
 - 1. SFFC fails to submit any of the reports required by the Contract within fifteen working days of their due dates.
 - 2. SFFC fails to demonstrate to OTTED's reasonable satisfaction that it has met a reporting requirement of the Contract and does not respond satisfactorily to OTTED's request for corrective action within 30 days of notification from OTTED.
 - 3. SFFC fails to perform the financial audits and program compliance audits required by the Contract within 15 days of their due dates.
- B. Sanctions will be imposed only after the completion of all efforts at resolving any disputes between the parties as provided in Article 11 of the Contract. The following sanctions may, at the reasonable discretion of OTTED, apply and remain in effect until SFFC has corrected or cured the deficiency that led to the sanctions.
- C. OTTED may impose Sanctions in two tiers, in its discretion. Such sanctions are intended to act as an incentive for compliance and are not intended to be punitive. Sanctions shall not be imposed for using innovative methods or making changes in programs with the intent to achieve greater efficiency and effectiveness.
 - 1. **Tier 1.** OTTED will require SFFC to provide a detailed explanation of the reasons for nonperformance within five days of the submission of its Annual Report. The explanation shall include a plan of action or remedial plan. The reasons for nonperformance may include, but are not limited to, uncontrollable circumstances, establishment of new processes, or allocation of resources to meet priority demands.
 - 2. **Tier 2.** If the report of action required under Tier 1 does not satisfactorily explain reasons for nonperformance, OTTED may require that SFFC meet with appropriate legislative staff and representatives of the Office of Program Policy Analysis and Government Accountability (OPPAGA) and Office of Policy and Budgeting (OPB) to explain lack of performance and to discuss a plan of action for remedial or corrective action. Any proposed

remedial plan must be approved by OTTED in advance, which consent shall not be unreasonably withheld.