

IN THE CIRCUIT COURT OF THE  
EIGHTEENTH JUDICIAL CIRCUIT IN  
AND FOR BREVARD COUNTY,  
FLORIDA

SCOTT ELLIS, in his official capacity as  
Brevard County Clerk of the Circuit Court,

Petitioner,

v.

ECONOMIC DEVELOPMENT  
COMMISSION OF FLORIDA'S SPACE  
COAST, INC., a Florida non-profit  
corporation,

Respondent.

CASE NO.: 05-2013-CA-069095-XXXX-XX

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**PETITIONER'S CLOSING ARGUMENT ON PETITIONER'S SECOND AMENDED  
PETITION FOR ACCESS TO PUBLIC RECORDS**

COMES NOW, Petitioner, SCOTT ELLIS, in his official capacity as Brevard County Clerk of the Circuit Court, by and through undersigned counsel and pursuant to the Court's verbal instruction at the January 31, 2014 evidentiary hearing, hereby submits this Closing Argument in support of his Second Amended Petition for Access to Public Records.

**INTRODUCTION**

Petitioner will be referred to herein as the "Clerk". Respondent, Economic Development Commission of Florida's Space Coast, Inc. f/k/a Economic Development Commission of East Central Florida, Inc. f/k/a Brevard Economic Development Corporation, Inc. will be referred to as the "EDC." Citations to the January 29, 2014 and January 31, 2014 hearing transcript, the original of which has been filed with the Court, will be designated by "Tr." followed by the appropriate page numbers. Citations to documents entered into evidence at the two-day hearing will be designated by "P. Ex." for Petitioner's Exhibits or "R. Ex." for Respondent's Exhibits,

followed by the appropriate exhibit number.

## **BACKGROUND**

Between early January 2013 and August 27, 2013, the Clerk made six (6) public records requests to the EDC. Specifically, the Clerk requested documents and information from the EDC related to Project Fates, BlueWare, BlueGEM, RoseWare, and affiliated companies (collectively, “BlueWare”) (the “EDC’s BlueWare File”). Each of the Clerk’s requests were met with blanket refusals by the EDC so that the Clerk was forced to file this lawsuit seeking production of the public records.

Several days before the initial hearing on the Clerk’s Petition which was held on November 1, 2013, the EDC produced some of the records to the Clerk because BlueWare allegedly granted the EDC permission to turnover certain portions of the EDC’s BlueWare File. However, the EDC refuses to produce additional public records that are subject to the Clerk’s requests. At the initial hearing, the EDC argued that they are not subject to Chapter 119, Florida Statutes (the “Public Records Act”) because it is a private entity. As such, a two-day evidentiary hearing was held to determine whether the EDC is subject to the Public Records Act, and whether the Clerk is entitled to additional records.

## **ARGUMENT**

There are two circumstances under which a private entity is subject to the Public Records Act. First, “[w]hen [an] agreement transfers [an] actual public function, public access follows...” *Memorial Hospital-West Volusia, Inc. v. News-Journal Corp.*, 729 So. 2d 373, 381 (Fla. 1999). *See also Harold v. Orange County, Fla.*, 668 So. 2d 1010, 1012 (Fla. 5<sup>th</sup> DCA 1996), *Putnam County Humane Society, Inc. v. Woodward*, 740 So. 2d 1238, 1239 (Fla. 5<sup>th</sup> DCA 1999) and *Stanfield v. Salvation Army*, 695 So. 2d 501, 503 (Fla. 5<sup>th</sup> DCA 1997).

The second circumstance is when a public agency has not delegated a public function, but the public agency has a significant level of involvement in the private entity. *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992). The *Schwab-Twitty* case lays out nine (9) factors (“*Schwab* Factors”) for the Court to rely upon in deciding whether a private entity is subject to the Public Records Act. Under either analysis the EDC is subject to the Public Records Act.

**A. The County Delegated a Public Function to the EDC**

The EDC is subject to the Public Records Act because Brevard County (the “County”) delegated a public function to the EDC. *See Memorial Hospital-West Volusia*, 729 So. 2d at 381; *Harold*, 668 So. 2d at 1012; *Stanfield*, 695 So. 2d at 503; *Putnam County Humane Society*, 740 So. 2d at 1239. In determining whether the County delegated a public function to the EDC, the Court should heavily rely on the testimony of the EDC’s witness, William Potter, Esq. Mr. Potter was appointed by County Commissioner Val Steele in 1970 to the Brevard Economic Development Council (the “Council”), the County’s public corporation that performed economic development prior to the EDC being created. (Tr. 403). Mr. Potter was the chairman of the Council many times during his tenure. (Tr. 406). He was also heavily involved in the Council being reorganized and converted to the EDC, and served as the EDC’s first chairman. (Tr. 405 – 411, 414 – 415). Mr. Potter testified about the history of economic development in Brevard County which included the history of the Council, its reorganization and conversion to the EDC, and the history of the EDC. (Tr. 405-411; 414-419).

The Council’s structure included a five (5) member board that was appointed by County Commissioners, an Executive Director, two assistants and two or three secretarial staff. (Tr. 403 - 404). For more than twenty (20) years, the Council operated as the County’s internal economic

development agency. (Tr. 403 - 406). The function of the Council was to attract industry looking to relocate or expand in the County. (Tr. 404). However, during the Council's existence, there were three (3) Chambers of Commerce (the "Chambers") representing North, Central and South Brevard that independently performed their own economic development in the County. (Tr. 411). These four (4) organizations were all working against one another. (Tr. 380). As such, the Council members and representatives of the Chambers began to evaluate whether the Council should reorganize and convert into a private economic development agency. (Tr. 409).

An eleven (11) member Ad Hoc Steering Committee composed of members of the Council, the Chambers, and others that equally represented North, Central and South Brevard studied the competitive economic development organizations in adjacent counties and evaluated solutions to unify economic development in the County. (P. Ex. 18). The Ad Hoc Committee developed five (5) Action Steps to make the County more competitive in economic development. (P. Ex. 18). This plan was designed to eliminate the barriers between the multiple economic development programs and position the County as a unified front. (P. Ex. 18, pg. ii). To accomplish the task, the Action Steps included a plan to convert the Council into to a private, nonprofit organization. (P. Ex. 18, pg. 1). In fact, Mr. Potter testified the reason for the privatization was that "we had in effect four (4) organizations doing industrial development in the county. ...[and] there should be one agency...." (Tr. 411) (Emphasis added).

The EDC may argue the reason to privatize economic development was that prospective companies would rather communicate with private entities than with the government. Mr. Potter disagreed with such an argument, testifying "that wasn't one of the reasons." (Tr. 411). Further, he testified that "most of the larger industries are working through state government, the state's

economic development arm, and they need one agency in the County to come to rather having to deal with four different agencies. So that was a large concern.” (Tr. 411).

Once the Ad Hoc Committee concluded its evaluation, Donald Nohrr, Esq., a member of the Council addressed the County Commission in March 1989. (P. Ex. 10, pgs 37 – 39). Mr. Nohrr requested that the County Commission approve the Ad Hoc Committee’s five-point plan, which requested the County Commission reorganize the Council to a private economic development agency. (P. Ex. 10, pgs. 37 - 39). The County Commission unanimously approved the recommendation to convert and reorganize the Council into the EDC<sup>1</sup>. (P. Ex. 10, pgs. 37 - 39 and Ex. 17).

On May 2, 1989, the County Commission and Mr. Potter, on behalf of the newly incorporated EDC, entered into a multi-year agreement (the “Initial Agreement”) for the EDC to serve as the County’s chief marketing and recruitment agency for economic development. (P. Ex. 20, pg. 1). The EDC agreed to use its best efforts to accomplish that task “on behalf of” the County. (P. Ex. 20, pg. 1). The County agreed to pay the EDC “a lump sum payment in the amount of \$75,000, and then an additional sum of \$50,000, and then a further payment on September 1, 1989, equal to the amount of funds remaining in the [Council’s] budget for FY 1989.” (P. Ex. 20, pg. 3). (Emphasis added). Furthermore, the Initial Agreement states, “[p]ursuant to the provisions of Section 125.38, Florida Statutes, the County has determined that the provision of economic development services for the County by the [EDC] constitutes a public purpose, and the County hereby agrees to lease to the [EDC], for a nominal sum, all

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<sup>1</sup> On or about May 4, 1989, the Articles of Incorporation for Brevard Economic Development Corporation, a Florida not for profit corporation (“BEDC”) were filed with the Florida Department of State and the BEDC was created. Then, on or about July 12, 1993, the BEDC amended its Articles of Incorporation to change the name of the BEDC to the Economic Development Commission of East Central Florida, Inc. Lastly, on August 14, 1996, the Articles of Incorporation were amended a second time to change the name to the Economic Development Commission of Florida’s Space Coast, Inc. Therefore, the Respondent is the Economic Development Commission of Florida’s Space Coast, Inc. which is same corporation that was incorporated in 1989 as BEDC. (P. Ex. 7, Tr. 393 and 414).

personal property formerly assigned to the [Council], for use by the [EDC] in performing this Agreement. Should any property require disposal, said property shall be returned to Brevard County Property Control for disposal.” (P. Ex. 20, pg. 4). (Emphasis added).

Mr. Potter testified that once the Council was reorganized and privatized into the EDC, the Council terminated. (Tr. 405). The “functions previously conducted by the [Council] were assumed by the [EDC],” and their “objectives were the same.” (Tr. 405). Some of the Board members of the Council and the entire staff transferred to the EDC. (Tr. 422). The equipment and supplies owned by the Council were transferred to the EDC. (Tr. 422). Lastly, five of the initial twelve (12) Board of Directors of the EDC were appointed by the Commission. (P. Ex. 17). In essence, the County approved the creation of the EDC and then transferred the Council’s board members, staff, equipment and money to the EDC.

Mr. Larry Wuensch, another EDC witness, was also essential as he was hired as the first permanent president for the EDC back in 1989. (Tr. 376-377). Mr. Wuensch testified that the EDC serves a public function and operates for “the general welfare of the community.” (Tr. 395 - 396)<sup>2</sup>. Additionally, Mr. Wuensch testified that there are three types of economic development commissions: 1) strictly private, 2) strictly public and 3) a hybrid private-public partnership. (Tr. 389 and 397). The EDC is the third type, a hybrid private-public partnership. (Tr. 397). Lastly, Mr. Wuensch testified that the EDC could not have survived without the money it received from the County. (Tr. 394).

From its inception, the EDC has been and continues to be the chief marketing and recruitment agency for the County. (P. Ex. 20, pg. 1; P. Ex. 8, pg. 1). The EDC’s contract with the County requires the EDC to “keep books, records, and accounts of all activities related to the

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<sup>2</sup> To further expand on Wuensch’s testimony, the State of Florida finds and declares that Florida is facing increasing competition from other states and countries and that it is a valid public purpose to expend public funds for economic development activities. Fla. Stat. § 125.045.

[a]greement.” (P. Ex. 8, pg. 4). Moreover, the EDC expressly agreed in the contract that it was subject to the Public Records Act: “[a]ll records, books and accounts related to the performance of [the] [a]greement shall be subject to ... the Florida Public Records Act....” (P. Ex. 8, pg. 4).

Our case is similar to *Harold, supra*, where the court opined that documents required by contract to be “compile[d], maintain[ed], and disclose[d] to the [c]ounty” by a private entity were in fact public records and subject to the Public Records Act. *Harold*, 668 So. 2d at 1012. In that case, the public agency and the private entity entered into a contract that required the private entity to compile, maintain, and disclose documents on behalf of the public agency. *Id.* Here, the EDC and the County entered into a contract that required the EDC to maintain records and required those documents to be subject to disclosure under the Public Records Act. (P. Ex. 8, pg. 4).

The evidence demonstrates that the County through its public corporation—the Council—performed its own economic development for many years. The County then reorganized and privatized the Council into the EDC. The Council’s Board members, staff, equipment and money were transferred to the EDC and the County has continually measured the EDC’s performance and has funded it accordingly. If not for the County, the EDC would not exist. Based upon the clear and compelling evidence adduced at the hearing, the County delegated a public function to the EDC.

The EDC may argue the public function delegated to the EDC is not an essential or mandated public function of the County but such an argument fails as a matter of law. The standard is “whether the government could perform the function itself – not whether it is essential that the government perform the function.” (Emphasis added). *Sarasota Herald-Tribune Co. v. Community Health Corp., Inc.*, 582 So. 2d 730, 733 (Fla. 2d DCA 1991). Here,

the County not only could perform the public function, the County was in fact performing the public function for more than 20 years before it reorganized its internal economic development arm and created the EDC. (Tr. 403 - 406). Because the County delegated its public function to the EDC, the EDC is subject to the Public Records Act.

**B. The County has a Significant Level of Involvement in the EDC**

This Court need not consider the *Schwab* Factors to find the EDC is subject to the Public Records Act because the County has delegated a public function to the EDC. *See Memorial Hospital-West Volusia*, 729 So. 2d at 381; *Harold*, 668 So. 2d at 1012; *Stanfield*, 695 So. 2d at 503; *Putnam County Humane Society*, 740 So. 2d at 1239. However, if the Court does not find a delegation by the County, the EDC still is subject to the Public Records Act because the County has a significant level of involvement in the EDC. *See Schwab*, 596 So. 2d at 1031.

The nine (9) *Schwab* Factors include but are not limited to: (1) level of public funding; (2) co-mingling of funds; (3) whether the activity was conducted on publicly owned property; (4) whether the services contracted for are an integral part of the public agency's chosen decision making process; (5) whether the private entity is performing a governmental function or a function which the public agency otherwise would perform; (6) the extent of the public agency's involvement with, regulation of or control over the private entity; (7) whether the private entity was created by the public agency; (8) whether the public agency has a substantial financial interest in the private entity; and (9) for whose benefit the private entity is functioning. *Id.*

The factors are designed to indicate whether a public agency has a significant level of involvement in the private entity. *Id.* Courts do not rely on any one factor but on the "totality of factors." *Id.*, *See also Schwartzman v. Merritt Island Volunteer Fire Dept.*, 352 So. 2d 1230 (Fla. 4th DCA 1977). The totality of *Schwab* Factors when applied to this case mandate a finding

that the EDC is subject to the Public Records Act.

The first factor relates to the level of public funding. As required by the contract between the County and the EDC, an annual independent audit was performed on the EDC for years 2012 and 2011 (the "Audit") (P. Ex. 8, pg. 4 and P. Ex. 9). The Audit was conducted in compliance with Government Auditing Standards, and reports that the EDC's total revenue for 2012 was \$2,861,078.00. (P. Ex. 9, pgs. 12 and 17). Approximately seventy-nine percent (79%) of the EDC's total revenue, or \$2,265,097.00, came from public sources. (P. Ex. 9, pg. 12). The County alone provided the EDC \$1,400,050.00. (P. Ex. 9, pg. 12). In 2011, the EDC's total revenue was \$2,085,968.00, and approximately seventy-four percent (74%) came from public sources. (P. Ex. 9, pg. 12).

The EDC has argued that the percentages in the Audit are incorrect because some of the public revenue was considered pass-through monies and should not have been considered revenue. (Tr. 281 - 283)<sup>3</sup>. However, the pass-through monies were federal and state dollars, so if they are not considered revenue for the EDC, then the total revenue drops from \$2,861,078 to \$2,135,156.00, and the percentage of County funding increases from forty-nine percent (49%) to sixty-five percent (65%). (Tr. 301 - 302).

Lastly, the EDC actually receives more public funding than initially indicated because many public agencies pay the EDC a considerable amount of public funds to be investors in the EDC. (Tr. 398 and R. Ex. 2). These funds are reported on the Audit as Investor payments.<sup>4</sup> (P. Ex. 9, pg. 12). As such, the EDC receives more than seventy-nine percent (79%) of its revenue

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<sup>3</sup> In fact, Trudy McCarthy testified that only fifty-three percent (53%) of the EDC's revenue was from public sources. (Tr. 283). First, the Audit was conducted by an outside certified public account and pursuant to Government Auditing Standards. (P. Ex. 9). Secondly, Ms. McCarthy's calculations subtract pass-through monies from the numerator but failed to subtract the pass-through monies from the denominator. (Tr. 301). This calculation causes the percentage of public funds received by the EDC to be skewed and inaccurate.

<sup>4</sup> An alphabetical index of investors are listed in Respondent's Investor Directory. (R. Ex. 2, pg. 48).

from public sources. There is little doubt that the EDC receives a significant level of funding from the public. Ms. Lynda Weatherman, the EDC's president and chief executive officer, even testified the EDC's revenue from public funds is significant. (Tr. 122). In reality, the EDC would not survive without public funding.

The second factor is whether the EDC's private and public funds are commingled. The EDC comingles all of its public and private funds in one bank account. (Tr. 125).

The fourth factor is whether the services contracted for are an integral part of the County's chosen decision-making process. As discussed, the Council performed the County's economic development function for many years. (Tr. 403 – 406). Then, in 1989, the County decided to privatize that function and reorganized the Council into the EDC. (P. Ex. 10, pgs. 37-39 and P. Ex. 17). The County has always had a very detailed and specific contract with the EDC that required the EDC to act on the County's behalf. (P. Ex. 8 and 20). From its inception, the EDC has been designated as the County's primary marketing and recruiting agency for economic development, and the County has always provided a significant portion of its funding. (P. Ex. 8, pg. 1; P. Ex. 20, pg. 1 and Tr. 122). The EDC's contract defines the scope of services that the EDC shall accomplish on behalf of the County; requires the EDC to report to the County; authorizes the County to measure the EDC's work performance; and probably most integral to the instant action, mandates that the EDC be subject to the Public Records Act. (P. Ex. 8, pg. 4). Furthermore, the County has five (5) voting board members on the EDC Board. (Tr. 240).

The fifth factor is whether the EDC is performing a governmental function or a function which the public agency would otherwise perform. As Mr. Potter testified, not only did the County perform this government function for more than 20 years, the EDC assumed the same functions previously conducted by the Council. (Tr. 403 - 406). He testified the objectives were

the same both before and after the Council was reorganized into the EDC. (Tr. 405). Further, the Initial Agreement says the County has “determined that the provision of economic development services for the County by the [EDC] constitutes a *public purpose*.” (P. Ex. 20, pg. 4) (Emphasis added). Mr. Wuensch also testified that the EDC serves a public function. (Tr. 395). Lastly, the State of Florida finds and declares economic development a valid public purpose. Section 125.045, Fla. Stat.

The sixth factor relates to a public agency’s involvement in the private entity. When the County reorganized the Council into the EDC in 1989, there were only twelve EDC Board of Directors, five of whom were appointed by the County Commission, and the County still has five voting Board members on the EDC. (P. Ex. 17 and Tr. 240). The contract between the County and the EDC requires the EDC to act on the County’s behalf to fulfill a public purpose. (P. Ex. 8, pg. 2). The contract also requires the EDC to provide quarterly and annual reports so the County can measure the EDC’s performance. (P. Ex. 8, pg. 4). Again, the County provides over \$1.4 million dollars of public funds annually to the EDC, and other public agencies also provide public funds to be board members. (P. Ex. 8, pg. 3; P. Ex. 9, pg. 12; R. Ex. 2 and Tr. 398). Furthermore, the County and other public agencies have significant voting power when the quorum for the EDC is only thirty percent (30%). (R. Ex. 2; Tr. 232 and 398).

The seventh factor is whether the private entity was created by the public agency; it was. As described in the delegation analysis, the Council was reorganized and converted to the EDC to eliminate the barriers between the multiple economic development programs and position Brevard County as a unified front. (P. Ex. 18, pg. ii). Mr. Potter testified that it was important that the County have a single economic development agency. (Tr. 411). In March 1989, the County reorganized and converted the Council into the EDC. (P. Ex. 10, pg. 39 and P. Ex. 17).

The County transferred the Council's Board members, Executive Director, staff, equipment, supplies and the remainder of the Council's fiscal year budget to the EDC. (Tr. 422 and P. Ex. 20, pg. 3). If not for the County, the EDC would not exist. (Tr. 394).

The eighth factor is whether the public agency has a substantial financial interest in the private entity; it does. The EDC is a not for profit corporation that receives more than seventy-nine percent (79%) of its total revenue from public sources and about half of its funding (\$1,400,050.00) comes directly from the County. (P. Ex. 9, pg. 12 and P. Ex. 7).

The ninth factor is for whose benefit the private entity is functioning. There is little doubt that the primary beneficiary of the EDC's activities is the public. Mr. Wuensch testified that the EDC serves a public function and operates for the "general welfare of the community." (Tr. 395). Both Ms. Weatherman and the EDC's Senior Director of Business Development, Greg Weiner, testified that the County is a beneficiary of the EDC's operations. (Tr. 139 and 343).

As an additional factor, the Court should consider that the EDC is a participant in the County's Group Health Insurance Plan. *See Schwab*, 596 So. 2d at 1031. On November 13, 1990, the County Commission unanimously approved the EDC as a participant in the County's Group Health and Life Insurance Program effective January 1, 1991, and EDC employees have consistently participated in the Plan. (P. Ex. 11, pg. 14 and P. Ex. 12). The latest Group Health Plan (the "Plan") states the purpose of the agreement is for "the parties to participate in a self-funded program for health plan coverage for employees." (P. Ex. 12, pg. 1). The Plan defines the participants as "the [Board of County Commissioners], Brevard County Sheriff's Office, Brevard County Supervisor of Elections, Brevard County Property Appraiser" and an entire list of other public agencies. (P. Ex. 12, pg. 5) Included in the list is the EDC. The Plan specifically

provides that:

“1. Pursuant to Section 112.08 of Florida Statutes, counties, municipalities, constitutional officers and special districts of the State of Florida have authority to self insure any plan for health, accident and hospitalization coverage or enter into a risk management consortium to provide such coverage, subject to approval by the Florida Office of Insurance Regulation.

2. In addition, such units of local government have authority to enter into interlocal agreements and exercise jointly with any other public agency of the state any power, privilege, or authority which they share in common and which each might exercise separately as provided in Section 163.01, Florida Statutes.

3. The parties executing this group health plan agreement (the “Agreement”) have been participating in and desire to continue participation in a self insurance program for health, accident, and hospitalization coverage for the mutual benefit of each and to provide for the payment by the parties hereto of contribution amounts necessary to achieve and preserve adequate levels of funding and reserve balances to enable payment of the benefits and administrative costs incurred under such program.”

(Emphasis added). (P. Ex. 12, pg. 1).

As mentioned, the Court does not need to address the *Schwab* Factors because the County delegated a public function to the EDC. However, if a public function was not delegated, the evidence demonstrates the County has a significant level of involvement in the EDC. The County created the EDC and made sure it existed by providing the initial seed money and continued to provide a significant amount of funding each year. In 2012, more than seventy-nine percent (79%) of the EDC’s total revenue was from public sources, including almost half coming directly from the County. In addition, the public funds and private funds are commingled into one (1) bank account. There is also little doubt that the EDC is performing a public function that benefits the County. As mentioned, the Council performed the County’s economic development for more than twenty (20) years. When the County Commission reorganized and converted the Council into the EDC, the County entered into contracts with the EDC that required the EDC to act on the County’s behalf. In addition, the County has five voting board positions.

Furthermore, many other public agencies are voting members of the EDC. The public has a significant amount of control over the EDC. Lastly, the EDC participates in the County's Group Health Insurance while no other private entities are allowed.

The Court questioned if the EDC produced to the Clerk all records that were subject to the Clerk's public record requests, would the case then be moot. The Fifth DCA has determined that responding to a public records request after an action is filed does not render the case moot or preclude consideration of the petitioner's entitlement to fees and costs under the statute. *Mazer v. Orange County*, 811 So. 2d 857, 859-60 (Fla. 5th DCA 2002)(where the Fifth District found that pursuant to Florida Statute § 119.12(1) production of public records after suit was filed did not render the case moot or preclude consideration of petitioner's entitlement to attorneys' fees).

Moreover, the EDC has not produced all records subject to the Clerk's public record requests. In fact, the EDC's employee, Trudy McCarthy, testified that she withheld a large number of documents, including newsletters, reports, press releases and internal communications. (Tr. 298) Additionally, the Clerk introduced into evidence a spreadsheet that showed a number of documents that were not produced by the EDC, such as attachments to emails that were produced. (P. Ex. 14 and Tr. 151 - 161). As such, an issue still exists as to whether the EDC is subject to the Public Records Act, and whether the Clerk is entitled to the records that have yet to be produced.

Thus, Petitioner, SCOTT ELLIS, in his official capacity as Brevard County Clerk of the Circuit Court ("Clerk") respectfully requests this Court enter a final order concluding the Respondent, Economic Development Commission of Florida's Space Coast, Inc. ("EDC") is a private entity subject to Chapter 119, Florida Public Records Act, requiring all records related to

the Clerk's public record requests be produced and if the EDC withholds any records for any reason, those records shall be submitted to the Court for an in-camera inspection.

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished via e-Service to Kevin C. McBride, Esq., Co-Counsel for Petitioner: kevin.mcbride@brevardclerk.us and [legal.assistant@brevardclerk.us](mailto:legal.assistant@brevardclerk.us) and Economic Development Commission of Florida's Space Coast, Inc., c/o Kimberly B. Rezanka, Esq.: krezanka@deanmead.com and [lmstress@deanmead.com](mailto:lmstress@deanmead.com), on this 24<sup>th</sup> day of February, 2013.

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