



VILLAGE OF KEY BISCAYNE

Office of the Village Manager

MEMORANDUM

Village Council
Franklin H. Caplan, *Mayor*
Michael W. Davey, *Vice Mayor*
Theodore J. Holloway
Michael E. Kelly
Mayra P. Lindsay
Ed London
James S. Taintor

Village Manager
John C. Gilbert

DATE: August 26, 2014

TO: Honorable Mayor and Members of the Village Council

FROM: John C. Gilbert, Village Manager

RE: Approving a Grant Agreement between the Florida Department of Environmental Protection and the Village

RECOMMENDATION

It is recommended that the Village Council approve the non-matching Grant Agreement between the Florida Department of Environmental Protection and the Village for \$50,000, attached as Exhibit A. The grant funding will be used to improve the Village Green.

BACKGROUND

The Florida Department of Environmental Protection has allocated \$50,000 to the Village of Key Biscayne as part of the Florida Recreation for Development Assistance Program (FRDAP) Grant. This FRDAP Grant does not require matching funds from the Village and will be used to help fund the improvements to the Village Green facility and field.

RESOLUTION NO. 2014 - _____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAZYNE, FLORIDA, APPROVING A GRANT AGREEMENT BETWEEN THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND THE VILLAGE FOR IMPROVEMENTS TO THE VILLAGE GREEN; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council of the Village of Key Biscayne (the "Village") desires to develop the project known as Village Green Improvements; and

WHEREAS, the Florida Department of Environmental Protection has allocated funds for this project under the Florida Recreation for Development Assistance Program (FRDAP); and

WHEREAS, the Village Council finds that the approval of the Agreement between the Florida Department of Environmental Protection and the Village (the "Agreement"), attached as Exhibit "A," is in the best interest of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF KEY BISCAZYNE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals Adopted.** That each of the recitals stated above is hereby adopted and confirmed.

Section 2. **Authorization.** That the Agreement is hereby approved and the Village Manager is hereby authorized to execute the attached Agreement, in substantially the form attached hereto as Exhibit "A," subject to approval as to form, content, and legal sufficiency by the Village Attorney.

Section 3. **Implementation.** That the Village Manager is authorized to take all action necessary to implement the purposes of this Resolution and the Agreement.

Section 4. **Effective Date.** That this Resolution shall be effective immediately upon

adoption hereof.

PASSED AND ADOPTED this ____ day of August, 2014.

FRANKLIN H. CAPLAN, MAYOR

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

Village Attorney

EXHIBIT "A"

DEP Agreement No. A5121
CSFA Number: 37.017
CSFA Title: FRDAP

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
FLORIDA RECREATION DEVELOPMENT ASSISTANCE PROGRAM (FRDAP)
PROJECT AGREEMENT (SFY 2014-2015) – DEVELOPMENT

This PROJECT AGREEMENT is made and entered into this _____ day of _____, 2014, by and between the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, whose address is 3900 Commonwealth Boulevard, Mail Station 595, Tallahassee, Florida 32399 hereinafter called the DEPARTMENT, and the VILLAGE OF KEY BISCAYNE, whose address is 88 West McIntyre Street, Key Biscayne, Florida 33149 hereinafter called the GRANTEE, a local government, in furtherance of an approved public outdoor recreation project. In consideration of the mutual covenants contained herein and pursuant to section 375.075, Florida Statutes, and chapter 62D-5, Part V, Florida Administrative Code, the parties hereto agree as follows:

1. This PROJECT AGREEMENT shall become effective upon execution by both parties and the GRANTEE shall complete construction of all PROJECT ELEMENTS on or before **April 30, 2017** (hereinafter referred to as the PROJECT completion date).
2. The DEPARTMENT has found that public outdoor recreation is the primary purpose of the project known as **Village Green** (Florida Recreation Development Assistance Program (FRDAP), FRDAP Project Number **A15121**), hereinafter called the PROJECT, and enters into this PROJECT AGREEMENT with the GRANTEE for the development of that real property, the legal description of which shall be submitted to the DEPARTMENT as described in the Florida Recreation Development Assistance Program Development Commencement Documentation Checklist, DEP Form FPS-A034.
3. The GRANTEE agrees to conduct the PROJECT in accordance with the terms and conditions set forth in this AGREEMENT, Attachment 1, PROJECT Work Plan, and all exhibits and attachments references herein and made a part hereof. PROJECT ELEMENTS may be modified by the DEPARTMENT if the GRANTEE shows good cause and the DEPARTMENT approves the modification. Any revisions to the PROJECT ELEMENTS as set forth in the approved Project Application and Attachment 1 must be formally requested by the GRANTEE and, if agreed upon by the DEPARTMENT, the modifications will be reduced to writing in an amendment to this PROJECT AGREEMENT. PROJECT planning expenses cannot exceed 15% of the PROJECT cost to be eligible for reimbursement.

4. This PROJECT AGREEMENT shall be performed in accordance with section 375.075, Florida Statutes; and chapter 62D-5, Part V, Florida Administrative Code, effective August 15, 2004, hereinafter called the RULE. The GRANTEE shall become familiar with and comply with all provisions of the RULE, which is incorporated into this PROJECT AGREEMENT as if fully set forth herein. It is the intent of the DEPARTMENT and the GRANTEE that none of the provisions of section 163.01, Florida Statutes, shall apply to this PROJECT AGREEMENT.
5. All forms referenced in this PROJECT AGREEMENT may be found at www.dep.state.fl.us/parks/oirs.
6. Prior to commencement of PROJECT development, the GRANTEE shall submit the documentation required by the Florida Recreation Development Assistance Program, Commencement Documentation Checklist, DEP Form FPS-A034, referenced in s. 62D-5.058(7)(c) of the RULE, to the DEPARTMENT. Upon determining that the documentation complies with the RULE, the DEPARTMENT will give written notice to GRANTEE to commence the development.
7. The GRANTEE shall obtain all required local, state and federal permits and approvals prior to completion of the PROJECT construction and shall certify that it has done so to the DEPARTMENT by completing the Project Completion Certification, DEP Form FPS-A037, referenced in s. 62D-5.058(7)(d) of the RULE.
8.
 - A. The GRANTEE may subcontract work under this PROJECT AGREEMENT without the prior written consent of the DEPARTMENT'S Grant Manager. The payment terms of subcontracts (other than construction and the purchase of commodities) shall comply with the terms of this Agreement. Regardless of any subcontract, the Grantee is ultimately responsible for all work performed under this Agreement. The GRANTEE may also be required to submit a copy of each executed subcontract to the DEPARTMENT within ten (10) days after execution. The GRANTEE agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the GRANTEE that the DEPARTMENT shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract and that the GRANTEE shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.
 - B. Subcontractors - Payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from the GRANTEE. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours/time spent on the project. All multipliers used (i.e. fringe benefits, overhead, and/or general and administrative rates) shall be supported by audit. If the DEPARTMENT determines that multipliers charged by any subcontractor exceeded the rates supported by audit, the GRANTEE shall be required to reimburse such funds to the DEPARTMENT within thirty calendar (30) days of written notification. Interest on the excessive charges shall be calculated based on the prevailing rate used by the State Board of Administration. Additionally, independent of the GRANTEE'S contract obligations to the Subcontractor, the DEPARTMENT shall not reimburse any of the following types of charges: cell phone usage, attorneys' fees (other than title work), civil or administrative penalties, handling fees, such as set percent

overages associated with purchasing supplies or equipment. For fixed price (vendor) subcontracts, the following provisions shall apply:

- i. The GRANTEE may award, on a competitive basis, fixed price subcontracts to consultants/contractors in performing the work described in Attachment 1. Invoices submitted to the DEPARTMENT for fixed price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (Invitation to Bid or Request for Proposals) resulting in the fixed price subcontract.
 - ii. The GRANTEE may request approval from the DEPARTMENT to award a fixed price subcontract resulting from procurement methods other than those identified in the paragraph above. In this instance, the GRANTEE shall request the advance written approval from the DEPARTMENT'S Grant Manager of the fixed price negotiated by the GRANTEE. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of the DEPARTMENT Grant Manager's approval of the fixed price amount, the GRANTEE may proceed in finalizing the fixed price subcontract.
 - iii. All subcontracts are subject to the provisions of paragraph 8 and any other appropriate provisions of this PROJECT AGREEMENT which affect subcontracting activities.
9. Land owned by the GRANTEE, which is developed or acquired with FRDAP funds, shall be dedicated in perpetuity as an outdoor recreation site by the GRANTEE for the use and benefit of the public as stated in section 62D-5.059(1) of the RULE. Land under control other than by ownership of the GRANTEE, such as by lease, shall be dedicated as an outdoor recreation area for the use and benefit of the public for a minimum period of twenty-five (25) years from the completion date set forth in the PROJECT completion certificate. All dedications must be recorded in the county property records by the owner, or by the GRANTEE if the owner has given GRANTEE authority to do so. Such PROJECT shall be open at reasonable times and shall be managed in a safe and attractive manner appropriate for public use.
10. The GRANTEE must erect a permanent information sign on the PROJECT site which credits PROJECT funding or a portion thereof, to the Florida Department of Environmental Protection and the Florida Recreation Development Assistance Program. The sign must be made of appropriate materials, which will be durable for a minimum of twenty-five (25) years after the PROJECT is complete. The sign must be installed on the PROJECT site and approved by the DEPARTMENT before the final PROJECT reimbursement request is processed.
11. The DEPARTMENT has the right to inspect the PROJECT and any and all records related thereto at any reasonable time.
12. A. The DEPARTMENT shall compensate the GRANTEE, on a reimbursement basis, funds not to exceed \$ 50,000.00, which will pay the DEPARTMENT'S share of the cost of the PROJECT ELEMENTS as set out in Attachment 1. The total amount of DEPARTMENT funding is based upon the following:

DEPARTMENT Amount:	\$ 50,000.00	100%
GRANTEE Match:	0	0%
Type of Match:	N/A	

If the total cost of the PROJECT exceeds the grant amount and the required match, the GRANTEE must pay the excess cost.

- B. Prior written approval from the Department's Grant Manager shall be required for changes within approved task budget categories of up to 10% of the total task budget amount. Changes less than 10% of the total approved task budget will require a formal change order to the PROJECT AGREEMENT. Changes greater than 10% of the total approved task budget and/or increase or decrease the total funding amount will require a formal amendment to the PROJECT AGREEMENT.
13. The GRANTEE shall submit invoices upon the completion of all Work Elements in Attachment 1 and submission of all deliverables. Each PROJECT reimbursement request shall include all documentation required by the DEPARTMENT for a proper pre-audit and post-audit review. Within sixty (60) days after receipt of the final reimbursement request, the DEPARTMENT'S Grant Manager shall review the Completion Documentation Checklist and reimbursement request from the GRANTEE for the PROJECT. If the documentation is sufficient and meets the requirements of the Florida Recreation Development Assistance Program, Completion Documentation Checklist, DEP Form FPS-A036, referenced in paragraph 62D-5.058(7)(d) of the RULE, the DEPARTMENT will approve the request for final PROJECT payment. The final PROJECT payment will not be processed until the match requirement has been met.
 14. All monies expended by the GRANTEE for the purpose contained herein shall be subject to pre-audit review and approval by the State of Florida Chief Financial Officer in accordance with section 17.03(2), Florida Statutes.
 15. In addition to the invoicing requirements contained in the paragraph above, the DEPARTMENT will periodically request proof of a transaction (such as invoice or payroll register) to evaluate the appropriateness of costs to the PROJECT AGREEMENT pursuant to State guidelines (including cost allocation guidelines). When requested, this information must be provided within thirty (30) calendar days of the date of such request. The GRANTEE may also be required to submit a cost allocation plan to the DEPARTMENT in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). State guidelines for allowable costs can be found in the Department of Financial Services' Reference Guide for State Expenditures at <http://www.fldfs.com/aadir/reference%5Fguide>, which the GRANTEE shall follow.
 16. The GRANTEE agrees to comply with the Division of Recreation and Parks' Financial Reporting Procedures, formerly known as the Grant and Contract Accountability Procedure, hereinafter called the PROCEDURE, incorporated into this PROJECT AGREEMENT by reference as if fully set forth herein. A copy of this PROCEDURE has been provided with this PROJECT AGREEMENT and may also be found at <http://www.dep.state.fl.us/parks/oirs>. All purchases of goods and services for accomplishment of the PROJECT shall be secured in accordance with the GRANTEE'S procurement procedures. Expenses representing the PROJECT costs, including the

required matching contribution, shall be reported to the DEPARTMENT and summarized on certification forms provided in the PROCEDURE. The DEPARTMENT and GRANTEE agree to use the PROCEDURE guidelines for accounting for FRDAP funds disbursed for the PROJECT. The parties further agree that the principles for determining the eligible costs, supporting documentation and minimum reporting requirements of the PROCEDURE shall be used.

17. Allowable indirect costs as defined in the PROCEDURE shall not exceed 15% of the GRANTEE'S eligible wages and salaries.
18. It is understood by the GRANTEE that the amount of this PROJECT AGREEMENT may be reduced should the Governor's Office declare a revenue shortfall and assess a mandatory reserve. Should a shortfall be declared, the amount of this PROJECT AGREEMENT may be reduced by the amount deemed appropriate by the DEPARTMENT.
19. The State of Florida's performance and obligation to pay under this PROJECT AGREEMENT is contingent upon an annual appropriation by the Legislature. The GRANTEE understands that this PROJECT AGREEMENT is not a commitment of future appropriations.
20. The purchase of non-expendable equipment is not authorized under the terms of this PROJECT AGREEMENT.
21. The GRANTEE recognizes that the State of Florida, by virtue of its sovereignty, is not required to pay any taxes on the services or goods purchased under the terms of this Agreement.
22. Pursuant to section 216.347, Florida Statutes, the GRANTEE is prohibited from spending FRDAP grant funds for the purpose of lobbying the legislature, the judicial branch, or a state agency.
23. PROJECT funds may be reimbursed for eligible Preagreement Expenses (as defined in s. 62D-5.054(34) of the RULE) incurred by the GRANTEE prior to execution of this PROJECT AGREEMENT in accordance with s. 62D-5.055(9) of the RULE. The DEPARTMENT and the GRANTEE fully understand and agree that there shall be no reimbursement of PROJECT funds by the DEPARTMENT for any expenditure made prior to the execution of this PROJECT AGREEMENT with the exception of those expenditures which meet the requirements of the foregoing sections of the RULE.

Preagreement Expenses Approved:

Description of Work Performed	Amount Approved
N/A	\$0
Total Preagreement Expenses Approved:	\$0

24. All payment requests and completion documentation shall be due to the DEPARTMENT within thirty (30) days of construction completion. Project completion means the PROJECT is open and available for use by the public. PROJECT must be designated complete prior to release of the final PROJECT payment. See Rule 62D-5.054(41). Ten

percent (10%) of the total grant amount will be held until Completion Documents have been received and approved by the DEPARTMENT.

25. No payment will be made for deliverables deemed unsatisfactory by the Department. In the event that a deliverable is deemed unsatisfactory by the Department, the Grantee shall re-perform the services needed for submittal of a satisfactory deliverable, at no additional cost to the Department, within ten (10) days of being notified of the unsatisfactory deliverable. If a satisfactory deliverable is not submitted within the specified timeframe, the Department may, in its sole discretion, either: 1) terminate this Agreement for failure to perform, or 2) the Department Grant Manager may, by letter specifying the failure of performance under this Agreement, request that a proposed Corrective Action Plan (CAP) be submitted by the Grantee to the Department. All CAPs must be able to be implemented and performed in no more than sixty (60) days.
- A. A CAP shall be submitted within ten (10) calendar days of the date of the letter request from the Department. The CAP shall be sent to the Department Grant Manager for review and approval. Within ten (10) calendar days of receipt of a CAP, the Department shall notify the Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, the Grantee shall have ten (10) calendar days from receipt of the Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain the Department approval of a CAP as specified above shall result in the Department's termination of this Agreement for cause as authorized in this Agreement.
- B. Upon the Department's notice of acceptance of a proposed CAP, the Grantee shall have ten (10) calendar days to commence implementation of the accepted plan. Acceptance of the proposed CAP by the Department does not relieve the Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, the Department shall retain the right to require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by the Department or steps taken by the Grantee shall preclude the Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to the Department as requested by the Department Grant Manager.
- C. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by the Department may result in termination of the Agreement

The remedies set forth above are not exclusive and the Department reserves the right to exercise other remedies in addition to or in lieu of those set forth above, as permitted by the Agreement.

26. Prior to the closing of the PROJECT, the DEPARTMENT shall have the right to a refund, either in whole or in part, of the FRDAP funds provided to the GRANTEE for noncompliance with the material terms of this PROJECT AGREEMENT. The GRANTEE, upon such written notification from the DEPARTMENT, shall refund, and shall forthwith pay to the DEPARTMENT, the amount of money demanded by the DEPARTMENT. Interest on any refund shall begin the date that the GRANTEE was informed that a

refund was required and continues to accrue until the date the refund and interest are paid to the DEPARTMENT.

27. The GRANTEE shall maintain books, records and documents directly pertinent to performance under this PROJECT AGREEMENT in accordance with generally accepted accounting principles consistently applied, including the PROCEDURE. The DEPARTMENT, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this PROJECT AGREEMENT and for five (5) years following PROJECT AGREEMENT completion or resolution of any dispute arising under this PROJECT AGREEMENT. In the event any work is subcontracted, the GRANTEE shall similarly require each subcontractor to maintain and allow access to such records for audit purposes.
28.
 - A. In addition to the requirements of the preceding paragraph, the GRANTEE shall comply with the applicable provisions contained in **Attachment 2, Special Audit Requirements**, attached hereto and made a part hereof. **Exhibit 1 to Attachment 2** summarizes the funding sources supporting the PROJECT AGREEMENT for purposes of assisting the GRANTEE in complying with the requirements of **Attachment 2**. A revised copy of **Exhibit 1** must be provided to the GRANTEE for each amendment which authorizes a funding increase or decrease. If the GRANTEE fails to receive a revised copy of **Exhibit 1**, the GRANTEE shall notify the DEPARTMENT'S Grant Manager to request a copy of the updated information.
 - B. The GRANTEE is hereby advised that the Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this PROJECT AGREEMENT. The GRANTEE shall consider the type of financial assistance (federal and/or state) identified in **Attachment 2, Exhibit 1** when making its determination. For federal financial assistance, the GRANTEE shall utilize the guidance provided under OMB Circular A-133, Subpart B, Section .210 for determining whether the relationship represents that of a subrecipient or vendor. For state financial assistance, the GRANTEE shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs. Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website:
<https://apps.fldfs.com/fsaa>
29. Following receipt of an audit report identifying any reimbursement due the DEPARTMENT for the GRANTEE'S noncompliance with this PROJECT AGREEMENT, the GRANTEE will be allowed a maximum of thirty (30) days to submit additional pertinent documentation to offset the amount identified as being due to the DEPARTMENT. The DEPARTMENT, following a review of the documentation submitted by the GRANTEE, will inform the GRANTEE of the final reimbursement due the DEPARTMENT.
30.
 - A. The accounting systems for all GRANTEES must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be

accounted for separately. GRANTEES are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a GRANTEE'S, or subrecipient's, accounting system cannot comply with this requirement, the GRANTEE, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.

- B. If the DEPARTMENT finds that these funds have been commingled, the DEPARTMENT shall have the right to demand a refund, either in whole or in part, of the funds provided to the GRANTEE under this PROJECT AGREEMENT for non-compliance with the material terms of this PROJECT AGREEMENT. The GRANTEE, upon such written notification from the DEPARTMENT shall refund, and shall forthwith pay to the DEPARTMENT, the amount of money demanded by the DEPARTMENT. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from the DEPARTMENT by the GRANTEE to the date repayment is made by the GRANTEE to the DEPARTMENT.
- C. In the event that the GRANTEE recovers costs, incurred under this PROJECT AGREEMENT and reimbursed by the DEPARTMENT, from another source(s), the GRANTEE shall reimburse the DEPARTMENT for all recovered funds originally provided under this PROJECT AGREEMENT. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the payment(s) are recovered by the GRANTEE to the date repayment is made to the DEPARTMENT by the GRANTEE.
- D. The GRANTEE shall include this provision in all subcontracts it enters into for the performance of work under this PROJECT AGREEMENT.

31. Any and all notices required by this PROJECT AGREEMENT shall be deemed sufficient if delivered or sent in writing by regular U.S. mail or electronic mail to the parties at the following addresses:

<u>GRANTEE'S Grant Manager</u>	<u>DEPARTMENT'S Grant Manager</u>
Mr. Todd Hofferberth Parks and Recreation Director 88 West McIntyre Street Key Biscayne, FL 33149 thofferberth@keybiscayne.fl.gov	Mary Ann Lee Florida Department of Environmental Protection 3900 Commonwealth Blvd., MS585 Tallahassee, Florida 32399-3000 <u>Mary.ann.lee@dep.state.fl.us</u>

Any changes to the above contact information must be noticed in writing to the other party within ten (10) calendar days of the change.

32. For the purpose of this PROJECT AGREEMENT, the DEPARTMENT'S Grant Manager, or successor, shall be responsible for ensuring performance of its terms and conditions and shall approve all reimbursement requests prior to payment. The GRANTEE'S Grant

Manager, identified in paragraph 31, or successor, shall act on behalf of the GRANTEE relative to the provisions of this PROJECT AGREEMENT. The GRANTEE shall submit to the DEPARTMENT signed Project Status Reports on January 5th, May 5th, and September 5th of each year of the PROJECT AGREEMENT summarizing the work accomplished, problems encountered, percentage of completion, and other information which may be requested by the DEPARTMENT. Photographs to reflect the construction work accomplished shall be submitted when the DEPARTMENT requests them.

33. This PROJECT AGREEMENT may be terminated prior to the expiration date as follows:
- A. If for any reason the GRANTEE should fail to perform in a timely manner the obligations under this PROJECT AGREEMENT, or if the GRANTEE should violate any of the federal, state, or local laws pertinent to the FRDAP Program or otherwise, or violate any of the terms and conditions of this PROJECT AGREEMENT, the DEPARTMENT shall thereafter have the right to terminate this PROJECT AGREEMENT with prior notice. In the notice, the DEPARTMENT shall set the effective date of the termination, which may be upon receipt. The DEPARTMENT may, in its sole discretion, provide the GRANTEE an opportunity to cure the violations. If the GRANTEE does not cure or obtain an extension of time within the time period stated in the notice, this PROJECT AGREEMENT shall automatically terminate on the date indicated in the DEPARTMENT'S notice. In the event the DEPARTMENT terminates this PROJECT AGREEMENT for any of these reasons, the DEPARTMENT is not required to compensate the GRANTEE for any expenses incurred before or after such termination.
 - B. The DEPARTMENT may terminate this PROJECT AGREEMENT for convenience by providing the GRANTEE with thirty (30) calendar days written notice. The GRANTEE shall not incur new obligations for the PROJECT after the notice is received and shall cancel as many outstanding obligations as possible. The notice shall set out the procedures for proper closeout of the PROJECT AGREEMENT.
 - C. This PROJECT AGREEMENT may be unilaterally cancelled by the DEPARTMENT for refusal by the GRANTEE to allow public access to all documents, papers, letters, or other material made or received by the GRANTEE in conjunction with this PROJECT AGREEMENT, unless the records are exempt from section 24(a) of Article I of the Florida Constitution and section 119.07(1), Florida Statutes.
 - D. If no reimbursements have been made and GRANTEE wishes to withdraw the Project, the parties hereto may agree to terminate this PROJECT AGREEMENT for convenience as evidenced by written notice from the DEPARTMENT to the GRANTEE. The GRANTEE shall counter-sign the notice and the PROJECT AGREEMENT shall terminate on the date of GRANTEE'S counter-signature.
34. If the DEPARTMENT determines that site control is not sufficient under the RULE, or has been compromised, the DEPARTMENT shall give the GRANTEE a notice in writing and a reasonable time to bring the site control into compliance with the RULE. If the deficiency is not corrected within the time specified in the notice, the DEPARTMENT shall terminate this PROJECT AGREEMENT and GRANTEE shall be responsible to reimburse the DEPARTMENT for grant funds expended, if any. Refusal or failure to

reimburse the funds shall result in the GRANTEE remaining out of compliance and thereby ineligible for further grant funding.

35. The GRANTEE shall comply with all federal, state and local regulations, rules and ordinances in developing this PROJECT. The GRANTEE acknowledges that this requirement includes, but is not limited to, compliance with all federal, state and local health and safety rules and regulations including all applicable building codes. The GRANTEE further agrees to include the requirements of this paragraph in all subcontracts made to perform this PROJECT AGREEMENT.
36. In the event of conflict in the provisions of the RULE, the PROJECT AGREEMENT and the Project Application, the provisions of the RULE shall have control over this PROJECT AGREEMENT and this PROJECT AGREEMENT shall have control over the Project Application documents.
37.
 - A. No person on the grounds of race, creed, color, national origin, age, sex, marital status or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this PROJECT AGREEMENT.
 - B. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list which may be found at http://dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists/discriminatory_vendor_list. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity at (850) 487-0915.
38. The GRANTEE, as an independent contractor and not an agent, representative, or employee of the DEPARTMENT, agrees to carry adequate liability and other appropriate forms of insurance. If the GRANTEE is self-funded for liability insurance, as appropriate and allowable under Florida law, then the GRANTEE warrants and represents that such self-insurance offers protection applicable to the GRANTEE'S officers, employees, servants and agents while acting within the scope of their employment with the GRANTEE. The DEPARTMENT shall have no liability except as specifically provided in this PROJECT AGREEMENT.
39. To the extent required by law, the GRANTEE will be self-insured against, or will secure and maintain during the life of this PROJECT AGREEMENT, Workers' Compensation Insurance for all of its employees connected with the work of this PROJECT and, in case any work is subcontracted, the GRANTEE shall require the subcontractor to provide Workers' Compensation Insurance for all of the subcontractor's employees unless such employees are covered by the protection afforded by the GRANTEE. Such self-insurance program or insurance coverage shall comply fully with the Florida

Workers' Compensation law. In case any class of employees engaged in hazardous work under this PROJECT AGREEMENT is not protected under Workers' Compensation statutes, the GRANTEE shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to the DEPARTMENT, for the protection of its employees not otherwise protected.

40. The GRANTEE covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.
41. Each party hereto agrees that it shall be solely responsible for the wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of section 768.28, Florida Statutes.
42. The PROJECT AGREEMENT has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this PROJECT AGREEMENT shall be interpreted in such manner as to be effective and valid under applicable Florida law, but if any provision of this PROJECT AGREEMENT shall be prohibited or invalid under applicable Florida law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this PROJECT AGREEMENT. Any action hereon or in connection herewith shall be brought in Leon County, Florida unless prohibited by applicable law.
43. No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by either party under this PROJECT AGREEMENT shall impair any such right, power or remedy of either party; nor shall such delay or failure be construed as a waiver of any such breach or default, or any similar breach or default thereafter.
44. This PROJECT AGREEMENT is not intended nor shall it be construed as granting any rights, privileges or interest to any third party without mutual written agreement of the parties hereto.
45. This PROJECT AGREEMENT is an exclusive contract and may not be assigned in whole or in part without the prior written approval of the DEPARTMENT.
46. This PROJECT AGREEMENT represents the entire agreement of the parties. Any alterations, variations, changes, modifications or waivers of provisions of this PROJECT AGREEMENT shall only be valid when they have been reduced to writing, in the form of an Amendment duly executed by each of the parties hereto, and attached to the original of this PROJECT AGREEMENT.

