RESOLUTION NO. 2005-

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AUTHORIZING AND APPROVING THE ATTACHED DISASTER RELIEF FUNDING AGREEMENT BETWEEN THE STATE OF FLORIDA, DEPARTMENT OF COMMUNITY AFFAIRS AND THE VILLAGE OF KEY BISCAYNE, PROVIDING FOR FEDERAL AND STATE DISASTER RELIEF FUNDING FOR DECLARED MAJOR DISASTER NO. FEMA-3259-EM-FL; AUTHORIZING VILLAGE MANAGER TO EXECUTE THE AGREEMENT; AUTHORIZING IMPLEMENTATION OF THE AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Hurricane Rita beginning September 18, 2005 had a devastating effect upon the State of Florida resulting in the declaration of a state of emergency by the Governor in Executive Order 05-183; and

WHEREAS, the President of the United States has concurred and has declared Major Disaster No. FEMA-3259-EM-FL in Broward, Collier, Miami-Dade and Monroe counties in the State of Florida; and

WHEREAS, the Federal Emergency Management Agency ("FEMA"), as a result of the Presidential Declaration, has made available federal funds for disaster relief activities; and

WHEREAS, the Village of Key Biscayne, Florida (the "Village") is eligible to receive Federal and State assistance for Major Disaster No. FEMA-3259-EM-FL.

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

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

Section 2. Disaster Relief Funding Agreement Approved. That the Disaster Relief Funding Agreement (Agreement No. 06-??-??-11-23-00-511, in substantially the form attached

is hereby approved, and the Village Manager is hereby authorized to execute said Agreement, on behalf of the Village.

Section 3. Implementation. That the Village Manager and Village Attorney are hereby authorized to take any and all action necessary to implement the terms and conditions of the attached Agreement.

Section 4. Effective Date. That this Resolution shall take effect immediately upon adoption hereof.

PASSED AND ADOPTED this 22nd day of November, 2005.

_____
MAYOR ROBERT OLDAKOWSKI

ATTEST:

_____
CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
VILLAGE ATTORNEY

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STATE OF FLORIDA
Department of Community Affairs

DISASTER RELIEF FUNDING AGREEMENT

Agreement No. 06-??-??-11-23-00-511

CFDA No. 97.036

Subgrantee: Key Biscayne, Village of

FIPS No. 086-36300-00

This Agreement is between the State of Florida, Department of Community Affairs (hereinafter referred to as the "Grantee" and, the undersigned State Agency, political subdivision of the State, private nonprofit organizations, or federally recognized Indian Tribes or authorized tribal organizations (hereinafter referred to as the "Subgrantee"). This Agreement is based on the existence of the following facts and conditions:

A. WHEREAS, Hurricane Rita the event beginning September 18, 2005, and thereafter, had a devastating impact upon the State of Florida. The severity of the damage and losses resulted in a proclamation of emergency by the Governor in Executive Order 05-183. In consequence of the Event, the President of the United States on September 20, 2005, declared Emergency No. FEMA-3259-EM-FL in Broward, Collier, Miami-Dade and Monroe counties in the State of Florida. Additional counties may be added to the declaration later. As a result, the Public Assistance Program was made available to eligible applicants in these Declared counties; and,

B. WHEREAS, the FEMA-State Agreement dated November 1, 2005 between the State of Florida and the Federal Emergency Management Agency governing the use of such funds requires the State to share the costs eligible for federal financial assistance, and the State has undertaken to share those costs, as appropriated, with its Subgrantees; and,

C. WHEREAS, the Grantee represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein and agrees to comply with all the requirements of this Agreement; and,

D. WHEREAS, the Grantee receives these grant funds from the State of Florida and the federal government, and has the authority, under Section 252.373, Florida Statute to disburse these funds to the Subgrantees upon the terms and conditions hereinafter set forth; and,

E. WHEREAS, a Budget Amendment has been prepared and is being considered to provide for the necessary funds and authority for this event. Under the Emergency Management Act, as amended, the Department has authority to administer federal financial assistance from the Federal Emergency Management Agency consequent to a presidential declaration of disaster.

NOW, THEREFORE, the Grantee and Subgrantee, based upon the existence of the foregoing conditions, do further agree to the following:

ARTICLE I. Definitions. As used in this Agreement, the following terms shall have the following meanings unless another meaning is specified elsewhere:

A. "Eligible activities" are those activities authorized in the FEMA-State Agreement, and in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended by Public Law 100-707; 44 Code of Federal Regulations Part 206.35; and applicable policies of the Federal Emergency Management Agency.

B. "FEMA-State Agreement" is the agreement dated November 1, 2005, between the Federal Emergency Management Agency and the State of Florida, for the Major Disaster No. FEMA-3259-EM-FL.

ARTICLE II. Applicable Law. The parties agree to all the conditions, obligations, and duties imposed by the FEMA-State Agreement and all applicable state and federal legal requirements including, without any limitation on the generality of the foregoing, the requirements of 44 Code of Federal Regulations Parts 13 and 206, and the policies of the Federal Emergency Management Agency.

ARTICLE III. Funding and Insurance. Grantee shall provide funds to the Subgrantee for eligible activities for the projects approved by the Grantee and the Federal Emergency Management Agency, as specified in the approved Project Worksheets. Allowable costs shall be determined as per 44 Code of Federal Regulations Parts 13 and 206, which shall be seventy five (75) percent of all eligible costs unless a higher percentage is approved.

A. The approved Project Worksheets shall be transmitted to Subgrantee, and shall state the cumulative funding allowed, the scope of the eligible project, and the costs eligible under this Agreement. Project Worksheets may obligate or deobligate funding, thereby amending the total funding for the project. The approved Project Worksheets shall document the total eligible costs and the total federal share of those costs, which shall be seventy five (75) percent of all eligible costs, unless a higher percentage is approved. Contingent upon an appropriation by the Florida Legislature, the Grantee may provide some portion of any nonfederal share for some subgrantees. As a condition of receipt of the federal funding, the Subgrantee agrees to provide any nonfederal share not paid by the Grantee.

B. As a condition to funding under this Agreement, the Subgrantee agrees that the Grantee may withhold funds otherwise payable to Subgrantee from any disbursement to Grantee upon a determination by Grantee or Federal Emergency Management Agency that funds exceeding the eligible costs have been disbursed to Subgrantee pursuant to this Agreement or any other funding agreement administered by Grantee.

C. As a further condition to funding under this Agreement, the Subgrantee agrees to procure insurance sufficient for the type or types of hazards for which the disaster was declared to cover any and all projects to be funded under this Agreement where insurance is available and reasonable. Subgrantee shall provide Grantee with a certificate of such insurance as a condition to funding under this Agreement.

ARTICLE IV. Duplication of Benefits Prohibition. Subgrantee may not receive funding under this Agreement to pay for damage covered by insurance, nor may Subgrantee receive any other duplicate benefits under this Agreement.

A. Subgrantee shall without delay advise Grantee of any insurance coverage for the damage identified on the applicable Project Worksheets and of any entitlement to compensation or indemnification from such insurance. Subgrantee shall reimburse Grantee without delay for any duplicate benefits Subgrantee may receive from any other source for any damage identified on the applicable Project Worksheets for which Subgrantee has received payment from Grantee, to the extent of any such duplication.

B. In the event that Grantee should determine that Subgrantee has received duplicate benefits, by its execution of this Agreement the Subgrantee gives Grantee or the Chief Financial Officer-Department of Financial Services of the State of Florida the authority to set off the sum of any such duplicate benefits by withholding it from any other funds otherwise due and owing to Subgrantee.

ARTICLE V. Compliance with Environmental, Planning and Permitting Laws. Subgrantee shall be responsible for the implementation and completion of the approved projects described in the Project Worksheets in a manner acceptable to Grantee, and in accordance with applicable legal requirements. The contract documents for

any project undertaken by Subgrantee, and any land use permitted by or engaged in by Subgrantee, shall be consistent with the local government Comprehensive Plan. Subgrantee shall ensure that any development or development order complies with all applicable planning, permitting and building requirements. Subgrantee shall engage such competent engineering, building, and other technical and professional assistance at all project sites as may be needed to ensure that the project complies with the contract documents.

ARTICLE VI. Required Documentation, Reviews, and Inspections. Subgrantee shall create and maintain documentation of work performed and costs incurred on each project identified in a Project Worksheet sufficient to permit a formal audit comporting with ordinary, customary and prudent public accounting requirements. Upon the failure of Subgrantee to create and maintain such documentation, Grantee may terminate further funding under this Agreement, and Subgrantee shall reimburse to Grantee all payments disbursed earlier to Subgrantee, together with any and all accrued interest.

A. Subgrantee shall submit the following documentation for Large Projects (the Large Project threshold for this declaration is $55,500), which can be found at www.floridapa.org

1. Request for Reimbursement
2. A Summary of Documentation, which shall be supported by original documents such as contract documents, invoices, purchase orders, and change orders;
3. A request for final inspection;
4. A signed Project Completion and Certification Report upon the completion of all projects; and
5. The Project Completion and Certification Report specified by Paragraph B of this Article.

B. For all projects, Subgrantee shall state on the "Project Completion and Certification Report" that all work was performed in accordance with this Agreement and the requirements in each Project Worksheet, and shall state the date of completion.

C. Grantee will inspect Small Projects by random selection, and will conduct the final inspections on Large Projects, to ensure that all work has been performed within the scope of work specified on the Project Worksheets. Costs not within the approved scope of work shall not be reimbursed.

ARTICLE VII. Cost Sharing. The federal share of the eligible costs specified in the Project Worksheets under this Agreement shall be seventy five (75) percent of such costs, unless a higher percentage is approved, and the nonfederal share shall be the remaining amount. Payment of all or a specified portion of the nonfederal share of such costs is contingent upon a potential future State appropriation defining the apportionment of the nonfederal share. Administrative costs in addition to the Project Worksheets that are otherwise eligible under 44 Code of Federal Regulations Part 206.228and do not require matching funds may also be funded by FEMA.

ARTICLE VIII. Payment of Costs. Grantee shall disburse the eligible costs to Subgrantee in accordance with the following procedures.

A. Grantee shall disburse the federal and nonfederal shares of the eligible costs for Small Projects to Subgrantee as soon as practicable after execution of this Agreement and formal notification by the Federal Emergency Management Agency of its approval of the pertinent Project Worksheet.

B. Grantee shall reimburse Subgrantee for the federal and nonfederal shares of the eligible costs for Large Projects as soon as practicable after Subgrantee has delivered the following documents to Grantee:

1. A Request for Reimbursement found at www.floridapa.org
2. A Summary of Documentation shall be supported by original documents such as contract documents, invoices, purchase orders, and change orders and is also available at www.floridapa.org:; and,

3. A letter or notification certifying that the reported costs were incurred in the performance of eligible work.

C. Grantee may advance funds under this Agreement to Subgrantee not exceeding the federal share if Subgrantee meets the following conditions:

1. Subgrantee shall certify to Grantee that Subgrantee has procedures in place to ensure that funds are disbursed to project vendors, contractors, and subcontractors without unnecessary delay;
2. Subgrantee shall submit to Grantee the budget supporting the request;
3. Subgrantee shall submit a statement justifying the advance and the proposed use of the funds, and specifying the amount of funds requested;
4. Subgrantee shall submit a completed Request for Advance and Schedule of Projected Expenditures Forms which is also available at www.floridapa.org; and,
5. Subgrantee shall pay over to Grantee any interest earned on advances for remittance to the Federal Emergency Management Agency as often as practicable, and in any event not later than ten (10) business days after the close of each calendar quarter.

D.Grantee may, in its discretion, withhold its portion of the nonfederal share of funding under this Agreement from Subgrantee if Grantee has reason to expect a subsequent unfavorable determination by the Federal Emergency Management Agency that a previous disbursement of funds under this Agreement was improper.

ARTICLE IX. Final Payment. Grantee shall disburse the final payment to Subgrantee upon the performance of the following conditions:

A. Subgrantee shall have completed the project;

B. Subgrantee shall have submitted the documentation specified in Articles VI and VIII of this Agreement;

C. In the case of Large Projects, the Grantee shall have performed the final inspection;

D. In the case of Small Projects, the Project Listing and Certification shall have been reviewed by Grantee, or Grantee shall have performed a final inspection; and,

E. Subgrantee shall have requested final reimbursement.

ARTICLE X. Records Maintenance. The funding of eligible costs under this Agreement and the performance of all other conditions shall be subject to the following requirements, in addition to such other and further requirements as may be imposed by operation of law:

A. The "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," as codified in 44 Code of Federal Regulations Part 13, as amended;

B. Office of Management and Budget Circular No. A-87, "Cost Principles for State and Local Governments," as amended;

C. Office of Management and Budget Circular No. A-110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," as amended; and

D. Office of Management and Budget Circular No. A-122, "Cost Principles for Non-Profit Organizations," as amended.

E. Subgrantee will maintain all documentation concerning the projects funded under this Agreement until the occurrence of the following events, whichever is the later:

1. The completion of final inspection and final audit, and the final resolution of any issues identified in the same; or,
2. The expiration of five (5) years from the date of disaster closeout under this Agreement.

F. Subgrantee shall make all documentation concerning the projects funded under this Agreement available and accessible to the Comptroller General of the United States, the Grantee, and the Federal Emergency Management Agency between 8:00 a.m. and 5:00 p.m. on weekdays other than official holidays.

ARTICLE XI. Reimbursement of Funds. If upon final inspection, final audit, or other review by Grantee, the Federal Emergency Management Agency or other authority determines that the disbursements to Subgrantee under this Agreement exceed the eligible costs, Subgrantee shall reimburse to Grantee the sum by which the total disbursements exceed the eligible costs within forty-five (45) days from the date Subgrantee is notified of such determination.

ARTICLE XII. Audit. Subgrantee shall submit an Audit of Agreement Compliance to Grantee, and shall have an independent audit performed by a Certified Public Accountant if its total expenditures of federal financial assistance for the most recent fiscal year equal or exceed $500,000.00.

A. Subgrantee will conduct the audit in accordance with the following requirements:

1. The standards established by the Comptroller General of the United States, as specified in the General Accounting Office Standards for Audit of Governmental Organizations, Programs, Activities and Functions;
2. The standards established by the American Institute of Certified Public Accountants;
3. The requirements of § 11.42, Florida Statute, and the Rules of the Auditor General;
4. The requirements of the Single Audit Act of 1984, Pub. L. 98-502, as amended, 31 U.S.C. §§ 7501-7507, to the extent here applicable; and,
5. Office of Management and Budget Circular No. A-133, as amended, to the extent here applicable.

B. The audit shall be identified by the serial contract identification number for this Agreement. If the Subgrantee is a private nonprofit organization, it shall submit an organization-wide audit.

C. The audit shall be due not later than seven (7) months after the close of the fiscal year for Subgrantee except where Grantee and Subgrantee have mutually agreed upon another date.

D. Subgrantee shall conduct such additional audits as Grantee or the Federal Emergency Management Agency may determine necessary to determine the adequacy, accuracy, and reliability of the internal procedures
Subgrantee has in place to protect its assets and to ensure compliance with this Agreement.

E. If this Agreement is closed out without an audit, Grantee may recover from Subgrantee any disallowed costs identified in an audit after such closeout.

ARTICLE XIII. Noncompliance. If the Subgrantee violates this Agreement or any legislation, regulation, statute, rule or other legal requirement applicable to the performance of this Agreement, the Grantee may withhold any disbursement otherwise due Subgrantee for the project with respect to which the violation has occurred until the violation is cured or has otherwise come to final resolution. If the violation is not cured, Grantee may terminate this Agreement and invoke its remedies under the Agreement as per Articles XVIII and XXIII of this Agreement.

ARTICLE XIV. Nondiscrimination by Contractors. Subgrantee shall undertake an active program of nondiscrimination in its administration of disaster assistance under this Agreement, as per 44 Code Federal Regulatons Parts 7 and 16, and 44 Code of Federal Regulations Part 206.36. Subgrantee shall also be subject to the requirements in the General Services Administrative Consolidated List of Debarred, Suspended and Ineligible Contractors, in accordance with 44 Code of Federal Regulations Part 17.

ARTICLE XV. Modification. The time for performance of this Agreement may be extended once unless the failure of Subgrantee to close out the project is caused by events beyond its control. A modification extending the time for completion of the project and any other modification shall be in writing, and shall take effect only upon execution by both parties. Modifications to any Project Worksheet to be funded under this Agreement may be requested by Subgrantee through Grantee, but the approval of any such modifications shall reside in the sole discretion of the Federal Emergency Management Agency. Any approved modification to a Project Worksheet shall be noted in an additional Project Worksheet version for the project. If otherwise allowed under this Agreement, any extension shall be in writing and shall be subject to the same terms and conditions as those set out in the initial Agreement.

ARTICLE XVI. Time for Performance. Time shall be of the essence of this Agreement and of the performance of all conditions under it. Subject to any modification extending the time for the performance of this Agreement approved by Grantee or the Federal Emergency Management Agency, the time for the completion of emergency work shall be six (6) months from the date of the Presidential Declaration. For Large Projects the Summary of Documentation and the supporting documents identified in Article VI of this Agreement shall be submitted to the Grantee not later than sixty (60) days after the extension date of the last modification extending the Agreement. Subgrantee shall submit the completed Project Listing to Grantee not later than thirty (30) days from the completion of all work, or the approval of the Final Inspection by the Federal Emergency Management Agency, whichever is later. The time for the performance of this Agreement may be extended for cause by Grantee. Extensions shall not be approved for delays caused by lack of cost-share funding. If any extension request is denied, Subgrantee shall be reimbursed for eligible project costs incurred up to the latest approved date for timely completion. Failure to complete any project will be adequate cause for the termination of funding for that project.

ARTICLE XVII. Contracts With Others. If the Subgrantee contracts with any other contractor or vendor for performance of all or any portion of the work required under this Agreement, the Subgrantee shall incorporate into its contract with such contractor or vendor an indemnification clause holding Grantee and Subgrantee harmless from liability to third parties for claims asserted under such contract.

ARTICLE XVIII. Termination. Either of the parties may terminate this Agreement by notice in writing delivered to the address specified in Article XXV of this Agreement. Such termination shall take effect thirty (30) days after the date of such notice. Such termination shall not affect the rights, interests, duties or responsibilities of either of the parties or any allowable costs that have accrued as of the date of the notice of termination.

ARTICLE XIX. Liability. Grantee assumes no liability to third parties in connection with this Agreement. Unless the Subgrantee is a governmental entity covered by § 768.28(5), Florida Statute, the Subgrantee shall be solely responsible to any and all contractors, vendors, and other parties with whom it contracts in performing this Agreement. Unless the Subgrantee is a governmental entity within the meaning of the preceding sentence, Subgrantee shall indemnify Grantee from claims asserted by third parties in connection with the performance of this Agreement, holding Grantee and Subgrantee harmless from the same. Also:

A. For the purpose of this Agreement, the Grantee and Subgrantee agree that neither one is an employee or agent of the other, but that each one stands as an independent contractor in relation to the other.

B. Nothing in this Agreement shall be construed as a waiver by Grantee or Subgrantee of any legal immunity, nor shall anything in this Agreement be construed as consent by either of the parties to be sued by third parties in connection with any matter arising from the performance of this Agreement.

C. Subgrantee represents that to the best of its knowledge any hazardous substances at its project site or sites are present in quantities within statutory and regulatory limitations, and do not require remedial action under any federal, state or local legal requirements concerning such substances. Subgrantee further represents that the presence of any such substance or any condition at the site caused by the presence of any such substance shall be addressed in accordance with all applicable legal requirements.

ARTICLE XX. Reports. Subgrantee shall provide Quarterly Reports to Grantee, on the Quarterly Report Form conforming to the sample attached as Attachment E. The first Quarterly Report shall be due at such time as Subgrantee is notified. All subsequent Quarterly Reports shall be due no later than fifteen (15) days after each calendar quarter through final inspection. Quarterly Reports shall indicate the anticipated completion date for each project, together with any other circumstances that may affect the completion date, the scope of work, the project costs, or any other factors that may affect compliance with this Agreement. Interim inspections shall be scheduled by Subgrantee before the final inspection, and may be required by Grantee based on information supplied in the Quarterly Reports. Grantee may require additional reports as needed, and Subgrantee shall provide any additional reports requested by Grantee as soon as practicable. With respect to the Request for Advance or Reimbursement, the Summary of Documentation, and the Quarterly Reports, the contact for Grantee will be the State Public Assistance Officer.

ARTICLE XXI. Standard Conditions. Subgrantee agrees to the following conditions:

A. The performance and obligation of Grantee to pay under this Agreement is contingent upon an annual appropriation by the Legislature and is subject to any modification in accordance with Chapter 216, Florida Statute, and the disbursement to Grantee of federal funding in accordance with § 252.37(4), Florida Statute

B. Bills for fees or other compensation for services or expenses must be submitted in detail sufficient for a proper pre-audit and post-audit.

C. Grantee may unilaterally terminate this Agreement for refusal by the Subgrantee or its contractors or subcontractors to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statute, that are made or received by Subgrantee or its contractors and subcontractors in connection with this Agreement.

D. Subgrantee agrees that no funds disbursed to it under this Agreement will be used for the purpose of lobbying the Legislature or any of its members, any employee of the State of Florida, any Member of Congress, any officer or employee of Congress, or any employee of a Member of Congress, in connection with this Agreement or any modifications to this Agreement.

E. Subgrantee certifies that it possesses the legal authority to receive the funds.

F. Subgrantee agrees that responsibility for compliance with this Agreement rests with Subgrantee, and further agrees that noncompliance with this Agreement shall be cause for the rescission, suspension or termination of funding under this Agreement, and may affect eligibility for funding under future Subgrantee Agreements.

G. If otherwise allowed under this Agreement, all bills for any travel expenses shall be submitted in accordance with Section 112.061, Florida Statute

H. The State of Florida will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions

contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Subgrantee of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Department.

I. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any 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 be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of Category Two for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

J. The Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), if applicable, which prohibits discrimination by public and private entities on the basis of disability in the areas of employment, public accommodations, transportation, State and local government services, and in telecommunications.

K. With respect to any Subgrantee which is not a local government or state agency, and which receives funds under this Agreement from the federal government, by signing this Agreement, the Subgrantee certifies, to the best of its knowledge and belief, that it and its principals:

1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;

2. have not, within a five-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offenses enumerated in paragraph 20(h)2. of this certification; and

4. have not within a five-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Subgrantee is unable to certify to any of the statements in this certification, such Subgrantee shall attach an explanation to this Agreement.

In addition, the Subgrantee shall submit to the Department (by email or by facsimile transmission) the completed "Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion" for each prospective subcontractor which Subgrantee intends to fund under this Agreement. Such form must be received by the Department prior to the Subgrantee entering into a contract with any prospective subcontractor.

L. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Subgrantee in this Agreement, in any subsequent submission or response to Department request, or in any submission or response to fulfill the requirements of this Agreement, and such information, representations, and materials are incorporated by reference. The lack of accuracy thereof or any material changes shall, at the option of the Department and with thirty (30) days written notice to the Subgrantee, cause the termination of this Agreement and the release of the Department from all its obligations to the Recipient.

M This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall lie in Leon County. If any provision hereof is in conflict with any applicable statute or rule, or is otherwise unenforceable, then such provision shall be deemed null and void to the extent of such conflict, and shall be deemed severable, but shall not invalidate any other provision of this Agreement.

N. The Recipient certifies, by its signature to this Agreement, that to the best of his or her knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

ARTICLE XXII. Term. This Agreement shall take effect upon its execution by both parties, and shall terminate upon approval of closeout by the Federal Emergency Management Agency, unless terminated earlier as specified elsewhere in this Agreement. Subgrantee shall commence project(s) specified by this Agreement without delay.

ARTICLE XXIII. Events of Default, Remedies, and Termination.

A. Upon the occurrence of any one or more of the following events, all obligations of Grantee to disburse further funds under this Agreement shall terminate at the option of Grantee. Notwithstanding the preceding sentence, Grantee may at its option continue to make payments or portions of payments after the occurrence of any one or more such events without waiving the right to exercise such remedies and without incurring liability for further payment. Grantee may at its option terminate this Agreement and any and all funding under this Agreement upon the occurrence of any one or more of the following:

1. Any representation by Subgrantee in this Agreement is inaccurate or incomplete in any material respect, or Subgrantee has breached any condition of this Agreement or any previous agreement with Grantee and has not cured in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;
2. Subgrantee suffers any material adverse change in its financial condition while this Agreement is in effect, as compared to its financial condition as represented in any reports or other documents submitted to Grantee, if Subgrantee has not cured the condition within thirty (30) days after notice in writing from Grantee;
3. Any reports required by this Agreement have not been submitted to Grantee or have been submitted with inaccurate, incomplete, or inadequate information; or,
4. The monies necessary to fund this Agreement are unavailable due to any failure to appropriate or other action or inaction by the Congress, Legislature, Office of the Comptroller or Office of Management and Budget.

B. Upon the occurrence of any one or more of the foregoing events, Grantee may at its option give notice in writing to Subgrantee to cure its failure of performance if such failure may be cured. Upon the failure of Subgrantee to cure, Grantee may exercise any one or more of the following remedies:

1. Terminate this Agreement upon not less than fifteen (15) days notice of such termination by certified letter to the Subgrantee at the address specified in Article XXV of this Agreement, such notice to take effect when delivered to Subgrantee;
2. Commence a legal action for the judicial enforcement of this Agreement;
3. Withhold the disbursement of any payment or any portion of a payment otherwise due and payable under this agreement or any other agreement with Subgrantee; and,
4. Take any other remedial actions that may otherwise be available under law.

C. Grantee may terminate this Agreement for any misrepresentation of material fact, for failure or non-performance of any Agreement condition or obligation, or for noncompliance with any applicable legal requirement.

D. Any deobligation of funds or other determination by the Federal Emergency Management Agency shall be addressed in accordance with the regulations of that Agency.

E. Upon the rescission, suspension or termination of this Agreement, the Subgrantee shall refund to Grantee all funds disbursed to Subgrantee under this Agreement.

F. The venue of any action or proceeding by either Grantee or Subgrantee for enforcement of this Agreement or for adjudication of rights, interests, or duties of the parties to it shall lie in Leon County, State of Florida.

G. Notwithstanding anything to the contrary elsewhere in this Agreement, the rescission, suspension or termination of this Agreement by Grantee shall not relieve Subgrantee of liability to Grantee for the restitution of funds advanced to Subgrantee under this Agreement, and Grantee may set off any such funds by withholding future disbursements otherwise due Subgrantee under this Agreement or any other Agreement until such time as the exact amount of restitution due Grantee from Subgrantee is determined. In the event the Federal Emergency Management Agency should deobligate funds formerly allowed under this Agreement or under any other Agreement funded by the Agency and administered by Grantee, then Subgrantee shall immediately repay such funds to Grantee. If the Subgrantee fails to repay any such funds, then Grantee may recover the same from funding otherwise due Subgrantee.

ARTICLE XXIV. Attachments.

A. All attachments to this Agreement if any are incorporated into this Agreement by reference as if set out fully in the text of the Agreement itself.

B. In the event of any inconsistencies between the language of this Agreement and the Attachments to it if any, the language of the Attachments shall be controlling, but only to the extent of such inconsistencies.

Note: All other grant administrative and electronic forms will be provided by Grantee as necessary or posted on the Department of Emergency Management website: www.floridapa.org.

ARTICLE XXV. Notice and Contact. All notices under this Agreement shall be in writing and shall be delivered by Internet, by telefacsimile, by hand, or by certified letter to the following respective addresses.

FOR THE GRANTEE:
W. Craig Fugate, Director
Division of Emergency Management
Department of Community Affairs
2555 Shumard Oak Blvd
Tallahassee, Florida 32399-2100

FOR THE SUBGRANTEE:
Jacqueline R. Menendez
Village Manager
88 W. McIntyre Street, Ste 210
Key Biscayne, FL 33149

ARTICLE XXVI. Designation of Agent. Subgrantee hereby designates Jacqueline R. Menendez as its primary agent, and designates Carolyn P. Greaves as its alternate agent, to execute any Request for Advance or Reimbursement, certification, or other necessary documentation.

IN WITNESS HEREOF, the Grantee and Subgrantee have executed this Agreement:

FOR THE GRANTEE:

DEPARTMENT OF COMMUNITY AFFAIRS,
State of Florida, By:

W. Craig Fugate, Director
Division of Emergency Management

(Date)
Public Assistance Program

FOR THE SUBGRANTEE:

VILLAGE OF KEY BISCAYNE
(Printed Name)

(Signed Name) Jacqueline R. Menendez

Village Manager
(Title)

November 8, 2005
(Date)
65-0291811
Federal Employer Identification Number (FEIN)