



STATE OF FLORIDA

DIVISION OF EMERGENCY MANAGEMENT

RICK SCOTT
Governor

BRYAN W. KOON
Director

September 22, 2011

RECEIVED

SEP 28 2011.

CITY MANAGER

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Jim Scholl, City Manager
City of Key West
P.O. Box 1409
Key West, FL 33041

Re: Repayment of Stafford Act Funds Owed
DR-1306 (Hurricane Irene)

Dear Mr. Scholl:

Attached for your review are copies of correspondence between the Division of Emergency Management (Division) and the City of Key West regarding overpayments of Stafford Act reimbursement funding arising out of the Hurricane Irene disaster (DR-1306). It is the belief of the Division that by this point in time the City of Key West is familiar with all background issues that have led to this invoice which requests the repayment of \$6,268,629.48. We request your review of these documents and look forward to receiving the refund check so that we may close out this project with FEMA.

Please be aware that the funding agreement executed on January 20, 2000, between the City of Key West and the Department of Community Affairs requires that the City (as subgrantee) reimburse the above-mentioned overpayment. Specifically, the Division of Emergency Management (as Grantee) is basing this request for reimbursement on the following section of the executed funding agreement:

Section 11 – Recovery of Funds – “If the final inspection, audit or other review by FEMA, the State, or any other authorized entity determines that payment made under this Agreement exceeds the amount of actual eligible costs, the Subgrantee shall, within forty-five (45) days of receipt of the determination notice, repay the Grantee the amount determined to be in excess of the actual costs.”

Attached to this letter please find a repayment plan that has been reviewed and approved by the Division’s Senior Management, which we believe offers a fair resolution to this issue. As FEMA withdraws funding from the State’s SMARTLINK account as soon as a de-obligation is processed, your delinquency in returning these overpaid funds has created a deficit which is currently affecting the State’s ability to repay other applicants from the same storm. In an effort to be fair to all of our applicants, we must request that you satisfy this delinquency immediately; executing the enclosed repayment plan is the first step towards clearing this debt.

Additionally, the Grantee would at this time point out the following enforcement mechanisms that arise from the above-referenced funding agreement, should this overpayment not be timely addressed by the City of Key West:

1. **The City of Key West may not be eligible for further Stafford Act reimbursement (including costs incurred in future disasters) until the deficit is corrected.** Such action is authorized by Section 24(f) of the funding agreement, which states that "... If Subgrantee fails to repay said funds, then Subgrantee authorizes the Grantee to recoup said funds from funding otherwise available under this Agreement or under any other grant Agreement with Subgrantee administered by the Grantee.
2. **The Division may seek Judicial or other appropriate remedial actions to compel reimbursement.** Such action is authorized by Section 24(b) (2) of the funding agreement.

Obviously it is in the best interests of both the City of Key West and the State of Florida for reimbursement of this invoice to be corrected as quickly and smoothly as possible. Please immediately execute the enclosed repayment plan or make the check in the amount of \$6,268,629.48 payable to "Division of Emergency Management - Cashier" and mail to the address below:

Bryan W. Koon, Governors Authorized Representative
Division of Emergency Management - Cashier
Attn: Tamara Francis
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100
CC: Kevin Adkison, State Public Assistance Officer

If you have any questions or should you require any further information, please contact Ms. Cathy Day, Grant Specialist at (850) 487-1312, or via email to: cathy.day@em.myflorida.com.

Sincerely,



for Bryan W. Koon
Governors Authorized Representative

BWK/LCL/wso

Attachments

Contract #: 00-RM-W*-11-54-02-118
Disaster Declaration #: 1306 Hurricane Irene
Subgrantee: City of Key West
PW#: 35-2, 322-2, 323-2, 423-2, 529-2 , OIG Audit # DA-25-03
Category of PA: Multiple

PUBLIC ASSISTANCE PROGRAM
REPAYMENT PLAN AGREEMENT

THIS AGREEMENT is entered into on this 23rd day of September, 2011, between the Florida Division of Emergency Management (“FDEM” or “Grantee”) and the City of Key West (“Subgrantee”) to facilitate the repayment of funds by Subgrantee to Grantee.

WHEREAS, FDEM provides disaster assistance to government entities and certain nonprofit organizations (collectively “Subgrantees”) through the federally funded Disaster Grants – Public Assistance (“PA”) Program of the Federal Emergency Management Agency (“FEMA”); and

WHEREAS, FDEM’s Bureau of Recovery administers the PA program and assists Subgrantees in returning damaged or destroyed public facilities, infrastructure, and services to pre-disaster conditions; and

WHEREAS, after the interim or final inspection of a project it is sometimes determined that there was an over-allocation of grant funds or, in some cases, projects are de-obligated completely after the FDEM Public Assistance Program has done everything reasonably possible to assist the Subgrantees with maximizing all allowed benefits from this program; and

WHEREAS, it can be difficult for some governmental agencies and nonprofit corporations to access sufficient funds to repay FDEM/FEMA in a timely manner.

NOW THEREFORE, in order to facilitate repayments by Subgrantees and thus ensure the availability of funds for other applicants, FDEM has developed this Public Assistance Program Repayment Plan (“PAPRP”). In consideration of the mutual promises and conditions contained herein, the parties to this PAPRP agree to the following terms:

1. **Disaster Funding Agreement:** Subgrantee acknowledges that it executed a Disaster Funding Agreement for Hurricane Irene , Disaster Declaration # 1306, and a copy of that Agreement is attached hereto as Exhibit A.
2. **Funds Owed:** Subgrantee agrees that it is obligated to return \$6,268,629.48 in previously disbursed PA funds to FDEM as Grantee for FEMA.
3. **Repayment Terms:** Subgrantee agrees that it will repay the PA funds to FDEM as follows:

- a. For Subgrantees obligated to return \$1,000,000.00 or more in previously disbursed PA funds to FDEM, payments shall be made in twelve (12) equal monthly payments of \$522,385.79 that will begin on November 1st, 2011, and will be subsequently made prior to the 5th day of every month until the total amount has been returned.
 - b. For Subgrantees obligated to return less than \$1,000,000.00 in previously disbursed PA funds to FDEM, said funds are to be repaid in equal payments of N/A within the current State Fiscal Year or within 6 months, whichever period is longer, from the original date of this agreement.
4. **Interest:** FDEM will not include a penalty or processing fee and no interest will be charged on the outstanding funds. Any interest that may be charged to FDEM as the Grantee from FEMA will be passed on to the Subgrantee.
5. **Payment Address:** All payments from Subgrantee should be mailed to the following address for receipt by FDEM prior to the 5th day of the month:

Tamara Francis, Cashier
Division of Emergency Management
2555 Shumard Oak Blvd.
Tallahassee, Florida 32399-2100

6. **Late Payments:**
 - a. For Subgrantees obligated to return \$1,000,000.00 or more in previously disbursed PA funds to FDEM, all payments received after the 15th day of the month shall be deemed late. After three late payments, this Agreement will terminate and the entire amount owed will become due immediately.
 - b. For Subgrantees obligated to return less than \$1,000,000.00 in previously disbursed PA funds to FDEM, all payments received after the 15th day of the month shall be deemed late. After three late payments, this Agreement will terminate and the entire amount owed will become due immediately.
7. **Failure to Pay:** If Subgrantee does not make the payments as agreed and specified in this Agreement, then any payments due the Subgrantee for the same disaster will be withheld. Additionally, FDEM reserves the right to apply obligated funds from other disasters to correct the deficiency in Subgrantee's account in accordance with such provisions contained in Subgrantee's executed funding agreement. Further, the FDEM reserves the right to initiate legal action against the Subgrantee to recover the PA funds at issue.

8. **Descriptive Headings:** The descriptive headings used herein are for convenience of reference only and they are not intended to have any affect whatsoever in determining the rights or obligations under this PAPRP.

9. **Governing Law:** This Public Assistance Program Repayment Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Florida. Venue for any legal action related to this Agreement will be in Leon County, Florida.

10. **Additional Repayment Plans:** The amount stated in this repayment plan reflects current account balances for the declaration(s) listed. Obligation of future project worksheet versions may result in amendments to this Repayment Plan or additional Repayment Plans.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their undersigned duly authorized officials.

Subgrantee

Florida DEM

By: _____

By: _____

 [Print Name and Title]

Bryan Koon, Director

 Date

 Date

GRAY|ROBINSON
ATTORNEYS AT LAW

301 SOUTH BRONOUGH STREET
SUITE 600
TALLAHASSEE, FL 32301 FORT LAUDERDALE
TEL 850-577-9090 JACKSONVILLE
FAX 850-577-3311 KEY WEST
gray-robinson.com LAKELAND
MELBOURNE
MIAMI
pva@gray-robinson.com NAPLES
ORLANDO
TALLAHASSEE
TAMPA

June 9, 2011

William S. Owens
Interim Bureau Chief
Recovery Bureau
Florida Division of Emergency Management
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100

Re: FEMA-1306-DR-FL
PA I.D. #087-36550-00/PWs 423 and 529



Dear Mr. Owens:

This firm represents the City of Key West with respect to the Division's demand for reimbursement of \$6,659,104.46 that FEMA has deobligated in connection with Hurricane Irene. While the City continues to believe these monies were spent appropriately in the public interest for essential public infrastructure, the City would like to have a constructive dialogue with the Division regarding an amicable resolution to the Division's demands.

Recall that we met in 2011 with the former Bureau Chief and agency counsel to discuss resolution of this matter. There has been some follow up conversation with agency counsel about the City's desire to settle FEMA's claim on reasonable, fiscally responsible terms. The terms that have been discussed include:

- payment of the federal monies at issue (\$5,715,676);
- a substantial down payment on that amount (approximately \$1 million);
- a reasonable payment plan;
- without interest.

While the City had no further discussions with the Division about such a resolution in 2011, my client welcomes the opportunity to continue these discussions with you along these lines here again proposed.

Sincerely,

Peter Antonacci