



Florida Department of Agriculture and Consumer Services
Office of Energy

GRANT AGREEMENT NO. ARE064

ADAM H. PUTNAM
COMMISSIONER

**STATE OF FLORIDA GRANT ASSISTANCE PURSUANT TO
AMERICAN RECOVERY AND REINVESTMENT ACT
UNITED STATES DEPARTMENT OF ENERGY AWARDS**

THIS AGREEMENT is entered into between the FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES whose address is 407 South Calhoun Street, Tallahassee, Florida 32399-0800 (hereinafter referred to as the "Department") and the CITY OF KEY WEST, whose address is 633 Palm Avenue (hereinafter referred to as "Grantee" or "Recipient"), a local government to provide financial assistance for the Replacement of Street Lighting.

In consideration of the promises and mutual agreements contained herein, the Department and the Grantee acknowledge and agree as follows:

1. The United States Department of Energy (USDOE) awarded funding to the Department pursuant to USDOE through American Recovery and Reinvestment Act (ARRA) Grant Agreement No. DE-EE0000800. The Grantee shall be a sub-grantee of federal financial assistance from USDOE. The Grantee is responsible for complying with the appropriate state and federal guidelines in the performance of its activities pursuant to this Agreement.
2. The Grantee agrees to perform in accordance with the terms and conditions set forth in this Agreement, its attachments and exhibits named and incorporated by reference.
3. This Agreement shall begin upon execution by both parties and end no later than _____, inclusive. If allowed by USDOE, this Agreement shall be effective _____ for purposes of reimbursement of allowable costs resulting from obligations incurred and meeting the cost share or match requirements as described in Attachment A, Work Plan. Profit to the Grantee, or any of its subgrantees, is prohibited by 10 Code of Federal Regulations (CFR) Part 600. This Agreement may be amended to revise Attachment A, if additional funding is made available by the USDOE and/or the Florida Legislature.
4.
 - A. The Grantee shall be eligible for reimbursement of allowable costs resulting from obligations incurred during the term of this Agreement. The Department shall reimburse the Grantee for allowable costs on a [not more frequently than monthly cost reimbursement basis in an amount not to exceed \$250,000 after receipt and approval by the Department's Grant Manager of satisfactory reports and documentation as required in this Agreement. The parties understand and agree that this Agreement does not require a cost sharing or match on the part of the Grantee.
 - B. Prior written approval from the Department's Grant Manager shall be required for changes between approved, funded budget categories up to 10% of the total, approved Grant funds. Approval of such changes will be contingent upon submission of a revised Project Budget. Budget category changes greater than 10%, the addition of previously unapproved or unfunded budget categories or the addition of previously unapproved or unfunded budget line-items, will require a formal written amendment to the Agreement. The Department agrees to review a request by the Grantee to modify Attachment A, should the Grantee find, after receipt of competitive bids, that the project described in Attachment A, cannot be accomplished for the current estimated project cost. If the Department agrees to a modification of Attachment A, it may be modified not to exceed the awarded funding identified above. Any such modification would be by formal written amendment, in accordance with Section 37. Nothing in this Section or Agreement is intended nor implies to guarantee approval of a request to modify or adjust Attachment A, or the available project funding.
 - C. All reimbursement requests under this Agreement shall be submitted using the Attachment B, format in detail sufficient for a proper pre-audit and post-audit thereof. The Grantee shall submit a properly completed Attachment B, with supporting documentation of allowable costs, including

for the final reimbursement request, as described below in paragraph 4.D. Ten percent of each approved reimbursement request shall be retained by the Department pending Grantee's compliance with Section 8.

- D. All reimbursements under this Agreement shall be in compliance with the laws, rules and regulations applicable to the expenditure of State and federal funds. The State of Florida guidelines for allowable costs include, but are not limited, to the Florida Department of Financial Services' Reference Guide for State Expenditures located at <http://www.myfloridacfo.com>. Federal program guidelines for allowable costs and related topics are listed in Attachment E, Federal Regulations and Attachment F. The Grantee must provide a detailed listing of expenditures made under this Agreement as support for the Payment Request Summary Form. All requests for reimbursement of travel expenses shall be in accordance with the travel requirements including mandated forms required by Section 112.061, Florida Statutes.
- E. In addition to the requirements contained in paragraphs 4.C & D above, the Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State of Florida guidelines. When requested, this information must be provided within 30 calendar days of such request.
5. The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature of the State of Florida and the availability of federal funding for the specific purpose of funding the Department's obligations under this Agreement. In the event of a State revenue shortfall, withdrawal of State budget authorization and/or rescission of federal funding, the total funding may be reduced accordingly. The Department, in accordance with direction from the Governor and/or the Florida Legislature, shall have final determination of the availability of any funds.
6. The Grantee shall submit, using Attachment C, monthly updates to describe the project progress, work performed, problems encountered, problem resolution, schedule updates and proposed work for the next reporting period. Attachment B, may not be submitted more frequently than on a monthly basis and must be accompanied by an Attachment C, Report, for the corresponding month. Attachment C shall be submitted to the Department no later than three calendar days following the completion of the monthly reporting period. The Department's Grant Manager may request additional information if the Department's Grant Manager determines it is necessary. The Department's Grant Manager shall have ten calendar days to review deliverables and payment requests submitted by the Grantee.
7. The Grantee shall submit an Annual Report not later than 15 calendar days after the end of the first year of the project, if the term of the project exceeds one year. The Annual Report shall provide a narrative detailing and evaluating the accomplishments and impact of the project in the prior twelve months. The Annual Report shall follow the format described in Attachment K.
8. The Grantee shall also submit a Final Report no later than 15 calendar days prior to the expiration date of the Agreement. The Final Report will provide a final narrative detailing and evaluating the accomplishments and impact of the project. The Final Report will include an evaluation of the energy savings directly attributable to the project, projections of estimated energy savings expected to accrue from the project and policy recommendations, which may be helpful in implementing other projects of a similar nature. Pursuant to paragraph 4.C, 10% of the total Agreement amount identified in paragraph 4.A will be withheld until receipt and approval of the Final Report.
- 9.

Each party agrees that it shall be solely responsible for the negligent or 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.

10. A. Department staff will perform compliance monitoring during the term of the Agreement, in addition to the review of Monthly Progress Reports, but not less than once a year, to ensure Agreement compliance. Monitoring shall include, but not be limited to, periodic review of compliance with Agreement service delivery, as described in Attachment A, Grant Work Plan as

documented in Attachment C, Monthly Progress Reports and also which includes a review of all Agreement requirements including the Attachments. The Department reserves the right for any Department staff to make scheduled or unscheduled, announced or unannounced compliance monitoring visits at any site where services are delivered pursuant to this Agreement.

- B. For each on-site compliance monitoring visit, Department staff will provide an oral exit interview and a written monitoring report to the Grantee.
 - C. If issues of non-compliance are identified in the monitoring report, a written Corrective Action Plan (CAP) may be required of the Grantee. If required, the CAP shall be submitted to the Department's Grant Manager within ten calendar days of receipt of the monitoring report. If a CAP is required of the Grantee, failure to correct deficiencies after thirty calendar days from the date-of-receipt of a written monitoring report notating the deficiencies may result in a determination of breach of Agreement and termination of services. If a CAP is not required of the Grantee, the Department may proceed under Section 11 and/or Section 14.
11. The Department may terminate this Agreement at any time in the event of the failure of the Grantee to fulfill any of its obligations under this Agreement. Prior to termination, the Department shall provide 30 calendar days written notice of its intent to terminate and shall provide the Grantee an opportunity to consult with the Department regarding the reason(s) for termination. If this Agreement is terminated, the Department shall only pay for those acts satisfactorily completed under this Agreement prior to the date of termination. The Department shall not pay the Grantee for any work performed after such termination, except as described in Section 14.F.
12. The Department may terminate this Agreement for convenience by providing the Grantee with 30 calendar days written notice. If this Agreement is terminated, the Department shall only pay for those acts satisfactorily completed under this Agreement prior to the date of termination. The Department shall not pay the Grantee for any work performed after such termination, except as described in Section 14.F.
13. This Agreement may be unilaterally terminated 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 Agreement, unless the records are exempt from Section 24(a), Article I of the Florida Constitution and Chapter 119, Florida Statutes. If this Agreement is terminated, the Department shall only pay for those acts satisfactorily completed under this Agreement prior to the date of termination. The Department shall not pay the Grantee for any work performed after such termination, except as described in Section 14.F.
14. If the Grantee materially fails to comply with the terms and conditions of this Agreement, including any Federal or State statutes, rules or regulations, applicable to this Agreement, the Department may take one or more of the following actions, as appropriate for the circumstances.
- A. Temporarily withhold cash payments pending correction of the deficiency by the Grantee.
 - B. Disallow (that is deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
 - C. Wholly or partly suspend or terminate this Agreement.
 - D. Withhold further awards for the project or program.
 - E. Take other remedies that may be legally available.
 - F. Costs of the Grantee resulting from obligations incurred by the Grantee during a suspension or after termination of the Agreement are not allowable unless the Department expressly authorizes them in the notice of suspension or termination.

- G. The remedies identified above, do not preclude the Grantee from being subject to debarment or suspension under Presidential Executive Orders 12549 and 12689.
15. A. In accordance with Presidential Executive Order 12549, Debarment and Suspension (10 CFR Part 606, later moved to 2 CFR Part 901), the Grantee shall agree and certify that neither it, nor its principals, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency; and, that the Grantee shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction, unless authorized in writing by USDOE to the Department.
- B. Upon execution of this Agreement by the Grantee, the Grantee shall complete, sign and return a copy of Attachment G.
- C. As required by paragraphs A and B above, the Grantee shall include the language of this Section and Attachment G, in all subcontracts and sub-grants or lower tier agreements executed to support the Grantee's work under this agreement.
16. The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles. The Department, the State of Florida, USDOE or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five years following Agreement completion. 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.
17. A. The Grantee shall retain and maintain all records referenced in Section 16 and make such records available for an audit as may be requested. Such records shall include independent auditor working papers, books, documents and other evidence, including but not limited to, vouchers, bills, invoices, requests for payment and other supporting documentation, which, according to generally accepted accounting principles, procedures and practices, sufficiently and properly reflect all program costs expended in the performance of this Agreement.
- B. The Grantee agrees to comply with the audit requirements of Section 215.97, Florida Statutes, and those found in Attachment D, as applicable.
- C. The Grantee shall include the audit and record keeping requirements described above and in Attachment D, in all subcontracts and assignments with sub-grantees of funds according to Section 215.97, Florida Statutes. For purposes of this Agreement, "sub-recipient" shall be defined in accordance with Section 215.97(2)(x), Florida Statutes.
- D. The Grantee must provide copies of any audit referencing this Agreement, the audit transmittal letter, and any response to such audit to the Department within 30 calendar days of its receipt. The Grantee should confer with its chief financial officer, audit director or contact the Department for assistance with questions pertaining to the applicability of these requirements.
18. A. The Grantee may subcontract work under this Agreement upon the condition that each Attachment C, contains a current list of subcontractors, the amount of each subcontract and a short description of work to be performed by that subcontractor. The Grantee shall be solely responsible for all work performed and all expenses incurred in connection with the development and implementation of the services, programs and activities under this Agreement whether directly performed or by subcontract.
- B. The Grantee shall not enter into subcontracts in which the Department or USDOE could be held liable to a subcontractor for any expenses or liabilities. The Grantee shall defend and hold the Department and USDOE harmless of any liabilities, as applicable by Florida laws, incurred under any of the subcontracts entered into by the Grantee. The Grantee shall be liable for all work performed and all expenses incurred as a result of any subcontract.

- C. The Grantee is encouraged to use small businesses, including minority, woman and service-disabled veteran-owned businesses as subcontractors or sub-vendors under this Agreement. The Grantee shall report to the Department in each, Attachment C, its expenditures with minority, woman and service-disabled veteran-owned businesses. The directory of State of Florida certified minority, woman and service-disabled veteran-owned businesses can be accessed from the website of the Department of Management Services, Office of Supplier Diversity. The Attachment C shall contain the names and addresses of the minority, woman and service-disabled veteran-owned businesses; the aggregate dollar figure disbursed that month for each business; the time period; type of goods or services and whether the business is minority, woman or service-disabled veteran-owned. If no expenditures were made to minority, woman and service-disabled veteran-owned businesses, the Grantee shall state "None" on that portion of the Attachment C.
19. The Grantee agrees to permanently refrain from using or mentioning its association with the Department in advertisements, letterhead, business cards, etc. The Grantee's project with the Department may be generally stated and described in the Grantee's professional resume. The Grantee may not give the impression in any event or manner, that the Department endorses or recommends the Grantee.
- 20.
- A. The Grantee certifies that no Federal appropriated funds have been paid or will be paid, on or after December 22, 1989, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding, renewal, amending or modifying of any Federal contract, grant, or cooperative agreement. If any non-Federal funds are used for lobbying activities as described above, the Grantee shall submit Attachment I, and shall file quarterly updates of any material changes. The Grantee shall require the language of this certification to be included in all subcontracts, and all subcontractors shall certify and disclose accordingly. [10 CFR Part 601]
- B. In accordance with Section 216.347, Florida Statutes, the Grantee is hereby prohibited from using funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or a State agency.
- C. Pursuant to the Lobbying Disclosure Act of 1995, any organization described in Section 501(c)4 of the Internal Revenue Code of 1986 shall not be eligible for subgrants under this Agreement, unless such organization warrants that it does not, and will not, engage in lobbying activities prohibited by the Act as a special condition of the subgrant. This restriction does not apply to loans made pursuant to approved revolving loan programs or to contracts awarded using proper procurement procedures.
21. The Grantee shall comply with all applicable federal, state and local rules and regulations. The Grantee acknowledges that this requirement includes compliance with all applicable federal, state and local health and safety rules and regulations. The Grantee further agrees to include this provision in all subcontracts issued as a result of this Agreement.
22. The Grantee agrees to comply with, and include as appropriate in subcontracts, the applicable regulations listed in Attachment E, and the provisions contained in Attachment F.
23. The Department's Grant Manager for this Agreement is identified below.

Office Grant Manager: Michael Mitchell	
Florida Department of Agriculture and Consumer Services	
Office of Energy	
600 South Calhoun Street, Suite 251	
Tallahassee, FL 32399-0001	
Telephone No.:	850-617-7470
Fax No.:	850-617-7471
E-mail Address:	Michael.Mitchell@freshfromflorida.com

24.

The Grantee's Representative for this Agreement is identified below.

Grantee's Representative: Rodrigo Delostrinos	
City of Key West	
Community Services	
633 Palm Avenue	
Key West, Florida, 33040	
Telephone No.:	305-809-3751
Fax No.:	305-296-6152
E-mail Address:	rdelostr@keywestcity.com
Grantee D-U-N-S :	
Grantee CCR Registration	
Expiration Date:	

25.

To the extent required by law, the Grantee will be self-insured against, or will secure and maintain during the life of this Agreement, Workers' Compensation Insurance for all of its employees connected with the work of this project. The Grantee shall require the subcontractor similarly to provide Workers' Compensation Insurance for all of the latter'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. 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 if any class of employees engaged in hazardous work under this Agreement is not protected under Workers' Compensation statutes.

26.

Documentation of all insurance coverage(s) required below, shall be submitted by the Grantee to the Department. Upon expiration of documented proof of insurance coverage, the Grantee shall submit proof of continued insurance coverage to the Department within 30 calendar days of insurance coverage expiration.

The Grantee warrants and represents that it is self-funded for liability insurance, appropriate and allowable under Florida law, and 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.

27.

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.

28.

Upon satisfactory completion of this Agreement, with Department approval, the Grantee may retain ownership of the non-expendable personal property or equipment purchased under this Agreement. However, the Grantee shall complete and sign Attachment J, Property Reporting Form, and submit it to the Department as an attachment to the Attachment B, Payment Request Summary Form, in which these costs are documented for reimbursement or match. The following terms shall apply:

- A. The Grantee shall have use of the non-expendable personal property or equipment for the authorized purposes of the contractual arrangement as long as the required work is being performed.
- B. The Grantee is responsible for the implementation of adequate maintenance procedures to keep the non-expendable personal property or equipment in good operating condition.

- C. The Grantee is responsible for any loss, damage, or theft of, and any loss, damage or injury caused by the use of, non-expendable personal property or equipment purchased with state funds and held in his possession for use in a contractual arrangement with the Department.
- D. All purchase and disposition of equipment shall be in accordance with 10 CFR Part 600.

29.

The employment of unauthorized aliens by any Grantee/vendor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Grantee/vendor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.

- 30. A. No person on the grounds of race, creed, color, national origin, age, sex 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 Agreement.

B. The Grantee agrees to comply with 10 CFR Part 1040 "Nondiscrimination in Federally Assisted Programs."

C. The Grantee affirms that it is aware of the provisions of Section 287.134(2)(a), Florida Statutes, and that at no time has the Grantee been placed on the Discriminatory Vendor List. The Grantee further agrees that it shall not violate such law and acknowledges and agrees that placement on the list during the term of this Agreement may result in the termination of this Agreement.

D. The Grantee affirms that it is aware of the provisions of Section 287.133(2)(a), Florida Statutes, and that at no time has the Grantee been convicted of a Public Entity Crime. The Grantee agrees that it shall not violate such law and further acknowledges and agrees that any conviction during the term of this Agreement may result in the termination of this Agreement. The Grantee shall insert a provision in accordance with this paragraph in all subcontracts for services in relation to this Agreement.

31. Land acquisition is not authorized under the terms of this Agreement.

32. A. If the Grantee brings to the performance of this Agreement pre-existing intellectual property, the Grantee shall retain all rights and entitlements to that pre-existing intellectual property.

B. All patent rights, copyrights, and data rights must be in accordance with 10 CFR Part 600 as referenced in Attachment H.

C. If, during the course of the Agreement, the Grantee modifies a pre-existing invention to the point where it is a new invention, patentable in its own right, or if any discovery or subject invention arises or is developed in the course of, or as a result of, work or services performed under this Agreement, or in any way connected herewith, the Grantee shall retain the entire right, title, and interest to each discovery or subject invention, subject to the provisions of this Section. With respect to any subject invention in which the Grantee retains title, the Department shall have a royalty-free, nonexclusive, transferable, irrevocable, paid up license to practice or have practiced for, or on behalf of, the Department or the State of Florida the subject invention and sublicense the same.

In the event that any books, manuals, films, or other copyrightable material are produced, which are intended to be made available to the public, the Grantee shall notify the Department. The Department shall have a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work, and to authorize others to do the same. The Grantee hereby grants the

Department full authority and right to modify or create derivative works of, or allow others to modify or create derivative works on behalf of the Department, any publications first produced under this Agreement. Any content submitted to the Department which is asserted to be exempt under Florida's Public Records Act, Chapter 119, Florida Statutes, shall be clearly marked "business proprietary", "exempt," "confidential," or "trade secret" (as applicable), with the statutory basis for such claim of exemption, confidentiality, or trade secret specifically identified in writing. Failure to identify any such content shall constitute a waiver of any claimed exemption, confidentiality, or trade secret.

E. The terms and conditions specified in Section 32 shall also apply to any subcontracts made under this Agreement. The Grantee shall be responsible for informing the subcontractor of the provisions of this Section and obtaining disclosures.

33. The Grantee is encouraged to publish or otherwise make publicly available the results of the work conducted under this Agreement. USDOE requires an acknowledgement of Federal support. A disclaimer must appear in the publication of any material, copyrighted or not, which was based on or developed under this Agreement, as follows:

Acknowledgement: "This material is based upon work supported by the U.S. Department of Energy and the Florida Energy and Climate Department under Award Number DE-EE0000800."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, nor any of their contractors, subcontractors or their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or any third party's use or the results of such use of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise, does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof or its contractors or subcontractors. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

The Grantee shall not develop any software or databases under the terms and conditions of this Agreement.

35. The Parties agree they will seek to resolve any disputes between them regarding their responsibilities as soon as possible and at the lowest level reasonable, in order to conserve the resources of the Parties. The Parties further agree to use their best efforts to assure speedy and non-confrontational resolution of any and all disputes between them.
36. This Agreement is executed and entered into in the State of Florida and shall be construed, performed and enforced in all respects in accordance with the laws and rules of the State of Florida. Any litigation arising under this Agreement shall be brought in the appropriate court in Leon, County, Florida, applying Florida Law.
37. This Agreement represents the entire agreement of the parties. Any alterations, variations, changes, modifications or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, duly signed by each of the parties and attached to the original of this Agreement, unless otherwise provided herein.
38. The following Attachments are incorporated into this Agreement:

Attachment	A	Grant Work Plan
Attachment	B	Payment Request Summary Form

Attachment	C	Monthly Progress Report
Attachment	D	Special Audit Requirements
Attachment	E	Federal Regulations
Attachment	F	Federal Funding Grantee, Sub-grantee and Contractor Provisions
Attachment	G	Debarment and Suspension Form
Attachment	H	Intellectual Property Provisions
Attachment	I	Disclosure of Lobbying Activities
Attachment	J	Property Reporting Form
Attachment	K	Annual Report

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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed, the day and year last written below.

CITY OF KEY WEST

FLORIDA DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES

By: _____
CRAIG CATES
MAYOR

By: _____
ALAN EDWARDS
DIRECTOR OF ADMINISTRATION

Date: _____

Date: _____

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