

Contract Number: 14HM-2V-11-54-02-446

Project Number: 1539-047-R

**MODIFICATION TO SUBGRANT AGREEMENT BETWEEN
THE DIVISION OF EMERGENCY MANAGEMENT AND
CITY OF KEY WEST**

This Modification Number One is made and entered into by and between the State of Florida, Division of Emergency Management ("the Division"), and City of Key West ("Recipient") to modify Contract Number 14HM-2V-11-54-02-446, dated April 14, 2014 ("the Agreement").

WHEREAS, the Division and the Recipient have entered into the Agreement, pursuant to which the Division has provided a subgrant to Recipient under the Hazard Mitigation Grant Program of \$2,494,848.00 in Federal funds; and

WHEREAS, the Division and the Recipient desire to modify the Agreement; and

WHEREAS, the Agreement will expire on July 18, 2015; and

WHEREAS, the Division and the Recipient desire to extend the terms of the Agreement.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein, the parties agree as follows:

1. Paragraph 3 of the Agreement is hereby amended to read as follows:

(3) PERIOD OF AGREEMENT

This Agreement shall begin April 14, 2014 and shall end December 18, 2015; unless terminated earlier in accordance with the provisions of paragraph (12) of this Agreement

2. The Scope of Work, to the Agreement, are hereby modified as set forth in 1st Revised Attachment A to this Modification, a copy of which is attached hereto and incorporated herein by reference.
3. All provisions of the Agreement being modified and any attachments in conflict with this Modification shall be and are hereby changed to conform with this Modification, effective on the date of execution of this Modification by both parties.
4. All provisions not in conflict with this Modification remain in full force and effect, and are to be performed at the level specified in the Agreement.
5. Quarterly Reports are due to the Division no later than 15 days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30 and December 31.

IN WITNESS WHEREOF, the parties hereto have executed this Modification as of the dates set out below.

RECIPIENT: CITY OF KEY WEST

By: _____

Name and Title: _____

Date: _____

**STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT**

By: _____

Name and Title: Bryan W. Koon, Director

Date: _____

Attachment A

(1st Revision)

Budget and Scope of Work

STATEMENT OF PURPOSE:

The purpose of this Scope of Work is to provide protection to the East Front Street in the City of Key West, Florida; funded through the Hazard Mitigation Grant Program (HMGP) **DR-1539-047-R**, as approved by the Florida Division of Emergency Management (Division) and the Federal Emergency Management Agency (FEMA).

The Recipient, the City of Key West, agrees to administer and complete the project per sealed engineering designs and construction plans as submitted by the Recipient and subsequently approved by the Division and FEMA. The Recipient shall complete the work in accordance with all applicable Federal, State and Local Laws, Regulations, and Codes.

PROJECT OVERVIEW:

As a Hazard Mitigation Grant Program project, the Recipient, the City of Key West, shall construct a drainage system to alleviate flooding in the area of East Front Street, located in Key West, Florida.

The work shall include the construction of five storm water gravity injection wells, a new 24-inch outfall and also treatment boxes, catch basins with inlets, approximately 2,300 linear feet of storm pipe and incidental work to provide a complete and serviceable drainage project.

The project shall provide protection for a 100-year return period event and shall comply with all rules and regulation of the governing jurisdiction.

TASKS & DELIVERABLE:

A. Tasks

- 1) The Recipient shall procure the services of a qualified and licensed Florida contractor and execute a contract with the selected bidder to complete the scope of work as approved by the Division and FEMA. The Recipient shall select the qualified, licensed Florida contractor in accordance with the Recipient's procurement policy as well as all federal and state laws and regulations. All procurement activities shall contain sufficient source documentation and be in accordance with all applicable regulations.

The Recipient shall be responsible for furnishing or contracting all labor, materials, equipment, tools, transportation and supervision and for performing all work per sealed engineering designs and construction plans presented to the Division by the Recipient and subsequently approved by the Division and FEMA.

The Recipient and contractor shall be responsible for maintaining a safe and secure worksite for the duration of the work. The contractor shall maintain all work staging areas in a neat and presentable condition.

The Recipient shall ensure that no contractors or subcontractors are debarred or suspended from participating in federally funded projects.

The selected contractor shall have a current and valid occupational license/business tax

receipt issued for the type of services being performed.

The Recipient shall provide documentation demonstrating the results of the procurement process. This shall include a rationale for the method of procurement and selection of contract type, contractor selection and/or rejection and bid tabulation and listing, and the basis of contract price.

The Recipient shall provide an executed "Debarment, Suspension, Ineligibility, Voluntary Exclusion Form" for each contractor and/or subcontractor performing services under this agreement.

Executed contracts with contractors and/or subcontractors shall be provided to the Division by the Recipient.

The Recipient shall provide copies of professional licenses for contractors selected to perform services. The Recipient shall provide a copy of a current and valid occupational license or business tax receipt issued for the type of services to be performed by selected contractor.

- 2) The Recipient shall monitor and manage the installation to improve the drainage and provide flood protection

The project shall be in accordance with sealed engineering designs and construction plans presented to the Division by the Recipient and subsequently approved by the Division and FEMA. The Recipient shall ensure that all applicable state, local and federal laws and regulations are followed and documented, as appropriate.

The project consists of the general construction and furnishing of all materials, equipment, labor and fees to minimize recurring flooding and reduce repetitive flood loss to structures and roadways.

The recipient shall fully perform the approved project, as described in the submitted documents, in accordance with the approved scope of work, budget line item, allocation of funds and applicable terms and conditions indicated herein. The recipient shall not deviate from the approved project terms and conditions.

Construction activities shall be completed by a qualified and licensed Florida contractor. All construction activities shall be monitored by a qualified engineer. The Recipient shall complete the project in accordance shall all required permits. All work shall be completed in accordance with applicable codes and standards.

Upon completion of the work, the Recipient shall schedule and participate in a final inspection of the completed project by the local municipal or county building department (official), or other approving official, as applicable. The official shall inspect and certify that all installations according to the manufactures specifications. Any deficiencies found during this final inspection shall be corrected by the Recipient prior to Recipient's submittal of the final inspection request to the Division.

Upon completion of Task 2, the Recipient shall submit the following documents with sufficient supporting documentation, and provide a summary of all contract scope of work and scope of work changes, if any. Additional documentation for closeout shall include:

- a) Signed and Sealed As-built project plans (drawings) by a Professional Engineer two hard copies and electronic version (via email or CD); and

- b) Letter of completion

1. Affirming that the project was completed in conformance with the approved project

- drawings, specifications, and scope; and
 - 2. Certifying Compliance with applicable codes (Florida Building Code or Miami-Dade)
- c) Archeological Materials – Projects which involve groundbreaking shall need written verification from the Recipient that no archeological materials were discovered during project construction.
- 1. A letter stating no archeological materials were discovered during project construction.
- d) Permit(s) and verification of compliance as applicable
- 1. Water Management Districts
 - 2. United States Army Corp of Engineering (USACE)
 - 3. Department of Environmental Protection (DEP)
 - 4. Department of Transportation (DOT)
 - 5. Local jurisdiction(s)
- NOTE:** If no permit was needed – a letter stating “no permit required”.
- e) Best Management Practices were utilized – Submit letter at closeout.
- f) National Discharge Elimination System (NPDES) stormwater permit – Required for any drainage **over one acre**. Include
- 1. Stormwater Pollution Prevention Plan (SWPPP);
 - 2. Notice of Intent (NOI), awarded by the Florida Department of Environmental Protection (FDEP)
 - 3. Notice of Termination (NOT); terminates the NOI (from FDEP);
- OR;** If the area of disturbance was **less than one** acre; A letter stating the extent of the ground disturbance (by site).
- g) Ground Dewatering Activities – involve ground dewatering activities at the construction site –
- 1. Provide documentation of coverage under FDEP “Generic Permit for the Discharge of Produced Ground Water from any Non-contaminated Site Activity.”
 - 2. **OR;** Letter stating that “No ground dewatering activities took place at this projects site”
- h) Proof of compliance with Project Requirements and Conditions contained herein;
- 3) During the course of this agreement the Recipient is required to submit requests for reimbursement. Adequate and complete source documentation is required to be submitted to support all costs (federal share and local share) related to the project. In some cases, all project activities may not be fully complete prior to requesting reimbursement of costs incurred in completion of this scope of work; however, a partial reimbursement may be requested.

The Recipient is required to submit an Affidavit signed by the Recipient’s project personnel with each reimbursement request attesting to the completion of the work, disbursements or payments were made in accordance with all agreement and regulatory conditions, and that reimbursement is due and has not been previously requested.

The Recipient must maintain accurate time records. The Recipient shall ensure invoices are accurate and any contracted services were rendered within the terms and timelines of this agreement. All supporting documentation shall agree with the requested billing period. All costs submitted for reimbursement shall contain adequate source documentation which may

include but not be limited to: cancelled checks, bank statements, Electronic Funds Transfer, paid bills and invoices, payrolls, time and attendance records, contract and subcontract award documents.

Construction Expense: The Recipient shall pre-audit bills, invoices, and/or charges submitted by the contractors and subcontractors and pay the contractors and subcontractors for approved bills, invoices, and/or charges. Recipient shall ensure that all contractor/subcontractor bills, invoices, and/or charges are legitimate and clearly identify the activities being performed and associated costs.

Project Management Expenses: The recipient shall pre-audit source documentation such as payroll records, project time sheets, attendance logs, etc. Documentation shall be detailed information describing tasks performed, hours devoted to each task, and the hourly rate charged for each hour including enough information to calculate the hourly rates based on payroll records. Employee benefits must be clearly shown.

The Division shall review all submitted requests for reimbursement for basic accuracy of information. Further, the Division shall ensure that no unauthorized work was completed prior to the approved project start date by verifying vendor and contractor invoices. The Division shall verify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measures are in compliance with the approved scope of work prior to processing any requests for reimbursement.

Review and approval of any third party in-kind services, if applicable, shall be conducted by the Division in coordination with the Recipient. Quarterly reports shall be submitted by the Recipient and received by the Division at the times provided in this agreement prior to the processing of any reimbursement.

The Recipient shall submit to the Division requests for reimbursement of actual construction and managerial costs related to the project as identified in the project application, sealed engineering designs, and construction plans. The requests for reimbursement shall include:

- a) Contractor, subcontractor, and/or vendor invoices which clearly display dates of services performed, description of services performed, location of services performed, cost of services performed, name of service provider and any other pertinent information;
- b) Proof of payment from the Recipient to the contractor, subcontractor, and/or vendor for invoiced services;
- c) Clear identification of amount of costs being requested for reimbursement as well as costs being applied against the local match amount;

The Recipient's final request for reimbursement should include the final construction project cost. Supporting documentation must show that all contractors and subcontractors have been paid.

B. Deliverables

Mitigation Activities consist of drainage improvements on the section of East Front Street, Key West, Florida, to include storm water gravity injection wells, outfalls, treatment boxes, catch basins with inlets, storm pipe and incidental work. The project shall provide protection for a 100-year return period event.

Provided the Recipient performs in accordance with the Scope of Work outlined in this Agreement, the Division shall reimburse the Recipient based on the percentage of overall project completion.

PROJECT REQUIREMENTS AND CONDITIONS:

C. Engineering:

- 1) The Recipient shall submit to the Division an official letter stating that the project is 100% complete and ready for the Division's Final Inspection of the project.
- 2) The Recipient shall submit a final copy of the completed project's As-built drawings and all necessary supporting documentation, and provide a summary of all contract scope of work changes, if any.
- 3) The Recipient shall provide a copy of the Notice of commencement, and any local official Inspection Report and/or Final approval, as applicable.
- 4) The Recipient shall submit of certified letter of completion from Engineer of Record. The recipient's Engineer of Record shall provide a formal certificate or letter affirming that the project has been completed in conformance with the approved project drawings, specifications, scope, and applicable codes.
- 5) If the Recipient is not the current title holder of the affected properties, the Recipients shall provide documentation confirming the property acquisition and easement rights were obtained voluntarily. If condemnation or eminent domain is used to obtain easement rights, FEMA shall not pay for any associated costs or payments to the property owner. Furthermore, FEMA shall not consider it an eligible contribution to the non-Federal cost share requirement and shall not financially participate in that component of a project if land or easements are obtained involuntarily.

D. Environmental:

- 1) If the City of Key West is not the current title holder of any affected properties, the city must provide documentation confirming property acquisition and easement rights were obtained voluntarily. If condemnation or eminent domain is used to obtain easement rights, FEMA will not pay for any associated costs or payments to the property owner. Furthermore, FEMA will not consider it an eligible contribution to the non-Federal cost share requirement and will not financially participate in that component of a project if land or easements are obtained involuntarily.
- 2) The Recipient shall follow all applicable state, local and federal laws regulations and requirements, and obtain (before starting project work) and comply with all required permits and approvals. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding. If project work is delayed for a year or more after the date of the categorical exclusion (CATEX), then coordination with and project review by regulatory agencies must be redone.
- 3) Any change, addition or supplement to the approved Scope of Work that alters the project (including other work not funded by FEMA, but done substantially at the same time), regardless of the budget implications, shall require re-submission of the application to FEMA through the Division for National Environmental Policy Act (NEPA) re-evaluation before starting project work.
- 4) The Recipient shall monitor ground disturbing activities during construction, and if any potential archeological resources are discovered, shall immediately cease construction in that area and notify the Division and FEMA.
- 5) If human remains or intact archaeological deposits are uncovered, work in the vicinity of the

discovery shall stop immediately and all reasonable measures to avoid or minimize harm to the finds shall be taken. The Recipient shall ensure that archaeological discoveries are secured in place, that access to the sensitive area is restricted, and that all reasonable measures are taken to avoid further disturbance of the discoveries. The Recipient's contractor shall provide immediate notice of such discoveries to the Recipient. The Recipient shall notify the Florida Division of Historic Resources, the Division's State Environmental Liaison Officer and FEMA within 24 hours of the discovery. Work in the vicinity of the discovery may not resume until FEMA and the Division have completed consultation with SHPO, Tribes, and other consulting parties as necessary.

In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with **Florida Statutes, Section 872.05**.

- 6) If project activities involve the disturbance on street/roads comprised of historic paving material, i.e., brick, stone or stone curbs, additional information must be provided to the FDEM, FEMA, and the Florida Division of Historical Resources regarding the affected area(s) and anticipated scope of work to be undertaken prior to commencing with the project. Work may not proceed until the FDEM has completed consultation with the State Historic Preservation Office (SHPO), FEMA, and other interested consulting parties.
- 7) Construction vehicles and equipment used for this project shall be maintained in good working order to minimize pollutant emissions.
- 8) Best management practices shall be used during project work to minimize soil erosion, sediment migration and turbidity with special focus on work in or around wetlands and other sensitive areas. A National Pollutant Discharge Elimination System (NPDES) stormwater permit shall be obtained (if area of disturbance shall be greater than one acre). The Recipient shall need to prepare and implement a Storm Water Pollution Prevention Plan (SWPPP). A copy of the Notice of Intent (NOI) submitted to use the State of Florida Generic Permit for stormwater discharge from construction activities; response letter from Florida Department of Environmental Protection (FDEP) if provided; and a copy of the Notice of Termination (NOT) must be submitted at project closeout.
- 9) For project closeout, the Recipient shall provide verification of compliance with the South Florida Water Management District (SFWMD) permits # 44-00535-W dated 05/06/2013 expiring 05/06/2015 and #44-0536-P dated 5/21/2013 expiring 05/21/2018.
- 10) Recipient shall obtain floodplain permit from the local floodplain administrator before work begins. Verification of compliance will be required at project closeout (i.e.: letter stating the project is in compliance with local ordinances, etc.)
- 11) Verification of compliance with the US Army Corps of Engineers (USACE) Nationwide Permit will be provided at closeout.
- 12) Recipient shall coordinate with local floodplain administrator to assure compliance with local regulations. Documentation of this coordination or permitting will be provided at closeout.
- 13) For projects involving groundwater dewatering activities at the construction site, provide documentation of coverage under the Florida Department of Environmental Protection (FDEP) "Generic Permit for the Discharge of Produced Ground Water from any Non-contaminated Site Activity."

E. Programmatic:

- 1) A change in the scope of work *MUST* be approved by the Division and FEMA in advance regardless of the budget implications.
- 2) The Recipient shall notify the Division as soon as significant developments becomes known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower costs or earlier completion.
- 3) The Recipient must “obtain prior written approval for any budget revision which would result in a need for additional funds” [44 CFR 13(c)], from the Division and FEMA.
- 4) Any extension of the Period of Performance shall be submitted to FEMA, 60 days prior to the expiration date. Therefore, any request for a Period of Performance Extension shall be in writing and submitted along with substantiation of new expiration date, and a new schedule of work, to the Division a minimum of seventy (70) days prior to the expiration date, for Division processing to FEMA.
- 5) The Recipient shall avoid duplication of benefits between the HMGP and any other form of assistance, as required by Section 312 of the Stafford Act, and further clarification in 44 CFR 206.191.

FINANCIAL CONSEQUENCES:

If the Recipient fails to comply with any term of the award, the Division shall take one or more of the following actions, as appropriate in the circumstances:

- 1) Temporarily withhold cash payments pending correction of the deficiency by the Recipient;
- 2) Disallow all or part of the cost of the activity or action not in compliance;
- 3) Wholly or partly suspend or terminate the current award for the Recipient's program;
- 4) Withhold further awards for the program; or
- 5) Take other remedies that may be legally available.

This is FEMA Project Number **1539-047-R**, is funded under HMGP-1539-DR-FL.

The Period of Performance (POP) for this project shall end on ***December 18, 2015.***

Schedule of Work

Phase II

State Contracting	2 Months
Bidding and Contracting:	2 Months
Materials Delivery	3 Months
Construction:	11 Months
In-house Clean -Up	3 Months
Final Inspection:	6 Months
Weather Delays:	2 Months
Total Period of Performance:	29 Months

Budget

Line Item Budget*

	<u>Project Cost</u>	<u>Federal Share</u>	<u>Local Share</u>
Phase II			
Materials, Labor, and Fees:	\$3,272,586.00	\$2,454,440.00	\$818,146.00
Administrative Allowance		\$40,408.00	
Total Project Cost:	\$3,272,586.00	\$2,494,848.00	\$818,146.00

** Any line item amount in this Budget may be increased or decreased 10% or less without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.*

Funding Summary

Federal Share:	\$2,454,440.00	(75%)
Local Share:	\$818,146.00	(25%)
Total Project Cost:	\$3,272,586.00	(100%)

Recipient Administrative Allowances up to \$40,408.00