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**RESOLUTION NO. 06-89**

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA; ACCEPTING THE PUBLIC LIBRARY CONSTRUCTION GRANT AWARD IN THE AMOUNT OF \$500,000 FOR THE CONSTRUCTION OF THE PALMETTO BAY BRANCH LIBRARY; APPROVING THE GRANT AGREEMENT WITH THE FLORIDA DEPARTMENT OF STATE; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE VILLAGE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village has partnered with the Miami-Dade County Library System to construct a public library on a portion of the Village-owned property located at SW 176<sup>th</sup> Street and Old Cutler Road; and,

WHEREAS, the Village previously applied for a grant to the Florida Department of State, Division of Library and Information Services; and,

WHEREAS, the Village has been awarded the maximum amount of \$500,000 for the construction of its library.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. The Village Council hereby accepts the grant award for \$500,000 for the construction of its library.

Section 2. The Grant Agreement between the Department of State and the Village of Palmetto Bay, included as Exhibit 1, is hereby approved.

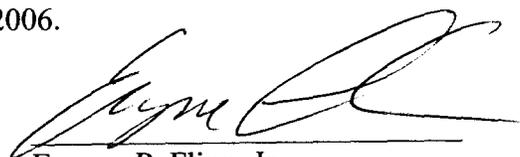
Section 3. The Village Manager is authorized to execute the grant agreement and all other applicable documents on behalf of the Village.

Section 4. This resolution shall take effect immediately upon approval.

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PASSED and ADOPTED this 7<sup>th</sup> day of August, 2006.

Attest:   
Melghan Pier  
Village Clerk

  
Eugene P. Flinn, Jr.  
Mayor

APPROVED AS TO FORM:

  
Nagin, Gallop & Figueredo, P.A.  
Village Attorney

FINAL VOTE AT ADOPTION:

- Council Member Ed Feller                    YES
- Council Member Paul Neidhart            YES
- Council Member John Breder              YES
- Vice-Mayor Linda Robinson              YES
- Mayor Eugene P. Flinn, Jr.                YES

**FLORIDA DEPARTMENT OF STATE  
DIVISION OF LIBRARY AND INFORMATION SERVICES  
PUBLIC LIBRARY CONSTRUCTION**

**GRANT AGREEMENT**

This AGREEMENT, executed and entered into \_\_\_\_\_,

BETWEEN the State of Florida, Department of State, Division of Library and Information Services, hereinafter Referred to as the DIVISION, and the

GRANTEE: Village of Palmetto Bay

the PROJECT: Palmetto Bay Branch Library

the GRANT AMOUNT: Five hundred thousand dollars (\$500,000)

Unless there is a change of address, any notice required by this agreement shall be delivered to the Division of Library and Information Services, 500 South Bronough Street, Tallahassee, Florida 32399-0250, for the State, and to Village of Palmetto Bay, 8950 S.W. 152 Street, Palmetto Bay, FL, 33157, for the GRANTEE. In the event of a change of address, it is the obligation of the moving party to notify the other party in writing of the change of address.

The DIVISION, as administrator of state funds provided under Section 257.191, *Florida Statutes*, has approved an application for public library construction funds submitted by the GRANTEE, which application is by reference herein made a part of this agreement. The GRANTEE, acting under the authority vested in it for the establishment and maintenance of a free public library, has applied for construction funds. The DIVISION and the GRANTEE are willing to cooperate for the implementation of a public library construction project.

The parties hereto agree as follows:

- I. The GRANTEE agrees:
  - A. To provide sufficient, eligible and unencumbered funds to be used for public library construction.
  - B. To provide an approved site and building plans and specifications prepared by a licensed architect. Submit the final drawings and specifications to the DIVISION for review prior to the award of a construction contract. Award a construction contract within 540 days from the date of the grant award.
  - C. To provide and maintain competent and adequate engineering or architectural supervision and inspection at the construction site to ensure that the completed work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the DIVISION.
  - D. To expend all grant funds received under this agreement solely for the purposes for which they were authorized and appropriated. Expenditures from grant funds shall not be made for general operating expenses such as salaries, travel, personnel, or office supplies. Grant funds will not be used for lobbying the Legislature, the judicial branch or any state agency.
  - E. To submit changes in the construction contract to the DIVISION for approval if they:
    1. alter the approved building floor space or space relationships;
    2. alter the approved function or services of any part of a facility;
    3. change the location, size, or quantity of any approved fixed equipment;
    4. transfer funds from the approved equipment budget to the construction budget, or vice versa;

5. affect design life safety features of the facility or requirements for elimination of architectural barriers for the handicapped.
- F. To include in the construction contract provisions for a Performance and Payment Bond and other financial assurances as to the contractor's ability to comply with said contract provisions, pursuant to Section 255.05, Florida Statutes.
- G. To establish and maintain a proper accounting system in accordance with generally accepted accounting principles.
- H. To provide the DIVISION, through any authorized representative, access to the site and access to and the right to examine all records, books, papers, or other documents related to the PROJECT.
- I. To notify the DIVISION of the date and time of final inspection in order to afford DIVISION participation in such inspection for purpose of concurring in the final acceptance of the building.
- J. To provide, without discrimination, free use of the library services to all residents of the area served.
- K. That it will not discriminate against any employee employed in the performance of this agreement, or against any applicant for employment because of race, creed, color, handicap, national origin, or sex. The GRANTEE shall insert a similar provision in all subcontracts for services by this agreement.
- L. To comply with the Executive Order 11988, Flood Plain Management.
- M. To comply with the provisions of Section 257.191, Florida Statutes, and the regulations implementing the law, including Sections 553.501-553.513, Florida Statutes, relating to accessibility by persons with disabilities, and the Americans with Disabilities Act of 1990.
- N. To the use of the building exclusively for the public library purposes for which constructed or altered. A change in its use must be approved by the DIVISION.
- O. In the event that the GRANTEE expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such GRANTEE, the GRANTEE must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. In determining the state financial assistance expended in its fiscal year, the GRANTEE shall consider all sources of state financial assistance, including state financial assistance received from the Department of State, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

In connection with the audit requirements addressed in part O., paragraph 1, the GRANTEE shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

If the GRANTEE expends less than \$500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the GRANTEE expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the GRANTEE's resources obtained from other than State entities).

Information related to the requirements of Section 215.97, Florida Statutes, (the Florida Single Audit Act) and related documents may be found at [www.fsaa.state.fl.us](http://www.fsaa.state.fl.us).

Copies of financial reporting packages required by this agreement shall be submitted by or on behalf of the GRANTEE directly to each of the following:

1. The Department of State at the following addresses:

Department of State  
Grants Office  
Division of Library and Information Services  
R. A. Gray Building, 2nd Floor  
500 South Bronough Street  
Tallahassee, FL 32399-0250

2. The Auditor General's Office at the following address:

Auditor General's Office  
Room 401, Pepper Building  
111 West Madison Street  
Tallahassee, FL 32399-1450

II. The DIVISION agrees to:

- A. Provide funds, in accordance with the terms of this agreement and to the extent that the appropriation for this project is released to the DIVISION for the PROJECT. Should the GRANTEE fail to expend the amount of local funds certified in the application, the DIVISION will match the local funds on a dollar for dollar basis to a maximum of the grant award.
- B. Make payments according to the schedule contained in the Library Construction Guidelines and Application packet, subject to any special conditions stipulated by the Department of Financial Services, State of Florida.
- C. Conduct a periodic check of the PROJECT, including participation in the final inspection, when feasible.

III. The GRANTEE and the DIVISION mutually agree that:

- A. This instrument embodies the whole agreement of the parties. There are no provisions, terms, conditions, or obligations other than those contained herein; and this agreement shall supersede all previous communication, representation, or agreement, either verbal or written between the parties. No amendment shall be effective unless reduced in writing and signed by the parties.
- B. The 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. Each party shall perform its obligations hereunder in accordance with the terms and conditions of this agreement.
- C. If any term or provision of the agreement is found to be illegal and unenforceable, the remainder of the agreement shall remain in full force and effect and such term of provision shall be deemed stricken.
- D. The DIVISION shall demand the return of monies delivered and withhold subsequent payments if violations occur which disqualify the project from the grant under which they were provided, if monies were improperly expended or managed or if records of proper expenditure are not prepared, preserved or surrendered as required by this agreement.
- E. No delay or omission to exercise any right, power or remedy accruing to either party upon breach or default by either party under this agreement, shall impair any such right, power or remedy of either party; nor shall such delay or omission be construed as a waiver of any such breach or default, or any similar breach or default.

- F. This agreement shall be terminated by the DIVISION because of failure of the GRANTEE to fulfill its obligations under this agreement in a timely and satisfactory manner unless the GRANTEE demonstrates good cause as to why it cannot fulfill its obligations. Satisfaction of obligations by the GRANTEE shall be determined by the DIVISION based on the terms and conditions imposed on the GRANTEE in this agreement and compliance with the program guidelines. The DIVISION shall provide the GRANTEE a written notice of default letter. GRANTEE shall have 15 calendar days to cure the default. If the default is not cured by the GRANTEE within the stated period, the DIVISION shall terminate this agreement, unless the GRANTEE demonstrates good cause as to why it cannot cure the default within the prescribed time period. For purposes of this agreement, "good cause" is defined as circumstances beyond the GRANTEE'S control. In the event of termination of this agreement, the GRANTEE will be compensated for any work satisfactorily completed prior to the notification of termination.
- G. The DIVISION shall cancel this Agreement in the event that the GRANTEE refuses to allow public access to all documents or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the GRANTEE.
- H. The State of Florida's performance and obligation to pay under this agreement is contingent upon an annual appropriation by the legislature. In the event that the state funds on which this agreement is dependent are withdrawn, this agreement is terminated and the state has no further liability to the GRANTEE, beyond that already incurred by the termination date. In the event of a state revenue shortfall, the grant will be reduced in accordance with Section 257.195, Florida Statutes.
- I. Bills for fees and services must be maintained in detail sufficient for a proper preaudit and postaudit thereof.
- J. Unless authorized by law and agreed to in writing by the DIVISION, the DIVISION shall not be liable to pay attorney fees, interest or the cost of collection.
- K. The DIVISION shall not assume any liability for the acts, omissions to act or negligence of the GRANTEE, its agents, servants or employees; nor shall the GRANTEE exclude liability for its own acts, omissions to act or negligence to the DIVISION. In addition, the GRANTEE hereby agrees to be responsible for any injury or property damage resulting from any activities conducted by the GRANTEE.
- L. The GRANTEE, other than a GRANTEE which is the State or agency or subdivision of the State, agrees to indemnify and hold the DIVISION harmless from and against any and all claims or demands for damages of any nature, including but not limited to personal injury, death, or damage to property, arising out of any activities performed under this agreement and shall investigate all claims at its own expense.
- M. The GRANTEE shall be responsible for all work performed and all expenses incurred in connection with the Project. The GRANTEE may subcontract as necessary to perform the services set forth in this agreement, including entering into subcontracts with vendors for services and commodities, PROVIDED THAT such subcontract has been approved by the DIVISION prior to its execution, and PROVIDED THAT it is understood by the GRANTEE that the DIVISION shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and that the GRANTEE shall be solely liable to the Subcontractor for all expenses and liabilities incurred under the subcontract.
- N. Neither the State nor any agency or subdivision of the State waives any defense of sovereign immunity, or increases the limits of its liability, upon entering into a contractual relationship.
- O. The GRANTEE, its officers, agents and employees, in performance of this agreement shall act in the capacity of an independent contractor and not as an officer, employee or agent of the DIVISION. GRANTEE is not entitled to accrue any benefits of state employment, including retirement benefits and any other rights or privileges connected with employment in the State Career Service. GRANTEE agrees to take such steps as may be necessary to ensure that each subcontractor of the GRANTEE will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the DIVISION.

- P. The GRANTEE shall not assign, sublicense or otherwise transfer its rights, duties, or obligations under this agreement without prior written consent of the DIVISION, which consent shall not be unreasonably withheld. The agreement transferee must demonstrate compliance with the requirements of the program. If the DIVISION approves a transfer of the GRANTEE'S obligations, the GRANTEE remains responsible for all work performed and all expenses incurred in connection with the agreement. In the event the Legislature transfers the rights, duties, and obligations of the DIVISION to another government entity pursuant to section 20.06, Florida Statutes, or otherwise, the rights, duties, and obligations under this agreement shall also be transferred to the successor government entity as if it were an original party to the agreement.
- Q. This agreement shall bind the successors, assigns and legal representatives of the GRANTEE and of any legal entity that succeeds to the obligation of the DIVISION.
- R. The term of this agreement will commence on the date of execution of the agreement.

THE GRANTEE

THE DIVISION

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
JuDee L. Pettijohn  
Deputy Secretary of State for Cultural and  
Historical Programs  
Department of State, State of Florida

\_\_\_\_\_  
Typed Name and Title of Authorized Official

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Witness

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Revised 06/08/06