

**City Of Gainesville
And State of Florida
Department of Children and Family Services**

**AGREEMENT GOVERNING
FIXED CAPITAL OUTLAY GRANTS AND AIDS**

THIS AGREEMENT, entered into this _____ day of _____, 2014, by and between the State of Florida, Department of Children and Family Services, hereinafter referred to as the "Department," and City of Gainesville hereinafter referred to as the "recipient,"

WITNESSETH:

WHEREAS, the State of Florida, Department of Children and Family Services, by authority granted in Chapters 20, 216, and 402 of the Florida Statutes, administers state funds appropriated by the Florida State Legislature, and

WHEREAS, \$300,000 was appropriated by the Florida State Legislature to the Department in Line Item 396A of Fiscal Year 2014-2015 General Appropriations Act, Section 3, Human Services for grants and aids to local governments and nonstate entities – fixed capital outlay from non-recurring General Revenue Funds.

WHEREAS, City of Gainesville has received \$300,000 for the Gainesville Correctional Institute Homeless Shelter and

WHEREAS, there is a need to provide a facility for provision of Homeless Services in order to comply with the will of the Legislature, and

WHEREAS, the Department has received from the recipient the attached **Exhibit "A"** Letter of Intent / Facility Program for the development and provision of Gainesville Correctional Institute Homeless Shelter for the Conversion of existing facility to a local campus or foster care facility, or one that serves at-risk youth, homeless families, or families impacted by domestic violence, Alachua County.

NOW, THEREFORE, IT IS HEREBY agreed, by and between the Department and the recipient as follows:

I. THE RECIPIENT HEREBY AGREES:

A. Services to be provided

To plan, develop and accomplish the services described in Exhibit A and to do the activities specified in I.B. Letter of Intent / Facility Program of this Agreement or otherwise to cause the planning, development and accomplishment of such services and activities.

B. Manner of Provision of Services
(Provide Information on Projects) See Exhibit "A", Letter of Intent / Facility Program

C. State Laws and Regulations

1. To obtain all supplies and services for use in the performance of this Agreement at the lowest practicable cost and to purchase by means of a system of competitive bidding wherever required to do so by law, or whenever practicable even if not required by law.

2. To comply with all state licensing standards, all applicable standards, criteria and guidelines of the Department.

D. Civil Rights and Other Legal Requirements

1. The Recipient agrees to assure compliance with all applicable governmental laws, ordinances, rules, regulations, procedures, guidelines and standards, including without limitation:

a. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., which prohibits discrimination on the basis of race, color, or national origin.

b. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap.

c. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex.

d. The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age.

e. Section 654 of the Omnibus Budget Reconciliation Act of 1981, as amended, 42 U.S.C. 9849, which prohibits discrimination on the basis of race, creed, color, national origin, sex, handicap, political affiliation or beliefs.

f. The Americans with Disabilities Act, 42 U.S.C. 12101 et seq, which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities.

g. All laws, rules, regulations, procedures, guidelines and standards applicable to the grant, including without limitation, if applicable, all laws, rules, regulations, procedures, guidelines and standards applicable to the supplemental emergency social services block grant program referred to below.

h. All applicable rules, regulations, guidelines and standards.

The recipient agrees that compliance with these requirements constitutes a condition of continued receipt of or benefit from funds provided through this Agreement, and that it is binding upon the recipient, its successors, transferees and assignees for the period during which services are provided or obligations under this Agreement continue. The recipient further assures that all contractors, subcontractors, subgrantees, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs and activities will not discriminate against those participants or employees in violation of the above statutes, regulations, guidelines and standards.

E. Audit and Records - The Recipient Agrees:

1. To maintain complete, accurate and adequate financial records and reports relating to funds received under this Agreement and expenditures made with those funds.

2. To maintain books, records, documents including electronic storage media and the evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. All records shall be subject at all times to inspection, review, copying or audit by authorized state personnel and other personnel duly authorized by the Department.

3. Without limiting the generality of the foregoing or the generality of the following with the foregoing, to adopt an accounting system, in compliance with generally accepted accounting principles, which shall provide for a complete record of the use of the grant money and shall comply with the provisions of Section 215.97 Florida Statutes.

4. To include these aforementioned audit and record keeping requirements in all approved subcontracts and assignments.

F. Retention of Records - Recipient Agrees:

To retain all financial records, supporting documents, statistical records and any other documents including electronic storage media pertinent to this Agreement for a period of not less than (i) six (6) years after the purchase if this grant is only for the purchase of real property, or, if audit findings have not been resolved at the end of such six (6) year period the records shall be retained until resolution of the audit findings, or (ii) six (6) years after the completion of the improvements, repairs, or renovations if this grant is for the improvement, repair or renovation of real property or for the purchase and improvement, repair or renovation of real property, or, if audit findings have not been resolved at the end of such six (6) year period the records shall be retained until resolution of the audit findings. State auditors and any persons duly authorized by the Department shall have full access to, and the right to examine any of the said materials at any time during regular business hours.

G. Status Reports - Recipient Agrees:

To furnish the Department with monthly status reports.

H. Indemnification

The recipient hereby agrees to indemnify the Department for claims brought against the Department only to the extent that they are found to result from the sole negligence of the recipient, its governing body, or its employees. This indemnification shall not be construed to be an indemnification for the acts, or omissions of third parties, independent contractors or third party agents of the recipient. This indemnification shall not be construed as a waiver of the recipient's sovereign immunity, and shall be interpreted as limited to only such traditional liabilities for which the recipient could be liable under the common law interpreting the limited waiver of sovereign immunity. An action may not be instituted on a claim against the recipient unless the claimant presents the claim in writing to the Risk Manager within 3 years after such claim accrues or the Risk Manager denies the claim in writing. For purposes of this paragraph, the requirements of notice to the Risk Manager and denial of the claim are conditions precedent to maintaining an action but shall not be deemed to be elements of the cause of action and shall not affect the date on which the cause of action accrues. Notwithstanding any other provisions of this paragraph, the value of this indemnification is limited to the maximum sum of \$300,000 representing the amount of the grant from the Department; the amount of the indemnification is limited to this same maximum sum of \$300,000 by reason of all claims and judgments arising out of the same incident or occurrence, not to exceed the sum of \$200,000 for any claim or judgment or portions thereof. In addition, this indemnification shall be construed to limit recovery by the indemnified party against the recipient to only those damages caused by the recipient's sole negligence, and shall specifically exclude any attorney's fees or costs associated therewith.

I. Publicity and Public Notice

All notices, informational pamphlets, press releases, research reports and similar public notices referencing the construction of this building and prepared and released by the recipient shall include the statement: "*This project is funded under an Agreement with the State of Florida, Department of Children and Family Services.*"

J. Safeguarding Recipient Information

The recipient shall not use or disclose any information concerning the eventual recipients of services under this Agreement for any purpose not in conformity with state and federal regulations, as determined by the Department, except on written consent of the eventual recipient, his attorney, or his responsible parent or guardian.

K. Monitoring

The recipient shall permit Department personnel or representatives to monitor the services, which are the subject of this Agreement.

L. Public Access - Recipient Agrees:

To allow public access to all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the recipient in conjunction with this Agreement.

M. Security Interest / Title Evidence and Insurance / Other Insurance

1. The recipient acknowledges that pursuant to section 402.73(3) F.S. any state funds provided for the purchase of or improvements to real property are contingent upon the contractor or political subdivision granting to the state a security interest in the property at least to the amount of state funds provided for at least 5 years from the date of purchase or the completion of improvements or as further required by law. Pursuant thereto the recipient has executed and delivered or shall execute and deliver to the Department the Mortgage Lien and Security Agreement instrument (the "**Mortgage**") of even date herewith granting to the Department a mortgage lien on and/or security interest in the property to be purchased and/or improved with the proceeds of this grant located in Alachua County, Florida, more particularly described therein, for a term commencing with the date of the execution of the Mortgage and ending on the date that is ten (10) years from the date of purchase or the completion of improvements, whichever is later, to secure the payment and performance of the obligations of the recipient under this Agreement and under the Mortgage. A copy of the Mortgage or the form of the Mortgage is attached hereto as **Exhibit "B"** and the terms and provisions thereof are incorporated herein by this reference and made a part hereof. The recipient agrees to pay all costs associated with the perfection of the liens and security interests under the Mortgage, including without limitation all recording and filing fees and the costs of any continuation statements, and any taxes associated with this Agreement and the Mortgage, including without limitation all documentary stamp taxes.

2. The recipient may request that the Department relinquish its interest sooner than the expiration of the term set forth above if extraordinary circumstances arise and if the Department finds that early retirement is in the best interest of the state. Under no circumstance will the Department consider such request earlier than 5 years after the date of the purchase or completion of the renovation or construction, whichever is later. The decision to approve such a request is the exclusive determination of the Department and shall not be reviewable by any court or administrative forum.

3. The recipient shall notify the Department in writing of the date of completion of construction (or renovation) and shall maintain a copy of the notification in its files together with a written acknowledgment of the Department's receipt and approval of the notification of completion. The notification and the acknowledgement of the Department's receipt and approval of the notification shall be in recordable form and shall be recorded in the public records of the county in which the property is located.

4. Prior to the disbursement of any of the grant proceeds by the Department to or for the benefit of the recipient the recipient shall furnish to the Department evidence satisfactory to the Department of, and, if required by the Department, the recipient's interest therein, the lien of the Mortgage, free and clear of all liens, encumbrances, and interests other than those acceptable to the Department.

5. Prior to the execution and recording of the Mortgage, recipient shall not make any improvements, or cause any improvements to be made, to the property to be purchased and/or improved with the proceeds of the grant that could give rise to any lien under the Construction Lien Law, Chapter 713, Part I, Florida Statutes. Without limiting the generality of the previous paragraph 7, all title evidence required by the previous paragraph 7 shall reflect that no notice of commencement under the Construction Lien Law has been recorded.

6. The recipient shall keep the property to be improved with the proceeds of this grant insured in the manner provided in Exhibit _____, and shall, prior to the disbursement of any of the grant proceeds by the Department and at all times thereafter, furnish to the Department evidence thereof.

N. Public Entity Crime

Pursuant to section 287.133, F.S., the following restrictions are placed on the ability of persons convicted of public entity crimes to transact business with the Department:

When a person or affiliate has been placed on the convicted vendor list following a conviction for a public entity crime, he/she may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or the repair of a public building or public work; may not submit bids, proposals, or replies 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 any public entity; and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, F.S., for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

Any person must notify the Department within 30 days after a conviction of a public entity crime applicable to that person or to an affiliate of that person. "Public entity crime means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including but not limited to, any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or a public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

II. THE RECIPIENT AND THE DEPARTMENT AGREE:

A. Consultation

To furnish consultation and technical assistance to the recipient, if requested.

B. Method of Payment for Services

The following procedures for payment will apply:

1. In no event will payment be made under this Section II.B. for grants requiring matching funds unless recipient illustrates to the Department that the project is fully funded with proper matching funds as specified in the Letter of Intent or Facility Program.

2. Subject to the availability of state funds, the Department shall award to the recipient a sum not to exceed \$300,000 during the term of this Agreement.

3. In no event will payment be made by the Department in excess of \$300,000 as agreed upon by all parties to this Agreement.

4. If any of the funds are to be used for the construction, improvement, or repair of real property payment shall be made as work is completed in accordance with Exhibit A (approved Letter of Intent or Facility Program) and submission of invoice.

5. Payment shall be accomplished within twenty (20) days after the submission of a correct invoice and supporting documentation and, at the Department's option, its verification of the invoice and supporting documentation through inspection of the work to be performed under this Agreement and its determination that sufficient work has been completed to justify the payment.

6. The City of Gainesville, Alachua County shall prepare and submit a request for release of funds that is on the recipient's stationery.

7. The Department may, in its sole discretion, advance parts or the whole of any advances before they become due if it is agreed by the parties and advisable to do so and all such advances or releases shall be deemed to have been made in pursuance of this Agreement and not to be a modification hereof. The making of any such advance, or any part of such advance, shall not be deemed an approval or acceptance by the Department of the work therefor done.

8. All sums advanced hereunder shall be used by the recipient solely and exclusively for the purposes intended to wit: City of Gainesville for the Gainesville Correctional Institute Homeless Shelter, Alachua County, as more particularly described in Exhibit "A" attached hereto. If any of the funds are to be used for the construction, improvement, or repair of real property all work shall commence on or before _____, 2014 and all work shall be completed and all funds for that purpose shall be disbursed on or before _____, 2016.

9. Upon completion of the project, a final accounting will be made and any funds not used in the completion of the project shall be returned to the Department within thirty (30) days after the final accounting report is submitted to the Department.

10. Any interest earned from advanced moneys shall be returned to the Department or shall be reduced from subsequent request for release of funds.

11. The Department shall not be obligated to, but may in its sole discretion, make any payment or advance any sums under this Agreement at any time in which the recipient is in default under this Agreement or the Mortgage.

III. THE DEPARTMENT AND THE RECIPIENT FURTHER AGREE:

A. Term of the Agreement

1. This Agreement shall be effective _____, or on the date on which the Agreement has been signed by both parties, whichever is later.

2. This Agreement shall end upon the performance and payment of all of the obligations of the parties hereunder and under the Mortgage and the discharge of the lien of the Mortgage;

B. Termination

1. Termination Because of Lack of Funds: It is agreed that in the event funds to finance this Agreement, or part of this Agreement become unavailable, the obligations of each party, hereunder may be terminated upon no less than twenty-four (24) hours notice in writing to the other party. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. The Department shall be the final authority as to the availability of state and federal funds, and as to how any available funds will be allocated among recipients. Any payments already made by the Department shall be repaid as described in the Mortgage. In the event the Department should terminate this Agreement for lack of funds, the mortgage/restriction shall be relinquished.

2. Termination for Breach: Unless the recipient's breach is excused, the Department may, by written notice of breach to the recipient, terminate the whole or any part of this Agreement in any of the following circumstances:

a. If the recipient fails to provide services called for by this Agreement within the time specified herein or any extension thereof; or

b. If the recipient fails to pay or perform any of the other provisions of or is otherwise in default under this Agreement or the Mortgage. A default under any of such instruments shall be a default under each and all such instruments.

c. Termination shall be upon no less than twenty-four (24) hours notice in writing delivered by certified mail, return receipt requested, or in person with proof of delivery. The recipient shall continue the performance of this Agreement to the extent not terminated under the provisions of this clause.

3. Waiver of Breach of any provision of this Agreement or the Mortgage shall not be deemed to be a waiver of any other or subsequent breach of

any of the same and shall not be construed to be a modification of the terms of any of the same.

C. Termination Arrangements

After receipt of a notice of termination, and except as otherwise directed, the recipient shall:

1. Stop work under the Agreement on the date and to the extent specified in the notice of termination.

2. Place no further orders or contracts for materials, services or facilities except as may be necessary for completion of such portion of work under the Agreement as is not terminated.

3. Terminate all outstanding orders and contracts to the extent that they relate to the performance of work which was terminated.

4. Prepare all necessary reports and documents required under the terms of this Agreement up to the date of termination, including the final report due upon completion of the Agreement, if any, without reimbursement for services rendered in completing said reports beyond termination date if said reports are not completed prior to termination date.

5. Take any other actions as directed in writing by the Department.

6. Immediately return all unexpended funds to the Department.

D. Renegotiation or Modification

Any alterations, variations, modifications, or waivers of provisions of this Agreement or the Mortgage shall only be valid when they have been reduced to writing, duly signed by all parties thereto, and attached to the original thereof.

E. Name of Payee

The name of the official payee to whom the Department shall issue warrants shall be _____. The payee's Federal Employer Identification Number is _____.

F. Use of Funds for Lobbying Prohibited

City of Gainesville will comply with the provisions of section 216.347, Florida Statutes, which prohibits the expenditure of grants and aids appropriations for the purpose of lobbying the legislature, the judicial branch, or a state agency.

G. Cooperation; Payment of Costs

As a further condition to receipt of the grant funds provided or to be provided by the Department to or for the benefit of the recipient, the recipient agrees to cooperate with the Department and to assist it in and shall pay all costs of filing and recording the Mortgage, the cost of insurance required by this Agreement or the Mortgage, taxes incurred pursuant to this Agreement or the Mortgage, and any other

costs or taxes incurred or to be incurred under or pursuant to this Agreement or the Mortgage. The Department shall, upon request by the recipient, advance, pay, and/or reimburse recipient for any such costs or taxes from the proceeds of the grant and any such sums so advanced and paid shall be considered an advancement and payment of grant proceeds to the recipient.

H. References and Citations

All references in this Agreement to statutory and regulatory citations and cross references or to any procedure, standard, or guideline shall be construed to refer to such statutes, regulations, procedures, standards, and guidelines as amended, renumbered, supplemented, and/or replaced from time to time. In the event of any conflict between with the terms and provisions of this Agreement and the provisions of any such statutes, regulations, procedures, standards, or guidelines, the provisions of such statutes, regulations, procedures, standards, and guidelines shall control and be applied.

I. All Terms and Conditions Included in Agreement

This Agreement and its incorporated attachments contain all the terms and conditions agreed upon by the parties. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto. In the event of a breach or termination of this Agreement or the Mortgage, the recipient agrees to pay all costs of collection of monies due to the Department including a reasonable attorney's fee and costs.

J. Miscellaneous

1. The entire Department's remedies hereunder and under the Mortgage and at law or in equity are cumulative and may be exercised alone, together, or in any combination thereof.

2. This instrument shall be governed and construed by any applicable federal law and to the extent not preempted by federal law by the laws of the State of Florida without regard to its conflicts of laws provisions.

3. If any provision of this instrument is found by a court of competent jurisdiction to be invalid or unenforceable, or invalid or unenforceable in any particular circumstances, no such invalidity or unenforceability shall affect or impair the validity or enforceability of such provision in other permissible circumstances or the validity or enforceability of any other provision of this instrument.

4. Wherever used in this instrument all pronouns shall include the feminine, masculine, and neuter gender and the singular shall include the plural and vice versa.

5. Time is of the essence in the payment and performance of the obligations under this instrument.

6. Captions and headings used in this Agreement are for convenience only and shall not be used to define or construe the terms and provisions of this Agreement.

7. The excise or documentary stamp tax due in connection with this transaction has been paid on the Mortgage.

**SIGNATURE PAGE TO THE AGREEMENT GOVERNING
FIXED CAPITAL OUTLAY GRANTS AND AIDS BETWEEN
State of Florida Department of Children and Family Services
AND City of Gainesville for the Gainesville Correctional Institute
Homeless Shelter**

IN WITNESS WHEREOF the parties hereto have executed this 12 page Agreement, the day and year previously written.

RECIPIENT:

As Witnessed By:

By: _____

_____ Name: _____

_____ Title: _____

Date: _____

**STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

As Witnessed By:

By: _____

_____ Name: _____

_____ Title: Regional Managing Director

Date: _____

APPROVED AS TO FORM AND LEGALITY

Regional General Counsel
Department of Children and Family Services

By: _____

Revised ___ 2014