

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: **5 -1-07** **Consent** **Regular**
 Workshop **Public Hearing**

Department: **Administration**
 Submitted By: **Administration**
 Submitted For: **Economic Development Office**

I. EXECUTIVE BRIEF

Motion and Title: STAFF RECOMMENDS MOTION TO APPROVE: An Agreement with Hartman Windows & Doors, LLC under the Community Development Block Grant (CDBG) / Economic Development Set-Aside Program for \$100,000.

Summary: On December 5, 2006 the Board of County Commissioners (BCC) approved four (4) CDBG / Economic Set-Aside projects for fiscal year 2006/2007 funding (*Item 5A-3*). Through the funding granted, Hartman Windows & Doors, LLC will create ten (10) full time equivalent positions. The Agreement with Hartman Windows & Doors, LLC will be retroactive and commence on April 2, 2007. Countywide / District 2 (DW)

Background and Policy Issues: The Community Development Block Grant (CDBG) regulations at 24 CFR 570.203 list "special economic development" as an activity eligible for CDBG funding. At a budget workshop on Economic Development, held on July 7, 1997, Palm Beach County Department of Housing and Community Development (HCD) was requested by the Board of County Commissioners (BCC) to set-aside ten percent (10%) of its annual Community Development Block Grant (CDBG) entitlement to fund economic development activities. As a result, HCD implemented its Economic Development Set-Aside Program in Fiscal Year 1998-99 and has funded the program each year subsequently.

The CDBG Set-Aside Program focuses on addressing the needs of businesses/entrepreneurs that require assistance above the level that can be acquired through Palm Beach County's Development Regions Grant Program. The Set-Aside Program's primary goals are to: a) create/retain jobs; and b) promote economic development in depressed development regions.

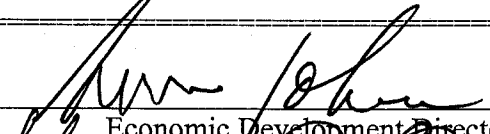
During this Fiscal Year (2006 / 2007), Palm Beach County's Economic Development Office began administering the CDBG / Economic Development Set-aside Program. The amount available for distribution is \$710,025, which represents the 10% set-aside from this fiscal year.

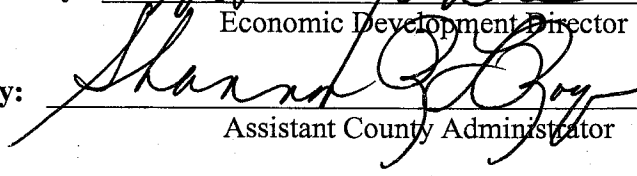
I. APPLICANT PROFILE: Per the Economic Set Aside Application:

- a) Hartman Windows & Doors, LLC manufactures custom mahogany windows and doors. Their project involves the purchase of a CNC Machining Center.

Attachments:

- 1. Economic Set Aside Grant Agreement
- 2. Approval from the City of West Palm Beach Commission

Recommended By:  **Economic Development Director** 4/4/07 **Date**

Approved By:  4/23/07 **Date**

I. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures/Construction	0	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Operating Costs	\$ 100,000	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	(100,000)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (PBC)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match (PBC)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Is Item Included In Current Budget? Yes x No

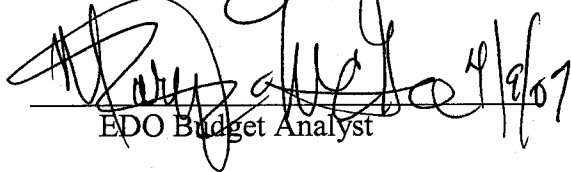
Budget Account No: Fund 1101 Department 143 Unit 1431 Object 8201

Program Code/Grant Year: BG70 / GY06

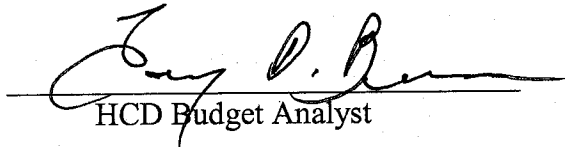
B. Recommended Sources of Funds/Summary of Fiscal Impact:

*Source for \$100,000 is available funds in the Economic Set Aside Program Budget Account Line 1101-143-1431-8201. Funds from the Community Development Block Grant / Economic Set Aside Program fall under the Palm Beach County Housing and Community Development Department.

C. Departmental Fiscal Review:



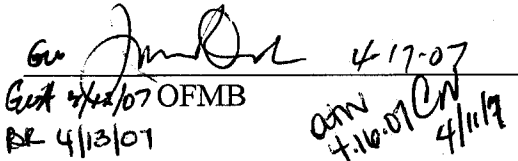
 EDO Budget Analyst

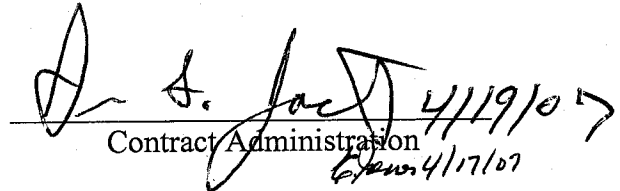


 HCD Budget Analyst

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Administration Comments:



 60 Jim Orr 4/17/07
 Get 4/12/07 OFMB
 PL 4/13/07
 CTR 4/16/07 CN
 4/11/07



 Contract Administration
 4/19/07
 4/17/07

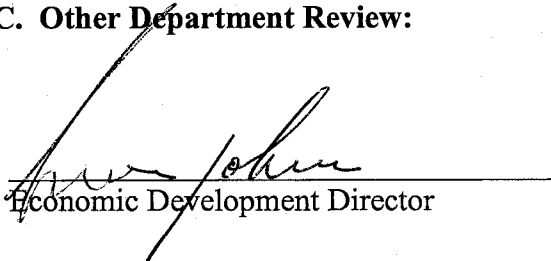
B. Legal Sufficiency:

This Contract complies with our contract review requirements.

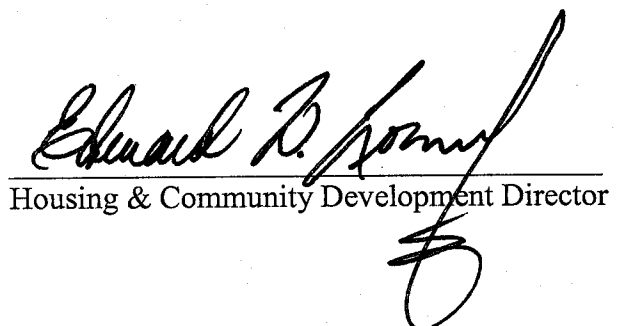


 Assistant County Attorney

C. Other Department Review:



 Economic Development Director



 Housing & Community Development Director

This summary is not to be used as a basis for payment.

AGREEMENT BETWEEN PALM BEACH COUNTY
AND
HARTMAN WINDOWS AND DOORS, LLC

THIS AGREEMENT, entered into this _____ day of _____, 2007, by and between Palm Beach County, a political subdivision of the State of Florida, for the use and benefit of its Community Development Block Grant Program, **Hartman Windows & Doors, LLC**, a corporation duly organized and authorized to do business in the State of Florida, having their principal office at **531 Southern Boulevard, West Palm Beach, FL 33405**, and its **Federal Tax Identification Number as 74-3028348** hereinafter referred to as the "Companies".

WHEREAS, Palm Beach County has entered into an Agreement with the United States Department of Housing and Urban Development for a grant for the execution and implementation of a Community Development Block Grant Program in certain areas of Palm Beach County, pursuant to Title I of the Housing and Community Development Act of 1974 (as amended); and

WHEREAS, Palm Beach County, in accordance with the Annual Consolidated Plan, and **Hartman Windows and Doors, LLC** desire to provide the activities specified in Part II of this Agreement; and

WHEREAS, Palm Beach County desires to engage **Hartman Windows and Doors, LLC** to implement such undertakings of the Community Development Block Grant Program.

NOW, THEREFORE, in consideration of the mutual premises and covenants herein contained, it is agreed as follows:

PART I
DEFINITION AND PURPOSE

1. DEFINITIONS

- (1) "COUNTY" means Palm Beach County.
- (2) "CDBG" means the Community Development Block Grant Program and / or Palm Beach County Economic Set Aside Program.
- (3) "EDO" means Palm Beach County Economic Development Office.
- (4) "HCD" means Palm Beach County Housing and Community Development.
- (5) "COMPANY" means **Hartman Windows and Doors, LLC**
- (6) "EDO Approval" means the written approval of the EDO Director or his designee.
- (7) "U.S. HUD" means the Secretary of the U.S. Department of Housing and Urban Development or a person authorized to act on its behalf.
- (8) "Low and moderate income persons" means the definition set by U.S. HUD.
- (9) "Held by or made available to" means the definition set by U.S. HUD.

2. PURPOSE

The purpose of this Agreement is to state the covenants and conditions under which the Company will implement the Scope of Services set forth in Part II of this Agreement. At least 51 percent (51%) of the jobs created/retained through this Agreement must be held by, or made available to, low- and moderate-income persons.

PART II
SCOPE OF SERVICES

The Company shall, in a satisfactory and proper manner as determined by EDO, perform the tasks outlined in Exhibit "A" and submit invoices using the cover sheet in Exhibit "B", both of which are attached hereto and made a part hereof.

PART III

COMPENSATION, TIME OF PERFORMANCE, METHOD AND CONDITIONS OF PAYMENT

1. MAXIMUM COMPENSATION

The Company agrees to accept as full payment for services rendered pursuant to this Agreement the actual amount of budgeted, eligible, and EDO Director or designee-approved expenditures and encumbrances made by the Company under this Agreement. Said services shall be performed in a manner satisfactory to EDO. In no event shall the total compensation or reimbursement to be paid hereunder exceed the maximum and total **authorized sum of one hundred thousand dollars (\$100,000)**. This Agreement shall be retroactive and commence on the 2nd day of April 2007 and end on the 1st day of April 2008. During this timeframe, the Company must use the CDBG funding awarded, in accordance with Exhibit "A." In addition, the grant award shall be payable in accordance with the terms of this Agreement and the eligible expenses outlined in Exhibit "A." Any funds not obligated by the expiration date of this Agreement automatically revert to the County.

Further budget changes within the designated Agreement amount can be approved in writing by the **EDO Director at his discretion up to ten percent (10%)** on a cumulative basis of the Agreement amount during the Agreement period. Such requests for changes must be made in writing by the Company to the EDO Director. Budget changes in excess of ten percent (10%) must be approved by the Board of County Commissioners.

2. TIME OF PERFORMANCE

The effective date of this Agreement and all rights and duties designated hereunder are contingent upon the timely release of funds for this project under HUD grant number B-06-UC-12-0004. The effective date shall be the date of execution of this Agreement, and the services of the Company shall be undertaken and completed in light of the purposes of this Agreement. In any event, all services required hereunder shall be **completed by the Company by April 1, 2008.**

3. METHOD OF PAYMENT

The County agrees to reimburse the Company for all budgeted costs permitted by Federal, State, and County guidelines. In no event shall the County provide advance funding to the Company or any subcontractor hereunder.

Requests by the Company for reimbursements shall be accompanied by proper documentation of expenditures and should, to the maximum extent possible, be submitted to EDO for approval no later than thirty (30) days after the date of payment by the Company. Payment shall be made by the Palm Beach County Finance Department upon proper presentation of invoices and reports approved by the Company and EDO. Proof of payment and originals of invoices, receipts, or other evidence of indebtedness shall be considered proper documentation. When original documents cannot be presented, the Company must adequately justify their absence, in writing, and furnish copies. Invoices will not be honored if received by the Palm Beach County Economic Development Office later than forty-five (45) days after the expiration date of this Agreement, nor will any invoices be honored that predate the effective date of this Agreement. Each invoice submitted to EDO for reimbursement must be submitted using the Letterhead Stationary format as identified in Appendix B.

4. CONDITIONS ON WHICH PAYMENT IS CONTINGENT

(1) IMPLEMENTATION OF PROJECT ACCORDING TO REQUIRED PROCEDURES

The Company shall implement this Agreement in accordance with applicable Federal, State, and County laws, ordinances and codes, and amendments and additions thereto as may from time to time be made. The Federal, State, and County laws, ordinances and codes are minimal regulations which may be supplemented by more restrictive guidelines set forth by EDO. No reimbursements will be made without evidence of the appropriate insurance required by this Agreement on file with EDO. No payments for multi-funded projects will be made until a cost allocation plan has been approved by the EDO Director or designee.

Should a project receive additional funding after the commencement of this Agreement, **the Company shall notify EDO in writing within thirty (30) days of receiving notification from the funding source and submit a cost allocation plan for approval by the EDO Director or designee within forty-five (45) days of said notification.**

(2) FINANCIAL ACCOUNTABILITY

The County may have a financial systems analysis and/or an audit of the Company or any of its subcontractors performed by an independent auditing firm employed by the County or by the County Internal Audit Department at any time the County deems necessary to

determine if the project is being managed in accordance with Federal, State, and County requirements.

(3) **SUBCONTRACTS**

Any work or services subcontracted hereunder shall be specifically by written contract, written agreement, or purchase order and shall be subject to each provision of this Agreement. Proper documentation in accordance with County, State, and Federal guidelines and regulations must be submitted by the Company to EDO and approved by EDO prior to execution of any subcontract hereunder. In addition, all subcontracts shall be subject to Federal, State, and County laws and regulations. This includes ensuring that all consultant Agreements and fee schedules meet the minimum standards as established by the Palm Beach County Engineering Department and U.S. HUD. Agreements for architecture, engineering, survey, and planning shall be negotiated fixed fee Agreements. All additional services shall have prior written approval with support documentation detailing categories of persons performing work plus hourly rates including benefits, number of drawings required, and all items that justify the "Fixed Fee Agreement." Reimbursables will be at cost.

None of the work or services covered by this Agreement, including but not limited to consultant work or services, shall be subcontracted or reimbursed without prior written approval of the EDO Director or his designee.

(4) **PURCHASING**

All purchases of goods and services, including capital equipment, shall be made by purchase order or by a written Agreement. Each business will be required to secure up to three (3) qualified quotes for goods and services (*if goods and services include equipment, each piece of equipment will require 3 separate quotes*). The business must inform EDO in writing (*and include the purchase order or written agreement*) for the vendor selected. The purchase order or written agreement must include the name / type of goods or services purchased and all costs associated with the purchase.

(5) **REPORTS, AUDITS, AND EVALUATIONS**

Payment will be contingent upon receipt of complete and accurate reports required by this Agreement, including the resolution of monitoring or audit findings identified pursuant to this Agreement.

(6) **ADDITIONAL COUNTY AND U.S. HUD REQUIREMENTS**

The State or Federal funds being provided hereunder cannot be used as a match for other State or Federal grants to the Company and the Company cannot submit requests for the same expenses to more than one funding source or under more than one program.

EDO shall have the right under this Agreement to suspend or terminate payments until the Company complies with any additional conditions that may be imposed by the County or U.S. HUD.

(7) **PRIOR WRITTEN APPROVALS-SUMMARY**

The following includes but is not limited to activities that require the prior written approval of the EDO Director or his designee to be eligible for reimbursement or payment:

- (a) All subcontracts and agreements pursuant to this Agreement;
- (b) All capital equipment expenditures of \$1,000 or more;
- (c) All out-of-town travel; (travel shall be reimbursed in accordance with Florida Statutes, Chapter 112.061);
- (d) All change orders;
- (e) Requests to utilize uncommitted funds after the expiration of this agreement for programs described in Exhibit A; and
- (f) All rates of pay and pay increases paid from funds provided hereunder, whether for merit or cost of living.

**PART IV
GENERAL CONDITIONS**

1. **OPPORTUNITIES FOR RESIDENTS AND CIVIL RIGHTS COMPLIANCE**

The Company agrees that no person shall on the ground of race, color, national origin, religion, disability, age, familial status, sex or sexual orientation be excluded from the benefits of, or be subjected to discrimination under any activity carried out by the performance of this Agreement. Upon receipt of evidence of such discrimination, the County shall have the right to terminate this Agreement. To the greatest extent feasible, lower-income residents of the project areas shall be

given opportunities for training and employment; and to the greatest extent feasible eligible business concerns located in or owned in substantial part by persons residing in the project areas shall be awarded Agreements in connection with the project. At a minimum, the Company shall comply with the Section 3 Clause of the Housing and Community Development Act of 1968, as amended.

2. OPPORTUNITIES FOR SMALL AND MINORITY/WOMEN-OWNED BUSINESS ENTERPRISES

In the procurement of supplies, equipment, construction, or services to implement this Agreement, the Company shall make a positive effort to utilize small business and minority/women-owned business enterprises of supplies and services, and provide these sources the maximum feasible opportunity to compete for Agreements to be performed pursuant to this Agreement. To the maximum extent feasible these small business and minority/women-owned business enterprises shall be located in or owned by residents of the areas designated by Palm Beach County in the Annual Consolidated Plan approved by U.S. HUD.

3. PROGRAM BENEFICIARIES

At least fifty-one percent (51%) of the jobs created/retained through this project must be held by, or made available to, low- and moderate-income persons. If the project is located in an entitlement city, as defined by U.S. HUD, or serves beneficiaries countywide, more than 50 percent (50%) of the beneficiaries assisted directly through the use of funds under this Agreement must reside in unincorporated Palm Beach County or in municipalities participating in the County's Urban County Qualification Program. **The Company shall provide written verification of compliance as described in Exhibit A of this Agreement to EDO upon EDO's request.**

4. EVALUATION AND MONITORING

The Company agrees that EDO will carry out periodic monitoring and evaluation activities, as determined necessary by EDO or the County, during the term of this Agreement and during the periods of time described in Exhibit A of this Agreement. The Company agrees to furnish upon request to EDO, the County or the County's designees and make copies or transcriptions of such records and information as is determined necessary by EDO or the County. The Company shall submit information and status reports required by EDO, the County or U.S. HUD, at EDO's request, to enable EDO to evaluate said progress and to enable EDO to complete reports required of EDO by U.S. HUD. The Company shall allow EDO or U.S. HUD to monitor the Company on site. Such site visits may be scheduled or unscheduled as determined by EDO or U.S. HUD.

5. AUDITS AND INSPECTIONS

At any time during normal business hours and as often as EDO, the County, U.S. HUD, or the Comptroller General of the United States may deem necessary, the Company shall make available all its records with respect to all matters covered by this Agreement.

6. DATA BECOMES COUNTY PROPERTY

All reports, plans, surveys, information, documents, maps, and other data procedures purchased, developed, prepared, assembled, or completed by the Company for the purpose of this Agreement shall become the property of the County without restriction, reservation, or limitation of their use and shall be made available by the Company at any time upon request by the County or EDO. Upon completion of all work contemplated under this Agreement, copies of all documents and records relating to this Agreement shall be surrendered to EDO if requested. In any event, **the Company shall keep all documents and records for three (3) years** after expiration of this Agreement.

7. INDEMNIFICATION

The Company shall protect, defend, reimburse, indemnify and hold the County, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during performance of the terms of this Agreement or due to the acts or omissions of the Company. The Company's aforesaid indemnity and hold harmless obligation, or portion or applications thereof, shall apply to the fullest extent permitted by law. The Company further agrees to hold the County harmless and will indemnify the County for any funds which the County is obligated to refund the Federal Government arising out of the conduct, any activities and administration of the Company.

8. INSURANCE REQUIREMENT

Unless otherwise specified in this Agreement, the Company shall, at its sole expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverages and limits, including endorsements, as described herein. The requirements contained herein as to types and limits, as well as County's review or acceptance of insurance maintained by the Company are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Company under the Agreement.

(1) COMMERCIAL GENERAL LIABILITY

The Company shall agree to maintain Commercial General Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted by County's Risk Management Department. The Company agrees this coverage shall be provided on a primary basis.

(2) BUSINESS AUTOMOBILE LIABILITY

The Company shall agree to maintain Business Automobile Liability at a limit of liability not less than \$500,000 Each Occurrence for all owned, non-owned and hired automobiles. In the event the Company does not own any automobiles, the Business Auto Liability requirement shall be amended allowing the Company to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. Company agrees this coverage shall be provided on a primary basis.

(3) WORKER'S COMPENSATION & EMPLOYER'S LIABILITY

The Company shall agree to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440. The Company agrees this coverage shall be provided on a primary basis.

(4) INSURANCE COVERING EQUIPMENT

The Company shall agree to maintain insurance coverages against theft, loss, damage, and loss to persons or property in an amount not less than one hundred percent (100%) of the replacement cost of the equipment purchased with funds under this Agreement for a period of ten (10) years. The Company shall agree to be fully responsible for any deductible or self-insured retention and agrees to name the County as a Loss Payee on each policy as its interest may appear in equipment purchased with funds under this Agreement.

(5) ADDITIONAL INSURED

The Company shall agree to endorse the County as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents, c/o Economic Development Office". The Company shall agree that the Additional Insured endorsements provide coverage on a primary basis.

(6) CERTIFICATE OF INSURANCE

The Company shall agree to deliver to the County a certificate(s) of insurance evidencing the required insurance is in full force and effect within thirty (30) calendar days prior to the execution of the Agreement and upon renewal or reduction of any required insurance. A minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage shall be included on the certificate(s).

(7) RIGHT TO REVIEW & ADJUST

The Company shall agree that the County, by and through its Risk Management Department, in cooperation with EDO, reserves the right to periodically review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the life of this Agreement. The County reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

9. CONFLICT OF INTEREST

The Company covenants that no person who presently exercises any functions or responsibilities in connection with the project has any personal financial interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement and that no person having any conflict of interest shall be employed by or subcontracted by the Company. Any possible conflict of interest on the part of the Company or its employees shall be disclosed in writing to EDO provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the statutory requirement that maximum opportunity be provided for employment of and participation of low and moderate-income residents of the project target area.

10. CITIZEN PARTICIPATION

The Company will cooperate with EDO in the implementation of the Citizen Participation Plan by informing project beneficiaries and the community of the activities the Company is undertaking in carrying out the provisions of this Agreement.

11. RECOGNITION

All property purchased or constructed pursuant to this Agreement shall be clearly identified as to funding source. The Company will include a reference to the financial support herein provided by County's EDO in all publicity. In addition, the Company will make a good faith

effort to recognize County's EDO support for all activities made possible with funds made available under this Agreement.

12. AGREEMENT DOCUMENTS

The following documents are herein incorporated by reference and made a part hereof, and shall constitute and be referred to as the Agreement; and all of said documents taken as a whole constitute the Agreement between the parties hereto and are as fully a part of the Agreement as if they were set forth verbatim and at length herein:

- (1) This Agreement, including its Exhibits
- (2) 48 CFR Part 31
- (3) Palm Beach County Purchasing Ordinance
- (4) Palm Beach County's Tangible Property Disposal Ordinance
- (5) Community Development Block Grant Regulations (24 CFR Part 570), as amended
- (6) The Company's Incorporation Certificate
- (7) The Company's Certificates of Insurance and Bonding

The Company shall keep an original of this Agreement, including its Exhibits, and all amendments thereto, on file at its principal office.

13. TERMINATION

In the event of termination, the Company shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Agreement by the Company, and the County may withhold any payment to the Company for set-off purposes until such time as the exact amount of damages due to the County from the Company is determined.

- A. Termination for Cause: If through any cause either party shall fail to fulfill in timely and proper manner its obligations under this Agreement, or if either party shall violate any of the covenants, agreements, or stipulations of this Agreement, either party shall thereupon have the right to terminate this Agreement or suspend payments in whole or part by giving written notice of such termination or suspension of payments and specifying the effective date of termination or suspension. The Company shall repay the full value of this grant, unless otherwise specified by EDO, within thirty (30) days of receiving the termination notice from the County.
- B. Termination Due To Cessation: In the event the grant to the County under Title I of the Housing and Community Development Act of 1974 (as amended) is suspended or terminated, this Agreement shall be suspended or terminated effective on the date U.S. HUD specifies.

In the event the Company ceases to exist, or ceases or suspends its operation for any reason, this Agreement shall be suspended or terminated on the date the County specifies. The determination that the Company has ceased or suspended its operation shall be made solely by the County, and the Company, its successors or assigns in interest agrees to be bound by the County's determination. At the County's sole discretion, pursuant to this Section 13, the Company shall return all funds received through this Agreement to the County within sixty (60) days of receiving the termination notice from the County.
- C. Termination for Convenience of County: The County may terminate this Agreement at any time by giving at least ten (10) working days notice in writing from the County to the Company. If this Agreement is terminated by the County as provided herein, the Company will be paid for allowable services and allowable expenses under Part II of this Agreement until the effective date of termination.
- D. Termination for Convenience of the Company: The Company may terminate this Agreement at any time by giving at least ten (10) working days prior written notice to EDO. If the Company has received funds through this Agreement, the Company shall return all funds to the County prior to the termination of this Agreement.

14. SEVERABILITY OF PROVISIONS

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

15. AMENDMENTS

The County may, at its discretion, amend this Agreement to conform with changes in Federal, State, County, or U.S. HUD guidelines, directives, and objectives. Such amendments shall be incorporated by written amendment as a part of this Agreement and shall be subject to approval of the Palm Beach County Board of County Commissioners. Except as otherwise provided herein, no amendment to this Agreement shall be binding on either party unless in writing, approved by the Board of County Commissioners and signed by both parties.

16. NOTICES

All notices required to be given under this Agreement shall be sufficient when delivered to EDO at its office at 301 N. Olive Avenue, 10th Floor, West Palm Beach, Florida 33401, and to the Company when delivered to its office at the address listed on Page One (1) of this Agreement.

17. INDEPENDENT AGENT AND EMPLOYEES

The Company agrees that, in all matters relating to this Agreement, it will be acting as an independent agent and that its employees are not Palm Beach County employees and are not subject to the County provisions of the law applicable to County employees relative to employment compensation and employee benefits.

18. NO FORFEITURE

The rights of the County under this Agreement shall be cumulative and failure on the part of the County to exercise promptly any rights given hereunder shall not operate to forfeit or waive any of the said rights.

19. PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the Company certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

Florida Department of Management Services, Division of Purchasing
4050 Esplanade Way, Tallahassee, FL 32399-0950
(850) 488-8440

http://dms.myflorida.com/business_operations/state_purchasing/vendor_information

20. COUNTERPARTS OF THE AGREEMENT

This Agreement, consisting of fifteen (15) enumerated pages which include the exhibits referenced herein, shall be executed in three (3) counterparts, each of which shall be deemed to be an original, and such counterparts will constitute one and the same instrument.

21. ENTIRE UNDERSTANDING

This Agreement and its provisions merge any prior Agreements, if any, between the parties hereto and constitutes the entire understanding. The parties hereby acknowledge that there have been and are no representations, warranties, covenants, or undertakings other than those expressly set forth herein.

22. AVAILABILITY OF FUNDS

The COUNTY's obligation to pay under this Agreement is contingent upon annual appropriation for its purpose by the Board of County Commissioners.

23. COUNTY FUNDED PROGRAMS

COUNTY funding can be used to match grants from other non-COUNTY sources; however, the COMPANY cannot submit reimbursement requests for the same expenses to more than one funding source or under more than one COUNTY funded program.

24. JOB CREATION AND JOB MAINTENANCE

In accordance with the Company's use of CDBG funds, all jobs must be created within twelve (12) months based on the following (*see Exhibit "A" for the agreed upon use of funds*):

- a- The date of completion of the facility,
- b- Improvements to a facility, or
- c- Purchase of equipment.

All full time equivalent (FTE) jobs created must be maintained for a period of at least three (3) years. The Economic Development Office will monitor the creation and maintenance of all jobs. When funding infrastructure, land acquisition or physical plant construction with CDBG funds, these activities must begin within twelve (12) months from the effective date of the Agreement. In addition, if CDBG funds are used for infrastructure, land acquisition or physical plant construction, the activity must be completed within twenty-four (24) months from the commencement of the Agreement.

Acquisition, construction and rehabilitation activities which utilize CDBG funds are subject to monitoring for ten (10) years under County policy and will be subject to a "Declaration of Restriction on Use" for the entire monitoring period.

Notice

All notices required in this Agreement shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

**Kevin Johns, Economic Development Director
Economic Development Office
301 North Olive Ave., 10th Floor
West Palm Beach, Florida 33401
Phone (561) 355-3624
Fax (561) 355-6017**

With a copy to:

**Dawn Wynn, Assistant County Attorney
County Attorney's Office
301 N. Olive Ave (6th floor)
West Palm Beach, FL 33401**

If sent to the COMPANY, notices shall be addressed to:

**Clifford Hartman, CEO
531 Southern Boulevard
West Palm Beach, FL 33405
Phone (561) 296-9600
Fax (561) 296-9601**

Entirety of Contractual Agreement

The County and the Company agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

Criminal History Records Check

The Company shall comply with the provisions of Ordinance 2003-030, the Criminal History Records Check Ordinance ("Ordinance"), if Company's employees or subcontractors are required under this contract to enter a "critical facility" (if applicable) as identified in Resolution R-2003-1274. The Company acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although County agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the Company shall be solely responsible for the financial, schedule, and staffing implications associated in complying with Ordinance 2003-030.

Regulations; Licensing Requirements

Company and its subcontractors shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. Company is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida, has made and executed this Agreement on behalf of the COUNTY and the COMPANY has hereunto set its hand and seal the day and year above written.

ATTEST:

Sharon R. Bock, Clerk & Comptroller

**PALM BEACH COUNTY, FLORIDA, A POLITICAL
SUBDIVISION OF THE STATE OF FLORIDA
BOARD OF COUNTY COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

APPROVED AS TO
TERMS AND CONDITIONS:

By: _____
Assistant County Attorney

By: _____
Economic Development Director

COMPANY: Hartman Windows & Doors, LLC

By: _____
COMPANY Representative
Print Name & Title

Signature

Witness Name

Signature

(CORPORATE SEAL)

EXHIBIT "A"

WORK PROGRAM NARRATIVE

I. The COMPANY agrees to:

- A. PURCHASE OF EQUIPMENT AND OTHER APPROVED ITEMS:** Purchase equipment for use in the Company's growth and expansion at 531 Southern Boulevard, West Palm Beach, Florida 33405. The terms of the approval will **allow the business to be reimbursed for the following categories: Acquisition of equipment (*approved equipment list and approximate costs are listed below in PART II of Section A*) and the costs associated with installation of that equipment (*costs not to exceed grant award*)** The County shall file liens on all equipment purchased, in whole or in part, with County funds. Such liens will be filed within one week of the Company being reimbursed by the County for the equipment purchased.

NOTE 1: Please refer to the purchasing requirements on page 3 of this Agreement, located in PART III / Section 4 / #4.

The COMPANY further agrees that EDO shall be the final arbiter on the COMPANY's compliance with the above.

- B. INVENTORY AND MAINTENANCE:** Within seven (7) days of the County reimbursing the Company for the purchase of the equipment, the Company shall provide EDO with a list of said equipment that includes a description of the equipment; serial number or other identification number, if applicable; source of the equipment; acquisition date; purchase price; and location of the equipment. Additionally, the Company will make the equipment available annually for inspection and inventorying by the County and must also provide annually to EDO a report on the condition and use of said equipment. EDO reserves the right to inspect said equipment on site.

The Company shall maintain said equipment at the Company's own cost and expense, in good repair and condition. The Company shall also keep the equipment insured **for the replacement cost of the equipment** against theft, loss, damage, and loss to persons or property.

The provisions of this clause shall survive the expiration of this Agreement.

- C. DISPOSITION:** Disposition of the equipment is subject to prior written approval of the EDO Director or designee. If for any reason the said equipment is not maintained, used for its intended purpose, or kept in a state of good repair and condition, the Company shall repay the full value of this grant, unless otherwise specified by EDO. EDO or its designee reserves the right to make the determination relating to the Company's use and maintenance of any tangible property purchased by or with County funds.
- D. JOB CREATION:** Subsequent to the effective date of this Agreement and within one (1) year of the completion of the activity, **the Company shall create ten (10) full-time equivalent jobs, where at least 51% of the jobs will be held by low- and moderate-income persons. (Exhibit C)** A full-time job shall mean employment for a minimum of 2,080 hours per year and for a wage or salary equal to or better than the minimum wage as determined by the U.S. Department of Labor. Low- and moderate-income status is based on the person's income at the time of hire and is not affected by subsequent raises or promotions. Said jobs will include, but may not be limited to, the jobs listed in **Exhibit D**. The Company will register said jobs with and consider applicants referred by the Palm Beach County Workforce Development Alliance.

NOTE 1: In accordance with this grant Agreement, the jobs committed for creation and/or retention cannot be counted or used toward receiving any additional Palm Beach County grants.

- E. SECURITY AGREEMENT:** To secure the grant amount, the Company hereby covenants and agrees for a period of **three (3) years** commencing with the completion of the activity to comply with the Job Creation requirements; **and for a period of ten (10) years to comply** with the equipment use/disposition requirements. If for any reason the Company fails to comply with the Job Creation or the equipment use/disposition requirements, the Company shall repay the full value of this grant, unless otherwise specified by EDO. **The provisions of this clause shall survive the expiration of this Agreement.**

F. REPORTS: The Company shall submit the reports listed below to EDO:

- 1) Semi-Annual reports during the term of this Agreement that describe the status of the activity funded under this Agreement. For the first year, semi-annual reports are due no later than 30 days following the sixth and twelfth month of this Agreement (*by October 31, 2007 and May 1, 2008*). For year two (2) and year three (3), the Company will only submit annual reports (*due by May 1, 2009 and May 1, 2010, respectively*). The Company and County agree that the frequency, type and due dates of all reports are at the sole discretion of the County and can be changed and altered as necessary by County without written amendment to this Agreement.
- 2) Written verification of job creation, satisfactory to EDO at EDO's sole discretion. Verification shall include job title, salary, fringe benefits, full-time equivalency status, name and address of person hired, proof that said person is of low- and moderate-income, and dates of employment. Said written verification shall be provided to EDO at the completion of the activity funded under this Agreement and annually thereafter for a period of **three (3)** years commencing with the completion of the activity. The Record of Hiring Form (**Exhibit E**) must be completed for each employee hired under this Agreement.
- 3) The list of equipment as described in this Agreement and the working condition of each piece of equipment.

II. The COUNTY agrees to:

- A. **Provide up to one hundred thousand dollars (\$100,000)** in funding to purchase the following specialized equipment: **A Record 132 TVN CNC Machining Centre.**
- B. Provide project administration and inspection to the Company to ensure compliance with U.S. HUD, the Department of Labor, and applicable State, Federal and County laws and regulations.
- C. Monitor the Company at any time during the term of this Agreement. Visits may be scheduled or unscheduled as determined by EDO, be conducted by EDO staff or its subcontractors, and will serve to ensure that planned activities are conducted in a timely manner, to verify the accuracy of reporting to EDO on program activities and compliance with U.S. HUD regulations.

EXHIBIT "B"

LETTERHEAD STATIONERY

DATE:

TO: Kevin Johns, Economic Development Director
Economic Development Office
301 North Olive Avenue, 10th Floor
West Palm Beach, Florida 33401

FROM: Hartman Windows and Doors, LLC
531 Southern Boulevard
West Palm Beach, FL 33405
Phone (561) 296-9600

SUBJECT: Reimbursement Request No.-
Contract No.-

=====
Attached, you will find Invoice #____, requesting reimbursement for \$____. _____The expenditures for this invoice covers the period of _____ through _____. You will also find attached, back-up original documentation relating to the expenditures being involved.

Approved for Submission: _____

EXHIBIT "C"

**ANNUAL INCOME LIMITS
FOR
WEST PALM BEACH - BOCA RATON**

Title: HUD Income Limits 2006
Author: U.S. Department of Housing and Urban Development
Date Published: 2006

ANNUAL INCOME LIMITS			
Number of Persons In Household	Very Low Income - 50%	Low Income - 80%	Moderate Income - 120%
1	\$22,550	\$36,050	\$54,100
2	\$25,770	\$41,200	\$61,820
3	\$29,000	\$46,350	\$69,550
4	\$32,200	\$51,500	\$77,280
5	\$34,370	\$55,620	\$83,460
6	\$37,370	\$59,740	\$89,650
7	\$39,950	\$63,860	\$95,830
8	\$42,520	\$68,000	\$102,010
9	\$45,100	\$72,100	\$108,200
10	\$47,700	\$76,220	\$114,370

EXHIBIT "D"

JOB LIST FOR POSITIONS TO BE CREATED

	<u>Job Title</u>	<u># of Employees (to be hired)</u>	<u>Full-Time Equivalency (select one)</u>
1			Full Time or Part Time
2			Full Time or Part Time
3			Full Time or Part Time
4			Full Time or Part Time
5			Full Time or Part Time
6			Full Time or Part Time
7			Full Time or Part Time
8			Full Time or Part Time
9			Full Time or Part Time
10			Full Time or Part Time
11			Full Time or Part Time
12			Full Time or Part Time
13			Full Time or Part Time
14			Full Time or Part Time
15			Full Time or Part Time
16			Full Time or Part Time
17			Full Time or Part Time
18			Full Time or Part Time
19			Full Time or Part Time
20			Full Time or Part Time
21			Full Time or Part Time
22			Full Time or Part Time
23			Full Time or Part Time
24			Full Time or Part Time
25			Full Time or Part Time
26			Full Time or Part Time
27			Full Time or Part Time
28			Full Time or Part Time
29			Full Time or Part Time
30			Full Time or Part Time
31			Full Time or Part Time
32			Full Time or Part Time
33			Full Time or Part Time
34			Full Time or Part Time
35			Full Time or Part Time
36			Full Time or Part Time
37			Full Time or Part Time
38			Full Time or Part Time
39			Full Time or Part Time
40			Full Time or Part Time
41			Full Time or Part Time
42			Full Time or Part Time
43			Full Time or Part Time
44			Full Time or Part Time
45			Full Time or Part Time
46			Full Time or Part Time
47			Full Time or Part Time
48			Full Time or Part Time
49			Full Time or Part Time
50			Full Time or Part Time

EXHIBIT "E"

**Record of Employee Hiring for
Economic Development Compliance**

(Business Name)

Employee Name: _____

Employee Address: _____

Job Title: _____

Salary: _____

Fringe Benefits: _____

Date of Hire: _____ Date of Termination: _____ Still Employed: YES or NO

Income Status at time of Hire: _____

Number of Persons in Household: _____ Family/Household Income: \$ _____

Identify documentation used to establish very-low, low and moderate income status at time of hire. Retain copies of that documentation in company files for **three years** for future County or Federal Audits.

Specify documentation: _____

