

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: April 21, 2009 [X] Consent [ ] Regular  
[ ] Public Hearing

Department: Housing and Community Development

Submitted By: Housing and Community Development

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: A reimbursement to the City of West Palm Beach in the amount of \$76,220 in connection with the 2004 Disaster Recovery Initiative Program.

**Summary:** Approval of this agenda item will reimburse the City of West Palm Beach for expenses already incurred in connection with the Carver Canal storm drainage improvements in the City of West Palm Beach. The City of West Palm Beach entered into a funding Agreement (R2006-0900) with Palm Beach County for this project on June 6, 2006. The Agreement expired on January 31, 2008. The \$76,220, payment could not be reimbursed in accord with the Agreement until the contractor completed his compliance with the Federally mandated Davis-Bacon Act relating to the payment of wages to workers on the project. Davis-Bacon Act requirements have been addressed thereby enabling this reimbursement. These are Federal CDBG funds that require no local match. (District 7) (TKF)

**Background and Justification:** On June 6, 2006, the County entered into an Agreement (R2006-0990) with the City of West Palm Beach to provide \$970,000, in CDBG funding. To date, the County has expended/reimbursed the City of West Palm Beach \$893,780 for construction costs incurred under the Agreement. The construction contract amount for this work is \$1,457,341. After the requested reimbursement is made, the County will have funded the City of West Palm Beach a total of \$970,000. The City has paid all costs above the \$970,000 allocated by the County for these costs. The 2004 Disaster Recovery Initiative Program is being implemented by the State of Florida to provide for disaster relief, long term recovery, and mitigation directly related to the effects of Hurricanes Charley, Frances, Ivan, and Jeanne. The program is funded under the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act of 2005.

**Attachments:**

1. Amendment No.001 to the Agreement with the City of West Palm Beach.
2. Agreement (R2006-0990) with the City of West Palm Beach, with exhibits A to D.

Recommended by: Edward R. Fournier Date: 3/27/09  
Department Director

Approved By: Sharon G. B. B. Date: 4/13/09  
Assistant County Administrator

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures					
Grants + Aids	\$76,220				
External Revenues	< \$76,220 >				
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	0				

# ADDITIONAL FTE POSITIONS (Cumulative)	-0-				
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Is Item Included In Current Budget? Yes XX No       
 Budget Account No.:

Fund 1106 Dept 143 Unit 1442 Object 8101 Program Code/Period DRI027-GY05

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

**Approval of this agenda item will reimburse the City of West Palm Beach \$76,220 for the Carver Canal storm drainage improvements.**

C. Departmental Fiscal Review: Shy 3:30-09  
 Shairette Major, Fiscal Manager I

## III. REVIEW COMMENTS

### A. OFMB Fiscal and/or Contract Development and Control Comments:

OFMB 4-7-09  
4/10/09 CN 3/31/09 5P 4/2/09

Contract Development and Control 4/18/09

### B. Legal Sufficiency:

4/13/09  
 Senior Assistant County Attorney

### C. Other Department Review:

\_\_\_\_\_  
 Department Director

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

**AMENDMENT 001 TO THE AGREEMENT  
WITH  
CITY OF WEST PALM BEACH**

Amendment 001 entered into this \_\_\_\_ day of SEP 11 2007, 20\_\_\_\_, by and between Palm Beach County and the City of West Palm Beach.

**WITNESSETH:**

WHEREAS, Palm Beach County entered into an Agreement (R2006-0990) with the City of West Palm Beach, on June 6, 2006, to provide \$970,000 of Community Development Block Grant funds for storm drainage improvements; and

WHEREAS, the parties wish to modify the Agreement to extend the project completion date, and

WHEREAS, both parties mutually agree that the original Agreement entered into on June 6, 2006, is hereby amended as follows:

**A. Part III - Section 1 - Maximum Compensation:**

Substitute "January 31, 2008" for "July 30, 2007".

**B. Part III - Section 2 - Time of Performance:**

After "06DB-3C-10-60-01-W26", add "and any amendments thereto. If funds cease to be available under said Contract, the County shall be relieved from providing funds under this Agreement.", and substitute "January 31, 2008" for "July 30, 2007".

**C. Exhibit A - Section I.B - Project Scope:**

Delete the contents of this section and replace them with the following: "The time frame for completion of the outlined activities shall be January 31, 2008".

NOW THEREFORE, all items in the previous Agreement in conflict with this Amendment shall be and are hereby changed to conform to this Amendment.

All provisions not in conflict with this aforementioned Amendment are still in effect and shall be performed at the same level as specified in the Agreement.

(MUNICIPALITY SEAL)

**CITY OF WEST PALM BEACH**

BY: \_\_\_\_\_

Lois J. Frankel, Mayor

BY: \_\_\_\_\_

Blane Kauthen, City Clerk

(COUNTY SEAL)

**PALM BEACH COUNTY, FLORIDA, a  
Political Subdivision of the State of Florida**

**BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_

Addie L. Greene, Chairperson  
Board of County Commissioners

ATTEST: Sharon R. Bock,  
Clerk & Comptroller

By: \_\_\_\_\_

Deputy Clerk

Document No.: R2007 1523

Approved as to Form and  
Legal Sufficiency

By: \_\_\_\_\_

Tammy K. Fields  
Senior Assistant County Attorney

Approved as to Terms and Conditions  
Dept. of Housing and Community Development

By: \_\_\_\_\_

Amin Houry, Manager  
Housing and Capital Improvements

R2006 0990

AGREEMENT BETWEEN PALM BEACH COUNTY

AND

CITY OF WEST PALM BEACH

**THIS AGREEMENT**, entered into this \_\_\_\_\_ day of JUN 06 2006, 2006, by and between Palm Beach County, a political subdivision of the State of Florida, and the City of West Palm Beach, a municipality duly organized and existing by virtue of the laws of the State of Florida, having its principal office at 200 2<sup>nd</sup> Street, West Palm Beach, Florida 33402.

**WHEREAS**, Palm Beach County has entered into a Contract (number 06DB-3C-10-60-01-W26) with the State of Florida, Department of Community Affairs, in connection with the State's Disaster Recovery Initiative Program which the State is implementing for the use of grant funds provided by the United States Department of Housing and Urban Development under its Community Development Block Grant Program; and

**WHEREAS**, the City of West Palm Beach was allocated certain funds under said Contract to implement specified activities under the Disaster Recovery Initiative Program; and

**WHEREAS**, Palm Beach County desires to engage the City of West Palm Beach to implement the activities associated with the funds allocated to it.

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

**PART I**

DEFINITIONS, PURPOSE AND APPLICABLE CONDITIONS

1. DEFINITIONS

- (1) "County" means Palm Beach County.
- (2) "CDBG" means the Community Development Block Grant Program of the United States Department of Housing and Urban Development.
- (3) "HCD" means Palm Beach County Housing and Community Development.
- (4) "Municipality" means the City of West Palm Beach.
- (5) "State" means the State of Florida, Department of Community Affairs.
- (6) "Contract" means contract number 06DB-3C-10-60-01-W26 between Palm Beach County and the State of Florida, Department of Community Affairs.
- (7) "HCD Approval" means the written approval of the HCD Director or his designee.
- (8) "U.S. HUD" means the Secretary of Housing and Urban Development or a person authorized to act on its behalf.

2. PURPOSE

The purpose of this Agreement is to state the covenants and conditions under which the Municipality will implement the Scope of Services set forth in Part II of this Agreement.

3. APPLICABLE CONDITIONS

The Municipality shall be bound by the Contract to the extent applicable to this Agreement. Furthermore, the conditions applicable to the activities undertaken in connection with this Agreement shall include but not be limited to those listed below (as they may be amended from time to time). Palm Beach County's failure to list verbatim or make reference to a regulation, statute, ordinance, reference, or any other document affecting the Municipality, shall not relieve the Municipality of compliance with any applicable regulation, statute, ordinance, or any other document not listed below. The County reserves the right, but not the obligation, to inform the Municipality of any such applicable regulation, statute, ordinance, or any other document, and to require the Municipality to comply with the same.

1. Community Development Block Grant, Final Rule, 24 C.F.R., Part 570;
2. Florida Small and Minority Business Act, s 288.702-288.714, F.S.;
3. Florida Coastal Zone Protection Act, s 161.52-161.58, F.S.;
4. Local Government Comprehensive Planning and Land Development Regulation Act, Ch. 163, F.S.;
5. Title I of the Housing and Community Development Act of 1974, as amended;
6. Treasury Circular 1075 regarding drawdown of CDBG funds;
7. Sections 290.0401-290.049, F.S.;
8. Rule Chapter 9B-43, Fla Admin. Code.;
9. Department of Community Affairs Technical Memorandums;
10. HUD Circular Memorandums applicable to the Small Cities CDBG Program;
11. Single Audit Act of 1984;
12. National Environmental Policy Act of 1969 and other provisions of law which further the purpose of this Act;
13. National Historic Preservation Act of 1966 (Public Law 89-665) as amended and Protection of Historic Properties (24 C.F.R., part 800);
14. Preservation of Archaeological and Historical Data Act of 1966;
15. Executive Order 11593 - Protection and Enhancement of Cultural Environment;
16. Reservoir Salvage Act;
17. Safe Drinking Water Act of 1974, as amended;
18. Endangered Species Act of 1958, as amended;
19. Executive Order 12898 - Environmental Justice
20. Executive Order 11988 and 24 C.F.R. Part 55- Floodplain Management;
21. The Federal Water Pollution Control Act of 1972, as amended (33 U.S.C., s 1251 et. seq.);
22. Executive Order 11990 - Protection of Wetlands;
23. Coastal Zone Management Act of 1968, as amended;
24. Wild and Scenic Rivers Act of 1968, as amended;
25. Clean Air Act of 1977;
26. HUD Environmental Standards (24 C.F.R. Part 58);
27. Farmland Protection Policy Act of 1981;
28. Clean Water Act of 1977;
29. Davis - Bacon Act;
30. Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. s. 327 et. seq.;
31. The Wildlife Coordination Act of 1958, as amended;
32. The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1975 (42 U.S.C., s. 6901 et. seq.;
33. Noise Abatement and Control: Departmental Policy Implementation, Responsibilities and Standards, 24 C.F.R. Part 51, Subpart B;
34. Flood Disaster Protection Act of 1973, P.L. 92-234;
35. Protection of Historic and Cultural Properties under HUD Programs, 24 C.F.R. Part 59;
36. Coastal Zone Management Act of 1972, P.L. 92-583;
37. Architectural and Construction Standards;
38. Architectural Barriers Act of 1968, 42 U.S.C. 4151;
39. Executive Order 11296, relating to the evaluation of flood hazards;
40. Executive Order 11288, relating to prevention, control and abatement of water pollution;
41. Cost-Effective Energy Conservation Standards, 24 C.F.R., Part 39;
42. Section 8 Existing Housing Quality Standards, 24 C.F.R., Part 882;
43. Coastal Barrier Resource Act of 1982;
44. Federal Fair Labor Standards Act, 29 U.S.C. s. 201 et. seq.;
45. Title VI of the Civil Rights Act of 1964 - Non-discrimination;
46. Title VII of the Civil Rights Act of 1968 - Non-discrimination in housing;
47. Age Discrimination Act of 1975;
48. Executive Order 12892 - Fair Housing;
49. Section 109 of the Housing and Community Development Act of 1974, Non-discrimination;
50. Section 504 of the Rehabilitation Act of 1973 and 24 C.F.R., Part 8;
51. Executive Order 11063 - Equal Opportunity in Housing;
52. Executive Order 11246 - Non-discrimination;
53. Section 3 of the Housing and Urban Development Act of 1968, as amended - Employment /Training of Lower Income Residents and Local Business Contracting;
54. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 100-17, and 49 C.F.R. Part 24;
55. Copeland Anti-Kickback Act of 1924;
56. Hatch Act;
57. Title IV Lead-Based Paint Poisoning Prevention Act (42 U.S.C. s. 1251 et. seq.);
58. OMB Circulars A-87, A-122 and A-133, as revised;
59. Administrative Requirements for Grants, 24 C.F.R. Part 85;
60. Section 102 of the Department of Housing and Urban Development Reform Act of 1989 and 24 C.F.R. Part 12;
61. Emergency Rule 9BER05-2, CDBG Disaster Recovery Funds;
62. HUD program requirements for disaster recovery projects as published in Federal Register, Vol. 69, No. 237 (December 10, 2004) [Docket No. FR-4959 - N-01].

PART II

SCOPE OF SERVICES

The Municipality shall, in a satisfactory and proper manner as determined by HCD, perform the tasks necessary to conduct the program outlined in Exhibit "A" as attached hereto and made a part hereof.

PART III

COMPENSATION, TIME OF PERFORMANCE, METHOD, AND CONDITIONS OF PAYMENT

1. MAXIMUM COMPENSATION

The Municipality agrees to accept as full payment for services rendered pursuant to this Agreement the actual amount of budgeted, eligible, and HCD Director or designee-approved expenditures and encumbrances made by the Municipality under this Agreement, which shall not be unreasonably withheld. Said services shall be performed in a manner satisfactory to HCD. In no event shall the total compensation or reimbursement to be paid hereunder exceed the maximum and total authorized sum of \$970,000 (as more specifically detailed in Exhibit A hereto) for the period of April 18, 2006 through and including July 30, 2007. Any funds not obligated by the expiration date of this Agreement shall automatically revert to the County.

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 State Contract number 06DB-3C-10-60-01-W26. The effective date shall be the date of execution of this Agreement, and the services of the Municipality 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 Municipality prior to July 30, 2007.

3. METHOD OF PAYMENT

The County agrees to make payments and to reimburse the Municipality for all budgeted costs permitted by Federal, State, and County guidelines. The Municipality shall not request reimbursement for payments made by the Municipality before the effective date of this Agreement, nor shall it request reimbursement for payments made after the expiration date of this Agreement, and in no event shall the County provide advance funding to the Municipality or any subcontractors hereunder.

The Municipality shall request payments or reimbursements from the County by submitting to HCD proper documentation of expenditures consisting of originals of invoices, receipts, or other evidence of indebtedness, and when original documents cannot be presented, the Municipality may furnish copies if deemed acceptable by HCD. Payment shall be made by the Palm Beach County Finance Department upon presentation of the aforesaid proper documentation of expenditures as approved by HCD.

The Municipality may at any time after the expiration of this agreement request from the County reimbursement for payments made by the Municipality during the term of this Agreement by submitting to HCD the aforesaid proper documentation of expenditures, and the Palm Beach County Finance Department shall make payment as stated above, provided that HCD has determined that the funds allocated to the Municipality through this agreement are still available for payment, and provided that HCD approves such payment.

4. CONDITIONS ON WHICH PAYMENT IS CONTINGENT

(1) IMPLEMENTATION OF PROJECT ACCORDING TO REQUIRED PROCEDURES

The Municipality shall implement this Agreement in accordance with applicable Federal, State, and County laws, ordinances and codes and with the procedures outlined in HCD Policies and Procedures memoranda. The Federal, State, and County laws, ordinances and codes are minimal regulations supplemented by more restrictive guidelines set forth by HCD. No payments for projects funded by more than one funding source will be made until a cost allocation plan has been approved by the HCD Director or designee.

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

(2) FINANCIAL ACCOUNTABILITY

The County may have a financial systems analysis and/or an audit of the Municipality, or of any of its subcontractors, 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. All subcontracts shall be submitted by the Municipality to HCD and approved by HCD prior to execution of any subcontract hereunder. All subcontracts shall be subject to Federal, State and County laws and regulations. This includes ensuring that all consultant contracts and fee schedules meet the minimum standards as established by the Palm Beach County Engineering Department and U.S. HUD. Contracts for architecture, engineering, survey, and planning shall be fixed fee contracts.

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 Contract." 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 HCD Director or his designee.

(4) PURCHASING

All purchasing for services and goods, including capital equipment, shall be made by purchase order or by a written contract and in conformity with the procedures prescribed by the Palm Beach County Purchasing Ordinance, as well as Federal Management Circulars A-87, A-102, A-128, and 24CFR Part 85 (also known as the Common Rule), which are incorporated herein by reference.

(5) REPORTS, AUDITS, AND EVALUATIONS

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

(6) ADDITIONAL HCD, COUNTY, AND U.S. HUD REQUIREMENTS

HCD shall have the right under this Agreement to suspend or terminate payments if after 15 days written notice the Municipality has not complied with any additional conditions that may be imposed, at any time, by HCD, the County, the State, or U.S. HUD.

(7) PRIOR WRITTEN APPROVALS-SUMMARY

The following activities among others require the prior written approval of the HCD Director or designee to be eligible for reimbursement or payment:

- (a) All subcontracts and agreements pursuant to this Agreement;
- (b) All change orders;
- (c) All requests to utilize uncommitted funds after the expiration of this Agreement for programs described in Exhibit A.

(8) PROGRAM-GENERATED INCOME

All income earned by the Municipality from activities financed in whole or in part by funds provided hereunder must be reported to HCD. Such income would include, but not be limited to, income from service fees, sale of commodities, and rental or usage fees. The Municipality shall report its plan to utilize such income to HCD, and said plan shall require the prior written approval of the HCD Director or designee. Accounting and disbursement of such income shall comply with OMB Circular A-110 and other applicable regulations incorporated herein by reference.

In addition to the foregoing, Program Income, as defined by 24 CFR 570.500(a), may be retained by the Municipality. Program Income shall be utilized to undertake activities specified in Exhibit A of this Agreement, and all provisions of this Agreement shall apply to said activities. Any Program Income on hand at, or received after, the expiration of this Agreement shall be returned to the County.

## PART IV

GENERAL CONDITIONS1. OPPORTUNITIES FOR RESIDENTS AND CIVIL RIGHTS COMPLIANCE

The Municipality agrees that no person shall on the ground of race, color, disability, national origin, religion, age, financial status, or sex 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 feasible extent eligible business concerns located in or owned in substantial part by persons residing in the project areas shall be awarded contracts in connection with the project. The Municipality shall comply with the Section 3 Clause of the Housing and Community Development Act of 1968.

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

In the procurement of supplies, equipment, construction, or services to implement this Agreement, the Municipality 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 contracts 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 CDBG areas designated by Palm Beach County in the CDBG Annual Consolidated Plan approved by U.S. HUD.

3. PROGRAM BENEFICIARIES

At least fifty-one percent (51%) of the beneficiaries of a project funded through this Agreement must be low- and moderate- income persons. The project funded under this Agreement shall assist beneficiaries as defined above for the time period designated in this Agreement. The Municipality shall provide written verification of compliance to HCD upon HCD's request.

4. EVALUATION AND MONITORING

The Municipality agrees that HCD will carry out periodic monitoring and evaluation activities as determined necessary by HCD or the County and that payment, reimbursement, or the continuation of this Agreement is dependent upon satisfactory evaluation conclusions based on the terms of this Agreement. The Municipality agrees to furnish upon request to HCD, the County, or the County's designees copies of transcriptions of such records and information as is determined necessary by HCD or the County. The Municipality shall submit status reports required under this Agreement on forms approved by HCD to enable HCD to evaluate progress. The Municipality shall provide information as requested by HCD to enable HCD to complete reports required by the County or HUD. The Municipality shall allow HCD, the County, the State, or HUD to monitor the Municipality on site. Such visits may be scheduled or unscheduled as determined by HCD, the State, or HUD.

5. AUDITS AND INSPECTIONS

At any time during normal business hours and as often as HCD, the County, the State, U.S. HUD, or the Comptroller General of the United States may deem necessary, there shall be made available by the Municipality to HCD, the County, the State, U.S. HUD, or the Comptroller General for examination all its records with respect to all matters covered by this Agreement.

The Municipality agrees to comply with the provisions of the Single Audit Act of 1984, as amended, as it pertains to this Agreement. The Municipality shall submit a single audit, including any management letter, made in accordance with the general program requirements of OMB Circulars A-87, A-102, A-133, and other applicable regulations within one hundred and eighty (180) days after the end of any fiscal year covered by this Agreement in which Federal funds from all sources are expended. Said audit shall be made by a Certified Public Accountant of the Municipality's choosing, subject to the County's approval. In the event the Municipality anticipates a delay in producing such audit or audited financial statements, the Municipality shall request an extension in advance of the deadline. The cost of said audit shall be borne by the Municipality. In the event the Municipality is exempt from having an audit conducted under A-133, the Municipality shall submit audited financial statements and/or the County reserves the right to conduct a "limited scope audit" of the Municipality as defined by A-133. The County will be responsible for providing technical assistance to the Municipality, as deemed necessary by the County.



6. DATA BECOMES COUNTY PROPERTY

All reports, plans, surveys, information, documents, maps, and other data procedures developed, prepared, assembled, or completed by the Municipality for the purpose of this Agreement shall be made available to the County by the Municipality at any time upon request by the County or HCD. Upon completion of all work contemplated under this Agreement copies of all documents and records relating to this Agreement shall be surrendered to HCD if requested. In any event the Municipality shall keep all documents and records for five (5) years after expiration of this Agreement.

7. INDEMNIFICATION

Each party to this Agreement shall be liable for its own actions and negligence and, to the extent permitted by law, the County shall indemnify, defend, and hold harmless the Municipality against any actions, claims, or damages arising out of the County's negligence in connection with this Agreement, and the Municipality shall indemnify, defend, and hold harmless the County against any actions, claims, or damages arising out of the Municipality's negligence in connection with this Agreement. The Municipality shall also hold the State harmless against all claims of whatever nature arising out of the Municipality's performance of work under this Agreement, to extent allowed and required by law. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statute, section 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions. The Municipality shall hold the County harmless and shall indemnify the County for funds which the County is obligated to refund the State or the Federal Government arising out of the conduct of activities and administration of the Municipality. The provisions of this indemnification clause shall survive the termination of this Agreement.

8. INSURANCE

Without waiving the right to sovereign immunity as provided by Florida Statute, Chapter 768.28, the Municipality reserves the right to self-insure for General Liability and Automobile Liability under Florida's sovereign immunity statute with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. In the event the Municipality maintains Commercial General Liability or Business Auto Liability, the Municipality agrees to maintain said insurance policies at limits not less than \$100,000 Per Person and \$200,000 Per Occurrence. The Municipality agrees to endorse Palm Beach County Board of County Commissioners as an "Additional Insured" to the Commercial General Liability, but only with respect to negligence other than County's negligence arising out of this project or Agreement. **This paragraph does not apply to liability policies which afford only indemnity based claims-bill coverage.**

The Municipality agrees to maintain, or self-insure, Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute, Chapter 440.

The Municipality agrees to provide a statement, or Certificate of Insurance, evidencing insurance or self-insurance for the above required coverages, which the Municipality shall deliver to HCD at its office at 3323 Belvedere Road, Building 501, West Palm Beach, Florida 33406. The Municipality agrees its self-insurance or insurance shall be primary as respects to any coverage afforded to or maintained by County.

The Municipality agrees compliance with the foregoing insurance requirements is not intended to nor construed to relieve the Municipality of its liability and obligations under this Agreement.

9. MAINTENANCE OF EFFORT

The intent and purpose of this Agreement is to increase the availability of the Municipality's services. This Agreement is not to substitute for or replace existing or planned projects or activities of the Municipality. The Municipality agrees to maintain a level of activities and expenditures, planned or existing, for projects similar to those being assisted under this Agreement which is not less than that level existing prior to this Agreement.

10. CONFLICT OF INTEREST

The Municipality covenants that no person who presently exercises any functions or responsibilities in connection with the Project, has any personal financial interest, direct or indirect, in the target areas or any parcels therein, 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 Municipality. Any possible conflict of interest on the part of the Municipality or its employees shall be disclosed in writing to HCD 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 area.

11. CITIZEN PARTICIPATION

The Municipality shall cooperate with HCD in the implementation of the Citizen Participation Plan by establishing a citizen participation process to keep residents informed of the activities the Municipality is undertaking in carrying out the provisions of this Agreement. Representatives of the Municipality shall attend meetings and assist HCD in the implementation of the Citizen Participation Plan, as requested by HCD.

12. RECOGNITION

All facilities purchased or constructed pursuant to this Agreement shall be clearly identified as to funding source. The Municipality will include a reference to the financial support herein provided by HCD in all publications and publicity. In addition, the Municipality will make a good faith effort to recognize HCD's support for all activities made possible with funds made available under this Agreement.

13. 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) Office of Management and Budget Circulars A-87, A-102, A-133, and 24CFR Part 85;
- (3) Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Title II of the Americans with Disabilities Act of 1990;
- (4) Executive Orders 11246, 11478, 11625, 12432, the Davis Bacon Act, and Section 3 of the Housing and Community Development Act of 1968, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended;
- (5) Executive Orders 11063, 12259, 12892, the Fair Housing Act of 1988, and Section 109 of the Housing and Community Development Act of 1974, as amended;
- (6) Florida Statutes, Chapter 112;
- (7) Palm Beach County Purchasing Ordinance;
- (8) Federal Community Development Block Grant Regulations (24 CFR Part 570), as amended;
- (9) The Municipality's personnel policies and job descriptions; and
- (10) The Municipality's Certificate of Insurance.
- (11) Contract number 06DB-3C-10-60-01-W26 between Palm Beach County and the State of Florida, Department of Community Affairs.

All of these documents will be maintained on file at HCD. The Municipality shall keep an original of this Agreement, including its Exhibits, and all amendments thereto, on file at its principal office.

14. TERMINATION

In event of termination for any of the following reasons, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports prepared, and capital equipment secured by the Municipality with funds under this Agreement shall be returned to HCD or the County.

In the event of termination, the Municipality 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 Municipality, and the County may withhold any payment to the Municipality for set-off purposes until such time as the exact amount of damages due to the County from the Municipality is determined.

(1) TERMINATION FOR CAUSE

If through any cause either party shall fail to fulfill in a 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 in whole or part by giving a fifteen (15) working day written notice of such termination to the other party and specifying therein the effective date of termination.

(2) TERMINATION DUE TO CESSATION

In the event the grant to the County under the Contract is suspended or terminated, this Agreement shall be suspended or terminated effective on the date the State specifies.

15. 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.

16. AMENDMENTS

The County may, at its discretion, amend this Agreement to conform with changes required by 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 the governing body of the Municipality, and signed by both parties.

17. NOTICES

All notices required to be given under this Agreement shall be sufficient when delivered to HCD at its office at 3323 Belvedere Road, Building 501, West Palm Beach, Florida 33406, and to the Municipality when delivered to its address on page one (1) of this Agreement.

18. INDEPENDENT AGENT AND EMPLOYEES

The Municipality 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, hours of work, rates of compensation, leave, unemployment compensation and employee benefits.

19. 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.

20. PUBLIC ENTITY CRIMES

As provided in F.S. 287.133 by entering into this Agreement or performing any work in furtherance hereof, the Municipality 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 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133 (3)(a).

21. COUNTERPARTS OF THE AGREEMENT

This Agreement, consisting of eighteen (18) 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. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.

THIS SPACE LEFT BLANK INTENTIONALLY

CITY OF WEST PALM BEACH

22. 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.

WITNESS our Hands and Seals on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(MUNICIPALITY SEAL)

CITY OF WEST PALM BEACH

BY:   
Lois J. Frankel, Mayor

By:   
Blane Kauthen, City Clerk


BY:  4/10/06  
Attorney for Municipality  
(Signature Optional)

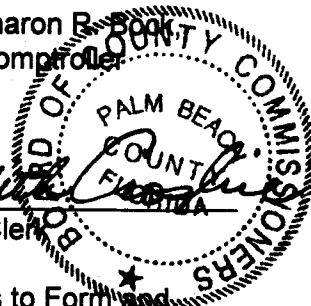
(COUNTY SEAL)

PALM BEACH COUNTY, FLORIDA, a  
Political Subdivision of the State of Florida

BOARD OF COUNTY COMMISSIONERS

ATTEST: Sharon R. Book  
Clerk and Comptroller

By:   
Deputy Clerk



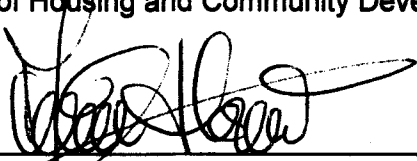
Approved as to Form and  
Legal Sufficiency

By:   
Tammy K. Fields  
Senior Assistant County Attorney

By:   
Tony Masilotti, Chairman  
Board of County Commissioners

Document No.: **R2006 0990**  
JUN 06 2006

Approved as to Terms and Conditions  
Dept. of Housing and Community Development

By:   
Amin Houry, Manager  
Housing and Capital Improvements

**EXHIBIT A**  
**WORK PROGRAM NARRATIVE**

**I. THE MUNICIPALITY AGREES TO:**

- A. **PROFESSIONAL SERVICES:** The Municipality shall, at its own expense, secure the services of a Florida professional engineer for this project to provide design services to create plans and specifications for the below described storm drainage improvements benefitting the Carver Canal drainage basin in the City of West Palm Beach. Said engineer shall also prepare, obtain and review bids, prepare contract documents, inspect work in progress, recommend payment to contractor and provide other professional services customarily provided by similar professionals. The engineer shall also coordinate the design and construction work with the asbestos abatement contractor, should such abatement become necessary. The Municipality's engineer for this project shall also provide the below described certification upon completion of the project.

The Municipality shall also secure the services of surveyors, testing services, or others as deemed necessary for the nature of the project.

- B. **PROJECT SCOPE :** The scope of this project, subject to funding availability, shall include all work necessary to construct the Carver Canal Storm Water Improvement Project including mobilization, demobilization, dewatering, shoring/sheeting, maintenance of traffic (M.O.T.), headwalls/endwalls, storm water pipes, canal excavation, pavement removal and restoration, demolition and installation of curbs, gutters and sidewalks, pavement marking and signage, bank regrading/restoration, sodding and/or seeding, and any and all required drainage appurtenances for the benefit of the Carver Canal drainage basin bounded by Sapodilla Avenue on the east, Australian Avenue on the west, 15th Street on the north, and 7th Street on the south, in the City of West Palm Beach.

NOTE 1: The Municipality shall submit its bid package and drawings/specifications to HCD and obtain a letter of approval prior to bidding the construction work. The Municipality recognizes that HCD must obtain the approval of the State before it is able to provide such letter, and the Municipality hereby covenants that it shall plan its bid process to allow for the necessary time to fully accomplish this approval process.

NOTE 2: Construction work that has been approved for bidding by HCD shall be advertised for bid for a period of not less than twelve (12) days.

NOTE 3: The Municipality shall prioritize the work in the project, and shall bid such work in a manner that would allow the receipt of itemized costs from bidders which would then allow the award of items that can be funded by the budget provided that the extent of work awarded will result in a functioning facility in the opinion of HCD.

NOTE 4: The Municipality shall not award the construction contract for the project until sufficient funding is available to complete the established scope of work. All construction work shall be included in one contract. The Municipality shall obtain HCD approval prior to awarding the construction contract to be funded through this Agreement. The Municipality recognizes that HCD must obtain the approval of the State before HCD is able to approve the award of the construction contract, and the Municipality hereby covenants that it shall plan its contract award process to allow for the necessary time to fully accomplish this approval process. After awarding such contract, the Municipality shall obtain HCD approval prior to executing any change orders to such contract. Furthermore, after awarding the construction contract, the Municipality shall provide HCD with a copy of the executed contract, and within thirty (30) days from the execution of the construction contract, the Municipality shall provide HCD with a copy of the prime contractor's schedule for the completion of the construction work under the contract.

NOTE 5: Should the construction contract amount for this project exceed the amount to be funded by the County for construction costs through this Agreement, then the Municipality shall fund all amounts in excess of the amount to be funded by the County. The Municipality shall not request the County for reimbursement of any of the County's funds for construction costs until after it has expended all amounts in excess of the amount to be funded by the County.

NOTE 6: The Municipality shall not request reimbursement from HCD for materials or equipment received and stored on the project site or elsewhere. The Municipality shall only request reimbursement for materials and equipment that have been installed.

NOTE 7: Upon completion of the project, the Municipality shall cause its engineering consultant to provide HCD a written certification. Such certification shall indicate that the project has met the specifications of the design, as may have been amended by change order, and the date of completion of construction.

The Municipality further agrees that HCD, in consultation with any parties it deems necessary, shall be the final arbiter on the Municipality's compliance with the above.

- C. **ASBESTOS REQUIREMENTS:** The Municipality shall comply with all applicable requirements contained in Exhibit D, attached hereto, for construction work in connection with the project funded through this Agreement.
- D. **DAVIS-BACON ACT:** The Municipality shall request the County to obtain a Davis-Bacon wage decision for the project prior to advertising the construction work. The Municipality shall incorporate a copy of the Davis-Bacon wage decision and disclose the requirements of the Davis-Bacon Act in its construction bid solicitation and contract.
- E. **BONDING REQUIREMENTS:** The Municipality shall comply with the requirements of 24CFR Part 85 in regard to bid guarantees, performance bonds, and payment bonds.
- F. **CONSTRUCTION PAYMENT RETAINAGE:** The Municipality shall apply a retainage of at least 5% on all construction draws which retainages shall be released in conjunction with the final draw upon satisfactory completion of the project. The Municipality agrees not to release such retainages until it has obtained approval from the County that the contractor and subcontractors have complied with the requirements of the Davis-Bacon Act.
- G. **FORMER PROJECTS:** The Municipality shall maintain all previously completed CDBG funded projects. Failure to do so will result in forfeiture of future CDBG funds and will delay funding for ongoing activities.
- H. **WORK SCHEDULE:** The time frame for completion of the outlined activities shall be July 30, 2007.

Complete Design & Bid Documents by	July 30, 2006
Advertise & Accept Bids by	Sep 30, 2006
Award Contract by	Nov 30, 2006
Start Construction by	Jan 30, 2007
Complete Construction by	July 15, 2007
Submit Final Invoice by	July 30, 2007

- I. **REPORTS:** The Municipality shall submit to HCD detailed monthly and semi-annual reports as described below:
  - (a) **MONTHLY REPORT:** The Municipality shall submit to HCD detailed monthly progress reports in the form provided as Exhibit B to this Agreement. Each report must account for the total activity for which the Municipality is funded under this Agreement. The progress reports may be used by HCD as an additional basis for invoice reimbursement.
  - (b) **SEMI-ANNUAL REPORT:** The Municipality shall submit to HCD detailed semi-annual reports in the form provided as Exhibit C to this Agreement. During the term of this Agreement, the Municipality shall each 31<sup>st</sup> day of March submit such report for the prior six month period beginning on the preceding 1<sup>st</sup> day of October, and ending on said 31<sup>st</sup> day of March. In addition, during the term of this Agreement, the Municipality shall each 30<sup>th</sup> day of September submit such report for the prior six month period beginning on the preceding 1<sup>st</sup> day of April, and ending on said 30<sup>th</sup> day of September.
- J. **USE OF THE PROJECT FACILITY:** The Municipality agrees in regard to the use of the facility/property whose acquisition or improvements are being funded in part or in whole by CDBG funds as provided by this Agreement, that for a period of ten (10) years after the expiration date of this Agreement (as may be amended from time to time):
  - (a) The Municipality may not change the use or planned use, or discontinue use, of the facility/property (including the beneficiaries of such use) from that for which the acquisition or improvements are made, unless the Municipality provides affected citizens with reasonable notice of, and opportunity to comment on, any such proposed change and either:

1. The new use of the facility/property qualifies as meeting one of the national objectives defined in the regulations governing the CDBG program, and is not a building for the general conduct of government; or
  2. The requirements of paragraph (b) of this section are met.
- (b) If the Municipality determines after consultation with affected citizens, that it is appropriate to change the use of the facility/property to a use which does not qualify under paragraph (a) (1) of this section or discontinue the use of the facility/property, it may retain or dispose of the facility for such use if the County is reimbursed in the amount of the current fair market value of the facility/property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of, or improvements to the facility/property. The final determination of the amount of any such reimbursement to the County under this paragraph shall be made by the County.
- (c) Following the reimbursement of CDBG funds by the Municipality to the County pursuant to paragraph (b) above, the facility/property will then no longer be subject to any CDBG requirements.

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

- K. **SECTION 3 REQUIREMENTS:** The Municipality agrees to comply with all Section 3 requirements applicable to contracts funded through this Agreement. Information on Section 3 is available at HCD upon request. The Municipality shall include the following, referred to as the Section 3 Clause, in every solicitation and every contract for every Section 3 covered project:

**Section 3 Clause**

- (a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U. S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's requirements in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers representative of the contractor's commitment under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (d) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

**II. THE COUNTY AGREES TO:**

- A. Provide funding for the above specified improvements as described above in "Project Scope", during the term of this Agreement, in the amount of \$970,000. However, the County shall not provide any funding for the construction work until the Municipality provides documentation showing that sufficient funds are available to complete the project.
- B. Provide project administration and inspection to the Municipality to ensure compliance with U.S. HUD and the Department of Labor, and applicable State, Federal and County laws and regulations.
- C. Monitor the Municipality at any time during the term of this Agreement. Visits may be announced or unannounced as determined by HCD and will serve to ensure compliance with State and U.S. Department of HUD regulations, that planned activities are conducted in a timely manner, and to verify the accuracy of reporting to HCD on program activities.
- D. The County shall perform an environmental review of the project, and review and approve project design and bids submitted for the work. The County shall also perform Davis Bacon Act Labor Standards monitoring and enforcement. Environmental review costs incurred by the County may be charged to the project budget identified above.
- E. Allowable costs that may be paid by the County under this Agreement in addition to those stated in II.A above:
  - (a) Costs of asbestos surveys, asbestos abatement, and abatement monitoring.
  - (b) Cost of soil testing.
  - (c) Reproduction costs of plans and specifications for the project.
  - (d) Costs of any other services customarily associated with projects of the nature of the project contemplated by this Agreement.

The County shall review requests by the Municipality for expenditures on the above items prior to undertaking the services associated with them, and approve any such expenditures it deems appropriate for this project.



**EXHIBIT B**

**PALM BEACH COUNTY**

**HOUSING & COMMUNITY DEVELOPMENT**

**MONTHLY NARRATIVE REPORT**

<b>Report For:</b>	Month: _____ Year: _____		
<b>Subrecipient Name:</b>	CITY OF WEST PALM BEACH		
<b>Project Name:</b>	Carver Canal Storm Water Improvement Project		
<b>Report Prepared By:</b>	<div style="display: flex; justify-content: space-between;"> <div>_____</div> <div>_____</div> <div>_____</div> </div> <div style="display: flex; justify-content: space-between;"> <div>Name</div> <div>Signature</div> <div>Date</div> </div>		

**BUDGETING AND EXPENDITURES**

**Amounts Expended this Reporting Period:** CDBG Funds:\$ \_\_\_\_\_ Other Funds:\$ \_\_\_\_\_

**Amounts Expended to Date:**

////////////////////////////////////	BUDGETED	EXPENDED	PERCENTAGE
CDBG Funds:	\$ _____	\$ _____	%
Other Funds:_____	\$ _____	\$ _____	%
Other Funds:_____	\$ _____	\$ _____	%
TOTAL:	\$ _____	\$ _____	%

**Describe any changes in budgeted amounts during this reporting period and the source of funds:**

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**Describe your efforts to obtain any additional funds for the project during this reporting period (if your project is underfunded):** \_\_\_\_\_

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**PROJECT ACTIVITIES**

**Describe your accomplishments during the reporting period:** \_\_\_\_\_

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**Describe any problems encountered during this reporting period:** \_\_\_\_\_

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**Other comments:** \_\_\_\_\_

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**Send report to:** Amin Houry  
 Department fo Housing and Community Development  
 3323 Belvedere Road, Bldg. 501, West Palm Beach, FL 33406

S:\CapImprv\DisasterRecoveryInitiative\WestPalmBeach\AgmtMuni.wpd

EXHIBIT C

PALM BEACH COUNTY

HOUSING & COMMUNITY DEVELOPMENT

CONTRACTUAL OBLIGATIONS AND MBE REPORT

Project Name:	CITY OF WEST PALM BEACH - Carver Canal Storm Water Improvement Project	Report Date:		Page ____ of ____ Pages
Report Period:	[ ] October 1, 200__, to March 31, 200__ [ ] April 1, 200__, to September 30, 200__		Prepared By:	

(1) Contractor/Subcontractor name and address (fill in for each contractor or subcontractor) Include all professional services such as consultants, engineers, architects, etc. that are funded under the agreement for this project. All contractors and subcontractors (with contracts over \$10,000) that are paid with CDBG funds must be included. Do not list previously reported information.	(2) Prime Contractor Employer Identification Number*	(3) Subcontractor Employer Identification Number*  (see below)	(4) Contract Period		(5) Amount of Contract or Subcontract	(6) Type of Trade (1 thru 3)  (see below)	(7) Contractor or Subcontractor Racial/Ethnic Code (1 thru 7) (see below)	Procurement Compliance Checklist				
			(a) Start Date	(b) End Date				(8) Section 3 (yes or no)	(9) WBE (yes or no)	(10) Small Business (yes or no)	(11) Davis Bacon (yes or no)	(12) Type of Procurement (see below)
Name: Street: City: State& Zip Code:												
Name: Street: City: State& Zip Code:												
Name: Street: City: State& Zip Code:												
Name: Street: City: State& Zip Code:												
Name: Street: City: State& Zip Code:												
Name: Street: City: State& Zip Code:												
(3) When subcontractor employer identification number is used, information in columns 4 through 11 must reflect the subcontractor information, not the prime contractor's information; also include the prime contractor's employer identification number.		(6) Type of Trade Codes: 1 = New construction (including rehab, water, and sewer) 2 = Education/Training 3 = Other (including supply, professional services and other activities except construction and education/training)				(7) Racial/Ethnic Code: 1 = White American    5 = Asian/Pacific American 2 = Black American    6 = Hasidic Jews 3 = Native American    7 = Other 4 = Hispanic American (9) WBE = Women Business Enterprise			(12) Type of Procurement Code: CB = Competitive Bid E = Emergency Purchase CN = Competitive Negotiation NC = Non-Competitive Negotiation SP = Small Purchase			
* Employer identification number or social security number												

**EXHIBIT D**

**ASBESTOS REQUIREMENTS**  
**SPECIAL CONDITIONS FOR DEMOLITION AND RENOVATION OF BUILDINGS**

The provisions of this part apply to all demolition and renovation work contemplated in this Agreement and described in Exhibit A of this Agreement.

**I. DEFINITIONS**

ACBM: Asbestos Containing Building Materials  
AHERA: Asbestos Hazard Emergency Response Act  
EPA: Environmental Protection Agency  
FLAC: Florida Licensed Asbestos Consultant  
HCD: Palm Beach County Department of Housing and Community Development  
NESHAP: National Emission Standards for Hazardous Air Pollutants  
NRCA: National Roofing Contractors Association  
NVLAP: National Voluntary Laboratory Accreditation Program  
OSHA: Occupational Health and Safety Administration  
PBCAC: Palm Beach County Asbestos Coordinator (in Risk Management)  
TEM: transmission electron microscopy

**II. ASBESTOS SURVEYS**

All properties scheduled for renovation or demolition are required to have a comprehensive asbestos survey conducted by a Florida Licensed Asbestos Consultant (FLAC). The survey shall be conducted in accordance with AHERA guidelines. Analysis must be performed by a NVLAP accredited laboratory.

For Renovation Projects (projects which will be reoccupied):

- Point counting must be done for all asbestos containing building materials (ACBM) indicating less than 1% asbestos (to determine if any asbestos is present).
- Samples of vinyl floor tile indicating asbestos not detected must be confirmed by transmission electron microscopy (TEM).
- Joint compound shall be analyzed as a separate layer.
- Roofing material shall be sampled only if a renovation requires the roof to be disturbed (in lieu of sampling the roof, it may be presumed to contain asbestos).

For Demolition Projects:

- Point counting must be done for all "friable" asbestos containing building materials (ACBM), indicating less than 1% asbestos. This includes joint compounds (to be analyzed as a separate layer), and vinyl asbestos tile.
- Roof materials shall be presumed to be asbestos containing.

If the Municipality has a recent asbestos survey report prepared by a licensed asbestos consultant, a copy may be provided to HCD and PBCAC for review to determine if the survey is adequate to proceed with renovation/demolition work. If no survey is available, a survey may be initiated by the Municipality or requested by HCD. A copy of the completed survey will be forwarded to the Municipality. All asbestos survey's shall be forwarded to the PBCAC.

**III. ASBESTOS ABATEMENT**

**A. RENOVATION**

- (a) Prior to a renovation, all asbestos containing materials that will be disturbed during the renovation, must be removed by a Florida Licensed Asbestos Contractor under the direction of a FLAC. Exceptions may be granted by HCD prior to the removal, (such as asbestos containing roofs, transite pipe). The Municipality must obtain approval for all exceptions from HCD. HCD will request the PBCAC to review and approve all exceptions.
- (b) Asbestos Abatement work may be contracted by the Municipality or by HCD upon request.
- (c) If the Municipality contracts the asbestos abatement, the following documents are required to be provided to the HCD and the PBCAC.
  - 1. An Asbestos Abatement Specification (Work Plan), sealed by an FLAC.
  - 2. Pre and Post Job submittals, reviewed and signed by the FLAC.

- (d) If the Municipality requests HCD to contract the asbestos abatement, HCD will initiate the request through the PBCAC who will contract the asbestos abatement. HCD will provide a copy of all contractor and consultant documents to the Municipality.
- (e) Materials containing <1% asbestos are not regulated by EPA/NESHAPS. However, OSHA compliance is mandatory. OSHA requirements including training, wet methods, prompt cleanup in leak tight containers, etc. The renovation contractor must comply with US Dept of Labor, Standard Interpretation (OSHA), Compliance requirements for renovation work involving material containing <1% asbestos, 11/24/2003. The renovation contractor must submit a work plan to HCD and the PBCAC prior to removal of the materials.

**B. DEMOLITION**

All "friable" ACM must be removed by a Florida Licensed Asbestos Contractor under the direction of a FLAC prior to demolition. Friable materials include: resilient asbestos tile and mastic which is not intact, linoleum, asbestos containing joint compound, asbestos containing cement panels (e.g. transite), etc.

Intact resilient tile and asbestos roof materials may be demolished with adequate controls (e.g. wet method) by a demolition contractor provided the contractor is aware of the asbestos containing materials present and exercises adequate control techniques (wet methods, etc.). In all cases, demolition work should be monitored by a FLAC to insure proper control measures and waste disposal. Any exceptions to these guidelines may be requested through HCD prior to the removal, (such as asbestos containing roofs, transite pipe). Exceptions may be granted by HCD prior to the removal, (i.e. asbestos containing roofs, transite pipe). The Municipality must obtain approval for all exceptions from HCD and the PBCAC.

- (a) Asbestos Abatement work may be contracted by the Municipality or by HCD upon request.
- (b) If the Municipality contracts the asbestos abatement, the following documents must be provided to the PBC/HCD and reviewed by the PBCAC.
  - 1. An Asbestos Abatement Specification (Work Plan), sealed by an FLAC.
  - 2. Pre and Post Job submittals, reviewed and signed by the FLAC.
- (c) If the Municipality requests HCD to contract the asbestos abatement, HCD will initiate the request through the PBCAC who will contract the asbestos abatement. HCD will provide a copy of all contractor and consultant documents to the Municipality.
- (d) Recycling, salvage or compacting of any asbestos containing materials or the substrate is strictly prohibited.
- (e) In all cases, compliance with OSHA "Requirements for demolition operations involving material containing <1% asbestos is mandatory.
- (f) For all demolitions involving asbestos containing floor tile, asbestos containing roofing material and materials containing <1%, the Demolition Contractor shall submit the following documents to HCD. HCD will provide a copy of these documents to PBCAC.
  - 1. Signed statement that the demolition contractor has read and understood the requirements for complying with EPA, OSHA and the State of Florida Licensing regulations for demolition of structures with asbestos materials.
  - 2. Submit a plan for the demolition of asbestos containing roofing and floor tile. State if these materials are likely to remain intact. Include in the plan what shall occur if materials become "not intact".
  - 3. Submit a plan for compliance with OSHA requirements such as but not limited to: competent person, establishing a regulated area, asbestos training of workers, respiratory protection, use of disposable suits, air monitoring, segregation of waste, containerizing asbestos waste, waste disposal.
- (g) If materials are discovered that are suspect asbestos materials that were not previously sampled, stop all work that will disturb these materials and immediately notify HCD.

**IV. NESHAPS NOTIFICATION**

**A. RENOVATION**

A NESHAP form must be received by the Palm Beach County Health Department at least ten working days prior to an asbestos renovation that includes regulated asbestos containing material greater than 160 square feet or 260 linear feet or 35 cubic feet. For lesser quantities, the Municipality (or its contractor) shall provide a courtesy notification to the Palm Beach County Health Department at least ten working days prior to an asbestos renovation. The removal of vinyl asbestos floor tile and linoleum shall be considered regulated. Asbestos roof removal requires a notification at least 3 working days prior to the removal.

**B. DEMOLITION**

A NESHAP form must be received by the Palm Beach County Health Department at least ten working days prior to the demolition.

- C.** The NESHAP notification shall be sent return receipt requested to the address shown below with a copy to HCD. HCD shall provide a copy to the PBCAC. All fees shall be paid by the Municipality.

Palm Beach County Department of Health  
Asbestos Coordinator  
901 Evernia Street  
Post Office Box 29  
West Palm Beach, Florida 33401

**V. APPLICABLE ASBESTOS REGULATIONS/GUIDELINES**

The Municipality, through its demolition or renovation contractor, shall comply with the following asbestos regulations/guidelines. This list is *not* all inclusive:

- (a) Environmental Protection Agency (EPA) NESHAP, 40 CFR Parts 61 Subpart M – National Emission standard for Asbestos, revised July 1991
- (b) Occupational Health and Safety Administration (OSHA) Construction Industry Standard, 29 CFR 1926.1101
- (c) EPA: A Guide to Normal Demolition Practices Under the Asbestos NESHAP, September 1992
- (d) Demolition practices under the Asbestos NESHAP, EPA Region IV
- (e) Asbestos NESHAP Adequately Wet Guidance
- (f) Florida State Licensing and Asbestos Laws
  1. Title XVIII, Chapter 255, Public property and publicly owned buildings.
  2. Department of Business and Professional Regulations, Chapter 469 Florida Statute, Licensure of Asbestos Consultants and Contractors
- (g) Resilient Floor Covering Institute, NRCI, Updated Recommended Work Practices and Asbestos Regulatory Requirements, September 1998.
- (h) Florida Roofing Sheet Metal and Air Conditioning Contractors Association, NRCA, June 1995
- (i) US Dept of Labor, Standard Interpretation (OSHA)
  1. Application of the asbestos standard to demolition of buildings with ACM in Place, 8/26/2002.
  2. Requirements for demolition operations involving material containing <1% asbestos, 8/13/1999.
  3. Compliance requirements for renovation work involving material containing <1% asbestos, 11/24/2003.