

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: February 1, 2011 [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: an Agreement with the West Jupiter Community Group, Inc., for the tutorial center expansion, in the amount of \$255,489, for the period of January 11, 2011, through December 31, 2011.

Summary: This project will provide three additional classrooms which will expand the West Jupiter Community Group's tutorial center where after school tutoring and enrichment activities to disadvantaged and at-risk children residing in the West Jupiter and surrounding areas are provided. The tutorial center is located at 7187 Church Street, in unincorporated Palm Beach County in the Limestone Creek area. These are Federal Community Development Block Grant funds that require no local match. District 1 (TKF)

Background and Justification: This project has been determined by Housing and Community Development (HCD) to be an eligible activity under the CDBG program. Allocation of these funds to the West Jupiter Community Group, Inc., was approved by the Board of County Commissioners on July 10, 2007, through its approval of Palm Beach County's Consolidated Plan for Fiscal Year 2007-2008 (R2007-1219).

Attachments:

- 1. Agreement with the West Jupiter Community Group, Inc., with Exhibits A, B, C & D
- 2. Insurance Certificate

Recommended by: Edward W. Ponce 1/20/2011
Department Director Date

Approved By: Sharon G. Gray 1/24/2011
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures					
Operating Costs	\$255,489				
External Revenues	(\$255,489)				
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 No
 Budget Account No.:

Fund 1101 Dept 143 Unit 1431 Object 8201 Program Code/Period BG67-GY07

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

Approval of this agenda item will allocate \$255,489 in CDBG funds to the West Jupiter Community Group, Inc., for the tutorial center expansion project.

C. Departmental Fiscal Review: SKM 1-20-11
 Shairette Major, Fiscal Manager I

III. REVIEW COMMENTS

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

[Signature] 1/24/2011
 OFMB
 JB
 1/21

[Signature] 1/24/11
 Contract Development and Control

B. Legal Sufficiency:

[Signature] 1/25/11
 Senior Assistant County Attorney

This Contract complies with our contract review requirements.

The effective date is retroactive.

C. Other Department Review:

 Department Director

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

AGREEMENT BETWEEN PALM BEACH COUNTY

AND

WEST JUPITER COMMUNITY GROUP, INC.

THIS AGREEMENT, entered into this _____ day of _____, 20____, 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, and the West Jupiter Community Group, Inc., a non-profit corporation duly organized and existing by virtue of the laws of the State of Florida, having its principal office at 7187 Church Street, Jupiter, FL 33458, and its Federal Tax Identification number as 65-0137715.

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 accord with the annual Action Plan, and the West Jupiter Community Group, Inc., desire to provide the activities specified in Part II of this Agreement; and

WHEREAS, Palm Beach County desires to engage the West Jupiter Community Group, Inc., to implement such undertakings of the Community Development Block Grant Program.

NOW, THEREFORE, in consideration of the mutual promises 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 of Palm Beach County.
- (3) "HCD" means Palm Beach County Housing and Community Development.
- (4) "Agency" means the West Jupiter Community Group, Inc.
- (5) "HCD Approval" means the written approval of the HCD Director or his designee.
- (6) "U.S. HUD" means the Secretary of Housing and Urban Development or a person authorized to act on its behalf.
- (7) "Low and moderate income persons" 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 Agency will implement the Scope of Services set forth in Part II of this Agreement.

PART II

SCOPE OF SERVICES

The Agency 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 Agency 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 Agency under this Agreement. 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 \$255,489 for the period of January 11, 2011, through and including December 31, 2011. 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 by U. S. HUD under grant No. B-07-UC-12-0004. The effective date shall be the date of execution of this Agreement, and the services of the Agency 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 Agency prior to December 31, 2011.

3. METHOD OF PAYMENT

The County agrees to make payments and to reimburse the Agency for all budgeted costs permitted by Federal, State, and County guidelines. The Agency shall not request reimbursement for payments made by the Agency 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 Agency or any subcontractors hereunder. The Agency 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 Agency may furnish copies if deemed acceptable by HCD. Each request for payment or reimbursement submitted by the Agency shall be accompanied by a letter from the Agency, provided on the Agency's letterhead, referencing the name of the project funded herein, the date of this Agreement and/or its document number, and containing a statement requesting the payment or reimbursement and its amount, as well as the name and signature of the person making the request. 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 Agency may at any time after the expiration of this agreement request from the County reimbursement for payments made by the Agency 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 Agency 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 Agency shall implement this Agreement in accordance with applicable Federal, State, County, and local 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 Agency 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.

WEST JUPITER COMMUNITY GROUP, INC.

- (2) FINANCIAL ACCOUNTABILITY
The County may have a financial systems analysis and/or an audit of the Agency, 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 Agency 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 Code, as well as Federal Management Circulars A-110, A-122, and 24CFR Part 84, 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 Agency has not complied with any additional conditions that may be imposed, at any time, by HCD, the County, 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 capital equipment expenditures of \$1,000 or more;
 - (c) All out-of-county travel; (travel shall be reimbursed in accordance with Florida Statutes, Chapter 112.061);
 - (d) All change orders; and
 - (e) All 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 out of CDBG funds, whether for merit or cost of living.
- (8) PROGRAM-GENERATED INCOME
All income earned by the Agency 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. Such income shall only be used to undertake the activities authorized by this Agreement. Accounting and disbursement of such income shall comply with OMB Circular A-110 and other applicable regulations incorporated herein by reference.

PART IV

GENERAL CONDITIONS

1. OPPORTUNITIES FOR RESIDENTS AND CIVIL RIGHTS COMPLIANCE

The Agency agrees that no person shall on the ground of race, color, disability, national origin, religion, age, financial status, familial status, marital status, sexual orientation, gender, or gender identity or expression, 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 Agency 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 Agency 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. If the project is located in an entitlement city, as defined by U.S. HUD, or serves beneficiaries countywide, at least fifty-one percent (51%) of the beneficiaries directly assisted 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 project funded under this Agreement shall assist the above beneficiaries for the time period designated in this Agreement and its exhibits.

4. EVALUATION AND MONITORING

The Agency 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 Agency 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 Agency shall submit status reports required under this Agreement on forms approved by HCD to enable HCD to evaluate progress. The Agency shall provide information as requested by HCD to enable HCD to complete reports required by the County or HUD. The Agency shall allow HCD, the County, or HUD to monitor the Agency on site. Such visits may be scheduled or unscheduled as determined by HCD or HUD.

5. AUDITS AND INSPECTIONS

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

If during the year, the Agency expends over \$500,000 of Federal awards, the Agency shall comply with the provisions of OMB Circular A-133. The Agency shall submit a single audit, including any management letter, made in accordance with the general program requirements of OMB Circulars A-110, A-122, A-133, and other applicable regulations within the earlier of, 30 days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period in which HCD-administered funds are expended. Said audit shall be made by a Certified Public Accountant of the Agency's choosing, subject to the County's approval. In the event the Agency anticipates a delay in producing such audit, the Agency shall request an extension in advance of the deadline. The cost of said audit shall be borne by the Agency. In the event the Agency is exempt from having an audit conducted under A-133, the Agency shall submit audited financial statements and/or the County reserves the right to conduct a "limited scope audit" of the Agency as defined by A-133. The County will be responsible for providing technical assistance to the Agency, as deemed necessary by the County.

6. UNIFORM ADMINISTRATIVE REQUIREMENTS

The Agency agrees to comply with the applicable uniform administrative requirements as described in Federal Community Development Block Grant Regulations 24 CFR 570.502.

7. REVERSION OF ASSETS

Upon expiration of this Agreement, the Agency shall transfer to the County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Any real property under the Agency's control upon expiration of this Agreement which was acquired or improved in whole or part with CDBG in excess of \$25,000 must either be used to meet one of the national objectives in Federal Community Development Block Grant Regulations 24 CFR 570.508 for a period of five years after expiration of this Agreement (unless a longer period is specified elsewhere in this Agreement), or, the Agency shall pay the County an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

8. DATA BECOMES COUNTY PROPERTY

All reports, plans, surveys, information, documents, maps, and other data procedures developed, prepared, assembled, or completed by the Agency for the purpose of this Agreement shall be made available to the County by the Agency 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 Agency shall keep all documents and records for five (5) years after expiration of this Agreement.

Notwithstanding any other provision in this Agreement, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of Inspector General Ordinance 2009-049, as may be amended.

9. INDEMNIFICATION

The Agency shall protect, defend, reimburse, indemnify and hold the County, its agents, its employees and elected officers harmless from and against any and 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 the performance of the terms of this Agreement, or due to the acts or omissions of the Agency. Agency's aforesaid indemnity and hold harmless obligation, or portion or applications thereof, shall apply to the fullest extent permitted by law. The Agency will hold the County harmless and will indemnify the County for funds which the County is obligated to refund the Federal Government arising out of the conduct of activities and administration of Agency.

10. INSURANCE

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

(1) COMMERCIAL GENERAL LIABILITY

The Agency 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 the County's Risk Management Department. The Agency agrees this coverage shall be provided on a primary basis.

(2) BUSINESS AUTOMOBILE LIABILITY

The Agency 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 Agency does not own any automobiles, the Business Auto Liability requirement shall be amended allowing the Agency 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. The Agency shall agree this coverage shall be provided on a primary basis.

- (3) WORKERS COMPENSATION INSURANCE
The Agency shall agree to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440. The Agency agrees this coverage shall be provided on a primary basis.
- (4) ADDITIONAL INSURED
The Agency 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 Department of Housing and Community Development". The Agency shall agree the Additional Insured endorsements provide coverage on a primary basis.
- (5) CERTIFICATE OF INSURANCE
The Agency 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 this Agreement by the County. A minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage shall be included on the certificate(s). The Agency shall deliver the certificate(s) to HCD at its office at 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406.
- (6) RIGHT TO REVIEW AND ADJUST
The Agency shall agree that the County, by and through its Risk Management Department, in cooperation with the Department of Housing and Community Development, 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 it's poor financial condition or failure to operate legally.
11. MAINTENANCE OF EFFORT
The intent and purpose of this Agreement is to increase the availability of the Agency's services. This Agreement is not to substitute for or replace existing or planned projects or activities of the Agency. The Agency 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.
12. CONFLICT OF INTEREST
The Agency 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 Agency. Any possible conflict of interest on the part of the Agency 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 target area.
13. CITIZEN PARTICIPATION
The Agency 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 Agency is undertaking in carrying out the provisions of this Agreement. Representatives of the Agency shall attend meetings and assist HCD in the implementation of the Citizen Participation Plan, as requested by HCD.
14. RECOGNITION
All facilities purchased or constructed pursuant to this Agreement shall be clearly identified as to funding source. The Agency will include a reference to the financial support herein provided by HCD in all publications and publicity. In addition, the Agency will make a good faith effort to recognize HCD's support for all activities made possible with funds made available under this Agreement.

15. 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-110, A-122, A-133, and 24CFR Part 84
- (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 Code;
- (8) Federal Community Development Block Grant Regulations (24 CFR Part 570), and Federal Consolidated Plan Regulations (24 CFR Part 91), as amended;
- (9) The Agency's personnel policies and job descriptions;
- (10) The Agency's incorporation Certificate and Articles of Incorporation;
- (11) The Agency's By-laws;
- (12) The Agency's Certificate of Insurance;
- (13) Current list of the Agency's officers and members of its Board of Directors; and
- (14) Proof of the Agency's 501(c)(3) certification from the Internal Revenue Service.

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

16. 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 Agency with funds under this Agreement shall be returned to HCD or the County.

In the event of termination, the Agency 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 Agency, and the County may withhold any payment to the Agency for set-off purposes until such time as the exact amount of damages due to the County from the Agency 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 FOR CONVENIENCE

At any time during the term of this Agreement, either party may, at its option and for any reason, terminate this Agreement upon ten (10) working days written notice to the other party. Upon termination, the County shall pay the Agency for services rendered pursuant to this Agreement through and including the date of termination.

(3) 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 the U.S. HUD specifies.

17. 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.

18. 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 signed by both parties.

19. NOTICES

All notices required to be given under this Agreement shall be sufficient when delivered to HCD at its office at 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406, and to the Agency when delivered to its office at the address listed on page one (1) of this Agreement.

20. INDEPENDENT AGENT AND EMPLOYEES

The Agency 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.

21. 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.

22. PUBLIC ENTITY CRIMES

As provided in F.S. 287.133 by entering into this Agreement or performing any work in furtherance hereof, the Agency 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).

23. PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL

Pursuant to Ordinance No. 2009-049, Palm Beach County has established the Office of the Inspector General, which is authorized and empowered to review past, present and proposed County agreements, contracts, transactions, accounts and records. All parties doing business with the County and receiving County funds, including the Agency, shall fully cooperate with the Inspector General. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and to audit, investigate, monitor, and inspect the activities of the Agency, its officers, agents, employees, and lobbyists in order to ensure compliance with this Agreement and to detect waste, corruption and fraud.

24. COUNTERPARTS OF THE AGREEMENT

This Agreement, consisting of nineteen (19) 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.

THIS SPACE HAS BEEN INTENTIONALLY LEFT BLANK

WEST JUPITER COMMUNITY GROUP, INC.

25. **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__.

(AGENCY SEAL BELOW)

WEST JUPITER COMMUNITY GROUP, INC.

By: Mary Hinton
Mary Hinton, President
West Jupiter Community Group, Inc.

By: Edna Runner
Edna Runner, Executive Director

(COUNTY SEAL BELOW)

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

BOARD OF COUNTY COMMISSIONERS

ATTEST: Sharon R. Bock,
Clerk & Comptroller

By: _____
Chair
Board of County Commissioners

By: _____
Deputy Clerk

Document No.: _____

Approved as to Form and
Legal Sufficiency

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

By: _____
Tammy K. Fields
Senior Assistant County Attorney

By: Amin Houry
Amin Houry, Manager
Housing and Capital Improvements

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EXHIBIT A
WORK PROGRAM NARRATIVE

I. THE AGENCY AGREES TO:

- A. **PROFESSIONAL SERVICES:** The Agency shall retain the services of a consultant for this project to prepare bid documents to procure the services of a contractor who shall provide design-build services for the below specified classroom buildings to be located at 7187 Church Street, in unincorporated Palm Beach County in the Limestone Creek area.

The consultant's bid documents shall consist of performance oriented drawings and specifications for the stated project. The documents shall provide performance based criteria including but not limited to: project location, survey and site layout information, interior space requirements, material and equipment quality standards, schematic layout, design and construction schedule, site development requirements, and provisions for utilities.

The consultant shall also prepare, obtain and review bids, prepare contract documents, inspect work in progress, recommend payment to contractors, and provide other professional services customarily provided by similar professionals for similar projects. The consultant shall also coordinate the design and construction work with the asbestos abatement contractor, should such abatement become necessary.

- B. **PROJECT SCOPE :** The scope of this project subject to funding availability shall include the following :

The installation of three prefabricated classroom buildings, covered walkways, restrooms, sinks, electrical, mechanical, water and sewer to serve each building, and concrete a pad at the rear exit door of each building.

NOTE: FURNITURE AND EQUIPMENT NOT INCORPORATED INTO THE BUILDINGS WILL NOT BE FUNDED THROUGH THIS AGREEMENT.

NOTE 1: The Agency shall submit its bid package (drawings/specifications and instructions to bidders), and an itemized opinion of probable construction cost prepared by its consultant, to HCD and obtain a letter of approval prior to bidding the construction work. Furthermore, the Agency shall obtain HCD approval prior to issuing any addenda to its bid documents for this project.

NOTE 2: The Agency 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 3: The Agency shall assure that neither the prime contractor nor any subcontractor shall be allowed to perform one hundred percent (100%) of their work on this project on nights, weekends, or County recognized holidays, and shall assure that the prime contractor and all subcontractors shall, at a minimum, perform work on this project for the duration of one regular working day. The Agency may request HCD for a waiver to the above requirement should the nature of the project so necessitate, and in such instance, HCD may, at its discretion, grant the Agency such waiver.

NOTE 4: The Agency 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 Agency shall obtain HCD approval prior to awarding the construction contract to be funded through this Agreement. After awarding such contract, the Agency shall obtain HCD approval prior to executing any change orders to such 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 Agency shall fund all amounts in excess of the amount to be funded by the County. The Agency 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 Agency shall not request reimbursement from HCD for materials or equipment received and stored on the project site or elsewhere. The Agency shall only request reimbursement for materials and equipment that have been installed.

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

WEST JUPITER COMMUNITY GROUP, INC.

- C. ASBESTOS REQUIREMENTS: The Agency shall comply with all applicable requirements contained in Exhibit C, attached hereto, for construction work in connection with the project funded through this Agreement.
- D. DAVIS-BACON ACT: The Agency shall request the County to obtain a Davis-Bacon wage decision for the project prior to advertising the construction work. The Agency 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 Agency shall comply with the requirements of OMB Circular A-110 and 24 CFR Part 84 in regard to bid guarantees, performance bonds, and payment bonds. For contracts exceeding \$100,000, the Agency shall require a bid guarantee from each bidder equivalent to five percent (5%) of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified. In addition, for contracts exceeding \$100,000, the Agency shall also require a performance bond on the part of the contractor for 100 percent (100%) of the contract price and a payment bond on the part of the contractor for 100 percent (100%) of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. All bonds shall be executed by a corporate surety company of recognized standing, authorized to do business in the State of Florida. The Agency may follow its own requirements relating to bid guarantees, performance bonds, and payment bonds for contracts of \$100,000, or less.
- F. CONSTRUCTION PAYMENT RETAINAGE: The Agency 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 Agency 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 Agency 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 December 31, 2011.

Complete Design & Bid Documents by	Nov 30, 2010
Advertise & Accept Bids by	Jan 15, 2011
Award Contract by	Feb 28, 2011
Start Construction by	Apr 1, 2011
Complete Construction by	Dec 15, 2011
Submit Final Reimbursement Request by	Dec 31, 2011

- I. REPORTS: The Agency 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 Agency is funded under this Agreement. The progress reports shall be used by HCD to assess the Agency's progress in implementing the project.
- J. USE OF THE PROJECT FACILITY: The Agency agrees in regard to the use of the facility whose acquisition or improvements are being funded in part or in whole by CDBG funds as provided by this Agreement, that it will comply with the provisions of Exhibit D. Upon execution of this Agreement the Agency shall execute and deliver to the County Exhibit D, which the County shall record in the public records. Recording fees associated with this Exhibit shall be charged to the project budget identified in this Agreement.
- K. SECTION 3 REQUIREMENTS: The Agency 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 Agency 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. 170 1u (Section 3).

WEST JUPITER COMMUNITY GROUP, INC.

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 \$255,489. However, the County shall not provide any funding for the construction work until the Agency provides documentation showing that sufficient funds are available to complete the project.
- B. Provide project administration and inspection to the Agency to ensure compliance with U.S. HUD and the Department of Labor, and applicable State, Federal and County laws and regulations.
- C. Monitor the Agency at any time during the term of this Agreement. Visits may be scheduled or unscheduled as determined by HCD, be conducted by HCD staff or its contractor, and will serve to ensure compliance with 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) 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 Agency 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

Report For:	Month: _____ Year: _____
Subrecipient Name:	West Jupiter Community Group, Inc.
Project Name:	Tutorial Center Expansion
Report Prepared By:	_____
	Name _____ Signature _____ Date _____

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:

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

PROJECT ACTIVITIES

Describe your accomplishments during the reporting period: _____

Describe any problems encountered during this reporting period: _____

Other comments: _____

Send report to: Amin Houry
 Department fo Housing and Community Development
 100 Australian Avenue, Suite 500, West Palm Beach, FL 33406

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EXHIBIT C

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 Agency 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 Agency or requested by HCD. A copy of the completed survey will be forwarded to the Agency. 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 Agency 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 Agency or by HCD upon request.
- (c) If the Agency 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 Agency 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 Agency.
- (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" ACBM 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 Agency must obtain approval for all exceptions from HCD and the PBCAC.

- (a) Asbestos Abatement work may be contracted by the Agency or by HCD upon request.
- (b) If the Agency 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 Agency 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 Agency.
- (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 Agency (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 Agency.

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

V. APPLICABLE ASBESTOS REGULATIONS/GUIDELINES

The Agency, 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.

EXHIBIT D

Return to: (by interoffice mail)
Palm Beach County
Housing & Community Development
100 Australian Avenue, Suite 500
West Palm Beach, Florida 33406
Prepared by: Tammy K. Fields,
Senior Assistant County Attorney
Attention: Amin Houry

DECLARATION OF RESTRICTIONS

The undersigned, West Jupiter Community Group, Inc., a not for profit corporation duly organized and existing under the laws of the State of Florida, having its principal office at 7187 Church Street, Jupiter, FL 33458, hereinafter referred to as "Declarant", for the property described below, in consideration of funding in the amount of Two-hundred Fifty-Five Thousand Four-hundred Eighty-Nine Dollars (\$255,489) received from the Palm Beach County Board of County Commissioners (the "County") does hereby grant to the County the following restrictions against the subject property, hereinafter referred to as the Property, and described as:

The South 1/4 of the Southeast 1/4 of the Southeast 1/4, less the East 902.37 feet and the West 205 feet thereof, in Section 33, Township 40 South, Range 42 East, lying and being in Palm Beach County, Florida.

Property Control Number(s): 00-42-40-33-00-000-5080

1. These restrictions shall be deemed a covenant running with the land and are binding upon the undersigned, their heirs, executors, successors, and assigns. These restrictions can only be terminated or released by the Palm Beach County Board of County Commissioners, and executed with the same formalities as this document.
2. In consideration of the County's grant in the amount of \$255,489 (in CDBG dollars) as provided through a grant Agreement with the County dated December 21, 2010, the Declarant hereby covenants and agrees for a period of 10 years commencing with the expiration date of said grant Agreement (as may be amended from time to time) to use the subject property as described in the Declarant's funding application to the County, and as described in said grant Agreement, and the Declarant further agrees to maintain insurance as required in the grant Agreement.
3. The Declarant agrees in regard to the use of the facility/property whose acquisition or improvements were funded through the grant Agreement that for a period of ten (10) years after the expiration date of said Agreement (as may be amended from time to time):
 - (a) The Declarant 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 were made, unless the Declarant 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, in the opinion of the County, 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 3(b) of this section are met.
 - (b) If the Declarant 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 3(a)(1) of this section or discontinue 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.

WEST JUPITER COMMUNITY GROUP, INC.

- (c) Following the reimbursement of CDBG funds by the Declarant to the County pursuant to Paragraph 3(b) above, the facility/property will then no longer be subject to these restrictions, and the County shall then release these restrictions as described above.

In the event of any proposed sale, conveyance or transfer of the subject property, the Declarant must obtain approval of the County, through its Housing and Community Development Department. Any approved sale or conveyance of the subject property by the Declarant will be contingent upon the receipt of the payment by the County in accordance with the provisions of Paragraph 3(b) above, or the receipt of a commitment, executed by a subsequent owner acceptable to the County, confirming its acceptance of the restrictions and conditions provided herein for the duration of this Declaration.

Notwithstanding the foregoing, the restrictions set forth herein shall run with the land whether or not such commitment is obtained from a subsequent owner.

4. The Declarant agrees to notify the County of any liens, judgements or pending foreclosure on the subject property within five (5) working days of the receipt of said notice by the Declarant.

5. The Declarant acknowledges and covenants that the provisions specified below constitute a default under this Declaration for which there may be a forfeiture of the Declarant's title to the Property:

- (a) Failure of the Declarant to perform any covenant, agreement, term, or condition contained herein or in the Agreement referenced in Section 2 above.

Notwithstanding the foregoing, and at the sole discretion of the County, upon providing notice to the Declarant of its determination that the Declarant is in default of the terms of this Declaration, the County may, from time to time, at its sole discretion, cure each default under any covenant so curable in this Declaration, or in any instrument creating a lien upon the Property, or any part thereof, to such extent that the County, at its sole discretion, determines, and each amount paid, if any, by the County to cure any such default shall be paid by the Declarant to the County in addition to the legal rate of interest from the time of expenditure and shall constitute a lien against the property which may be foreclosed if not discharged and satisfied within three (3) months of expenditure of such funds by the County. The County shall also become subrogated to whatever rights the holders of a prior lien might have under such instrument.

6. If the Declarant fails, neglects or refuses to perform any of the provisions, terms and conditions set forth herein, for any breach of this Declaration, the County shall have the right to file in court of competent jurisdiction an action for:

- (a) Forfeiture of all the Declarant's right, title, and interest in the Property for a breach of the restrictive covenants contained in this Declaration; and
- (b) Collection of due and unpaid real estate taxes, assessments, charges and penalties for which the Declarant is obligated to pay.

In addition to any remedy set forth herein the County shall have such other remedies as are available at law or equity. The exercise or attempted exercise by the County of any right or remedy available under this Declaration shall not preclude the County from exercising any other right or remedy so available, nor shall any such exercise or attempted exercise constitute or be construed as an election of remedies. The Declarant shall pay any reasonable expenses, including reasonable attorney's fees and costs incurred by the County, under this Declaration and the preparation and delivery of notices required hereunder. The failure or omission by the County to enforce any of its rights or remedies upon breach of any of the covenants, terms or conditions of this Declaration shall not bar or breach any of the County's rights or remedies on any subsequent default. Before the County shall pursue any of its rights or remedies under this Declaration, the County shall first give the Declarant written notice of the default complained of which such notice shall be given to the Declarant at their address shown above. The Declarant shall then have ten (10) working days from the date such notice is given to cure or correct any default.

7. Declarant shall submit to the County once each year a report detailing the Declarant's compliance with the terms of the grant Agreement and this Declaration of Restrictions.

8. Declarant relinquishes all rights to alter, amend, modify, or release these covenants prior to the completion of the ten year period described above.

WEST JUPITER COMMUNITY GROUP, INC.

9. In the event of any litigation necessary to enforce the terms of the Declaration, the Declarant agrees to reimburse the County for attorneys fees and costs associated with litigation.

Executed this _____ day of _____, 20__.

West Jupiter Community Group, Inc.

(DO NOT SIGN THIS EXHIBIT)

By: _____
Mary Hinton, President

(CORPORATE SEAL ABOVE)

STATE OF FLORIDA
COUNTY OF PALM BEACH

The forgoing instrument was acknowledged before me this ____ day of _____, 20__, by
____ Mary Hinton _____, who is personally known to me, or who has produced _____
_____ as identification, and who did (did not) take an oath.

(DO NOT SIGN THIS EXHIBIT)

Signature: _____

Notary Name: _____
Notary Public - State of Florida

(NOTARY SEAL ABOVE)

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