

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>20 11</u>	<u>20 12</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
Capital Expenditures	\$500,000	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>500,000</u>	_____	_____	_____	_____

ADDITIONAL FTE POSITIONS (Cumulative) _____

Is Item Included In Current Budget? Yes X No _____

Budget Account No.: Fund 3900 Department 366 Unit X073 Object 6506
Reporting Category

B. Recommended Sources of Funds/Summary of Fiscal Impact: Funds will be allocated from the Westgate/Belvedere CRA budget line previously approved. Fiscal impact will be a reduction to the amount allocated for this project from the capital account. Remaining funds, if any, after project is complete will be retained and moved to CCRT Recoup Funding line.

C. Departmental Fiscal Review: Pat Higgins

III. REVIEW COMMENTS

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

WS 6/10/11 OFMB SN 6/13/11 6/17/11 Dr. J. Jacobson 6/16/11
Contract Dev. and Control

B. Legal Sufficiency: Assistant County Attorney 6/16/11

This Contract complies with our contract review requirements.

C. Other Department Review:

Elisee Michel, Westgate CRA
Department Director

**INTERLOCAL AGREEMENT BETWEEN
PALM BEACH COUNTY AND
WESTGATE / BELVEDERE HOMES
COMMUNITY REDEVELOPEMENT AGENCY**

THIS INTERLOCAL AGREEMENT is made and entered into this _____ day of _____, 2011 by and between Palm Beach County, a political subdivision of the State of Florida hereinafter referred to as "COUNTY" and Westgate/Belvedere Homes Community Redevelopment Agency, a Florida public agency established pursuant to Chapter 163, Florida Statutes hereinafter referred to as "CRA"

WITNESSETH:

WHEREAS, the CRA has undertaken a multi-year project to mitigate flooding in the Westgate community, hereinafter referred to as the "PROJECT"; and

WHEREAS, CRA has requested COUNTY fund an amount not to exceed Five Hundred Thousand Dollars (\$500,000.00) for the PROJECT; and

WHEREAS, the COUNTY desires to support the PROJECT by providing supplemental reimbursement funding for documented costs of the PROJECT in an amount not to exceed Five Hundred Thousand Dollars (\$500,000.00); and

WHEREAS, the PROJECT serves a public purpose.

NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the parties agree as follows:

1. The above recitals are true, correct and incorporated herein.
2. CRA shall conduct the PROJECT as more specifically described in the Scope of Work, which is attached hereto and incorporated herein as Exhibit "A".
3. COUNTY shall reimburse CRA an amount not to exceed Five Hundred Thousand Dollars (\$500,000.00) for the PROJECT, provided CRA performs pursuant to the terms and conditions of this Agreement. CRA agrees that the extent of COUNTY's responsibility under this Agreement shall be limited solely to funding, as stated above, and COUNTY shall have no obligation to any other person or entity.
4. Upon request by COUNTY, CRA shall provide COUNTY with all documentation pertaining to the PROJECT, including but not limited to all due diligence documents such as surveys, appraisals, title commitments, and environmental studies. In the event COUNTY determines a piece of property should not be acquired as part of the PROJECT, CRA shall not purchase that particular property with COUNTY funds.
5. CRA acknowledges the PROJECT will be used to mitigate flooding in the Westgate community, hereinafter referred to as the "IMPROVEMENTS". In the event the IMPROVEMENTS are not installed on the PROJECT within five (5) years from the date of execution of this Agreement, CRA shall reimburse COUNTY all funds received pursuant to this Agreement. This provision shall survive expiration and termination of this Agreement.
6. In the event the CRA ceases to exist, the CRA shall transfer title of the PROJECT to the COUNTY. Additionally, if the CRA ceases or suspends the PROJECT for any reason, any remaining unpaid portion of this Agreement shall be retained by COUNTY, and COUNTY shall have no further obligation to honor reimbursement requests submitted by CRA. The determination that CRA has ceased or suspended the PROJECT shall be made by COUNTY and CRA agrees to be bound by COUNTY's determination. This provision shall survive expiration and termination of this Agreement.
7. CRA shall use its own personnel and/or subcontractor(s) to perform this Agreement.

8. COUNTY shall reimburse CRA the amount established in Section 3 above for costs associated with the PROJECT, upon the CRA's submission of acceptable documentation needed to substantiate its cost for the PROJECT. The COUNTY will use its best efforts to provide said funds to the CRA on a reimbursement basis within forty-five (45) days of receipt of all information required in Section 10, below. COUNTY shall have the final determination of eligibility for reimbursement.

9. The CRA shall assume all responsibility for due diligence, bidding, contract preparation, and contract administration necessary for the PROJECT, including payment(s) to contractor(s) pursuant to all applicable governmental laws and regulations and will comply with all applicable governmental codes and permitting requirements. The CRA shall also assume financial responsibility for the completion of any portions of the PROJECT that is not fully funded by the amount set forth in Section 3, above. COUNTY shall have the final determination of the eligibility for reimbursement of any changes to the PROJECT. Substantial variations from the approved plans shall require prior written approval from the COUNTY.

10. The CRA shall obtain or provide all labor and materials necessary for the PROJECT. The CRA shall furnish to the Office of Community Revitalization's representative a request for payment supported by the following:

A) A Contract Payment Request Form and a Contractual Services Purchases Schedule Form, attached hereto and incorporated herein as Exhibit "B", which are required for each and every reimbursement to the CRA. Said information shall list each invoice payable by the CRA and shall include the vendor invoice number, invoice date, and the amount payable by the COUNTY. The CRA shall attach a copy of each vendor invoice paid by the CRA along with a copy of the respective check and shall make reference thereof to the applicable item listed on the Contractual Services Purchases Schedule Form. Further, the CRA Financial Officer, or authorized representative, shall also certify that each invoice listed on the Contractual Services Purchases Schedule Form was paid by the CRA as indicated. CRA shall supply any further documentation deemed necessary by COUNTY within seven (7) calendar days of request by the COUNTY. Failure to submit completed reports within the specified timeframe may result in a delay in payment. In no event shall COUNTY provide advance funding to CRA.

11. CRA shall maintain books, records, and documents to justify all charges, expenses and costs incurred under this Agreement in performing the PROJECT, in accordance with Generally Accepted Accounting Principles (GAAP), as promulgated by the Government Finance Officers Association from time to time. The COUNTY shall have access to all books, records, and documents as required in this Agreement, and for at least three (3) years after completion of the PROJECT. In the event any work is subcontracted by CRA, CRA shall similarly require each subcontractor to maintain and allow access to such records for audit purposes.

12. The CRA shall be solely responsible for the subsequent maintenance of the PROJECT. The CRA shall be solely responsible for obtaining and complying with all necessary permits, approvals and authorizations from any federal, state, regional, County or agency if any are required for the PROJECT.

13. The term of this Agreement shall be effective on the date of execution of this Agreement by both parties and shall continue in full force and effect until October 1, 2014, unless otherwise terminated as provided herein. COUNTY reserves the right to extend this Agreement for good cause. Any extensions shall be in writing and executed by both parties. The PROJECT shall be completed and final invoices submitted to the COUNTY no later than September 1, 2014 and the COUNTY shall have no obligation to the CRA or any other entity or person for any cost(s) incurred thereafter unless the time for completion is extended by written modification of this Agreement.

14. CRA shall not assess any property owners for the PROJECT.

15. CRA is, and shall be, in the performance of all work, services and activities under this Agreement an Independent Contractor and not an employee, agent or servant of COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall

at all times, and in all places, be subject to CRA's sole direction, supervision and control. CRA shall exercise control over the means and manner in which it and its employees perform the work, and in all respects CRA's relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

16. CRA represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the COUNTY. All of the services required herein under shall be performed by CRA or under its supervision, and personnel engaged in performing the services, shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

17. Each party shall be liable for its own actions and negligence and to the extent permitted by law; the CRA shall indemnify, defend and hold harmless the COUNTY against any actions, claims or damages arising out of the CRA's actions in connection with this Agreement or the performance by the CRA as it may relate to this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 786.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligence, willful or intentional acts or omissions. This section shall survive termination or expiration of this Agreement.

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

19. The obligations of COUNTY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Board of County Commissioner of Palm Beach County.

20. The CRA shall, at all times during the term of this Agreement, maintain in force its status as an insured corporation, and shall provide evidence of this insurance prior to the COUNTY's execution of this Agreement. Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, CRA acknowledges it is either self-insured under State Sovereign Immunity statutes 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, which the COUNTY shall recognize as acceptable coverage for General Liability and Automobile Liability insurance. In the event CRA does not rely exclusively on sovereign immunity as provided by Section 768,28, Florida Statute, CRA shall maintain third-party Commercial General Liability and Automobile Liability at limits not less than \$1,000,000 Per Occurrence. With respect to Commercial General Liability, CRA shall add the COUNTY as an "Additional Insured".

- A. CRA shall maintain or be self-insured for Worker's Compensation & Employer Liability insurance in accordance with Florida Statutes, Chapter 440.
- B. CRA shall provide a statement or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which COUNTY shall recognize as acceptable for the above required coverage. The Certificate Holder shall be: Palm Beach County.
- C. CRA shall require each contractor engaged by the CRA for work associated with this Agreement to maintain:
 - 1) Workers' Compensation coverage in accordance with Florida Statutes, and;
 - 2) Commercial General Liability coverage, including vehicle coverage, in combined single limits of not less than One Million Dollars (\$1,000,000.00). The COUNTY shall be included in the coverage as an additional insured.

3) If applicable, a payment and performance bond for the total amount of the PROJECT in accordance with Florida Statute 255.05.

21. In the event of termination of this Agreement, the CRA shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of this Agreement by the CRA; and the COUNTY may withhold any payment to the CRA for the purpose of set-off until such time as the exact amount of damages due the COUNTY is determined.

22. The CRA's termination of this Agreement shall result in all obligations of the COUNTY for funding contemplated herein to be cancelled.

23. The COUNTY and CRA agree that no person shall, on the grounds of residency, race, color, national origin, ancestry, sexual orientation, sex, age, religion or creed, marital status, family status, gender identity or expression be discriminated against in performance of this Agreement. CRA shall ensure that all contracts let for the PROJECT pursuant to the terms of this Agreement will contain a similar non-discrimination and equal opportunity clause.

24. In the event that any section, paragraph, sentence, clause or provision hereof is held invalid by a court of competent jurisdiction, such holding shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

25. All notices required to be given under this Agreement shall be in writing, and deemed sufficient to each party when sent by United States Mail, postage paid, to the following:

AS TO THE COUNTY

Houston L. Tate, Director
Palm Beach County Office of Community Revitalization
2300 North Jog Road, 2nd Floor East
West Palm Beach, Florida 33411

AS TO THE CRA

Westgate/Belvedere Homes
Community Redevelopment Agency
Elizee Michel, ACIP
Executive Director
160 Australian Avenue, Suite 500
West Palm Beach, Florida 33406

26. This Agreement shall be construed and governed by the laws of the State of Florida. Any legal action necessary to enforce this Agreement shall be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every other remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power or remedy shall preclude any other or further exercise thereof.

27. Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and conditions of this Agreement shall be borne by the respective parties; provided, however, that this clause pertains only to the parties to the Agreement.

28. Except as expressly permitted herein to the contrary, no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and equality of dignity herewith.

29. Each party agrees to abide by all laws, orders, rules and regulations and the CRA will comply with all applicable governmental codes during the PROJECT.

30. Each party shall promptly notify the other of any lawsuit-related complaint, or cause of action threatened or commenced against it, which arises out of or relates, in any manner, to the performance of this Agreement.
31. The parties expressly covenant and agree that in the event any of the parties are in default of its obligations under this Agreement, the parties not in default shall provide to the defaulting party thirty (30) days written notice before exercising any of their rights.
32. The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not solely as a matter of judicial constraint, be construed more severely against one of the parties than the other.
33. This Agreement represents the entire understanding among the parties, and supersedes all other negotiations, or agreements, written or oral, relating to this Agreement.
34. CRA shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. CRA further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
35. This Agreement may be terminated by either party to the Agreement upon sixty (60) days written notice to the other party. CRA's termination of this Agreement shall result in all obligations of the COUNTY for funding contemplated herein to be cancelled.
36. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.
37. COUNTY and CRA agree that this Agreement sets forth the entire Agreement between the parties, and there are no promises or understandings other than those stated herein.
38. COUNTY may, at its discretion and for the duration of construction and repairs, install signs within public property or easements notifying the public that construction of the PROJECT was funded with COUNTY dollars.
39. Palm Beach County has established the Office of Inspector General in Ordinance 2009-049, as may be amended, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General has the power to subpoena witnesses, administer oaths and require the production of records, and audit, investigate, monitor, and inspect the activities of the CRA, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties have executed this Agreement and it is effective on the date first above written.

**WESTGATE/BELVEDERE HOMES
COMMUNITY REDEVELOPEMENT
AGENCY**

**PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS**

By: *Elisee Michel*
Executive Director

By: _____
Karen T. Marcus, Chairperson

ATTEST:

ATTEST:

**SHARON R. BOCK, CLERK &
COMPTROLLER**

By: _____

By: _____
Deputy Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: *[Signature]*

By: _____
Assistant County Attorney

Date: 6/16/11

Date: _____

**APPROVED AS TO TERMS
AND CONDITIONS**

By: *[Signature]*
Houston L. Tate, Director
Office of Community Revitalization

Date: 6/8/11

CERTIFICATE OF COVERAGE

Certificate Holder

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS
 A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA ITS OFFICE EMPLOYEES AND AGENCY
 C/O DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
 100 AUSTRALIAN AVENUE SUITE 500
 WEST PALM BEACH FL 33406

Administrator

Issue Date 2/3/11

Florida League of Cities, Inc.
 Department of Insurance and Financial Services
 P.O. Box 530065
 Orlando, Florida 32853-0065

COVERAGES

THIS IS TO CERTIFY THAT THE AGREEMENT BELOW HAS BEEN ISSUED TO THE DESIGNATED MEMBER FOR THE COVERAGE PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE COVERAGE AFFORDED BY THE AGREEMENT DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH AGREEMENT.

COVERAGES PROVIDED BY: **FLORIDA MUNICIPAL INSURANCE TRUST**

AGREEMENT NUMBER: FMIT 0637

COVERAGES PERIOD: FROM 10/1/10

COVERAGES PERIOD: TO 10/1/11 12:01 AM STANDARD TIME

TYPE OF COVERAGE - LIABILITY

General Liability

- Comprehensive General Liability, Bodily Injury, Property Damage and Personal Injury
- Errors and Omissions Liability
- Supplemental Employment Practice
- Employee Benefits Program Administration Liability
- Medical Attendants/Medical Directors' Malpractice Liability
- Broad Form Property Damage
- Law Enforcement Liability
- Underground, Explosion & Collapse Hazard

Limits of Liability

* Combined Single Limit

Deductible N/A

Automobile Liability

- All owned Autos (Private Passenger)
- All owned Autos (Other than Private Passenger)
- Hired Autos
- Non-Owned Autos

Limits of Liability

* Combined Single Limit

Deductible N/A

TYPE OF COVERAGE - PROPERTY

- Buildings
 - Basic Form
 - Special Form
- Personal Property
 - Basic Form
 - Special Form
- Agreed Amount
- Deductible \$500
- Coinsurance 100%
- Blanket
- Specific
- Replacement Cost
- Actual Cash Value

Miscellaneous

- Inland Marine
- Electronic Data Processing
- Bond

Limits of Liability on File with Administrator

TYPE OF COVERAGE - WORKERS' COMPENSATION

- Statutory Workers' Compensation
- Employers Liability
 - \$1,000,000 Each Accident
 - \$1,000,000 By Disease
 - \$1,000,000 Aggregate By Disease
- Deductible N/A

Automobile/Equipment - Deductible

- Physical Damage N/A - Comprehensive - Auto N/A - Collision - Auto N/A - Miscellaneous Equipment

Other

The limit of liability is \$100,000 Bodily Injury and/or Property Damage per person or \$200,000 Bodily Injury and/or Property Damage per occurrence. These specific limits of liability are increased to \$500,000 (combined single limit) per occurrence, solely for any liability resulting from entry of a claims bill pursuant to Section 766.28 (5) Florida Statutes or liability/settlement for which no claims bill has been filed or liability imposed pursuant to Federal Law or actions outside the State of Florida

Description of Operations/Locations/Vehicles/Special Items

Re: Community Development Block Grant

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE AGREEMENT ABOVE.

DESIGNATED MEMBER

WESTGATE/BELVEDERE HOMES COMMUNITY REDEVELOPMENT AGENCY
 100 AUSTRALIAN AVENUE SUITE 410
 WEST PALM BEACH FL 33406

CANCELLATIONS

SHOULD ANY PART OF THE ABOVE DESCRIBED AGREEMENT BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 45 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED ABOVE, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE PROGRAM, ITS AGENTS OR REPRESENTATIVES.



AUTHORIZED REPRESENTATIVE

"EXHIBIT A" Scope of Work



Office of Community Revitalization Grant: \$500,000.00

Use of Grant: Support for Existing Flood Mitigation Drainage Work

Scope of Work

The Westgate Belvedere Homes area was one of the first areas to be developed within suburban West Palm Beach. Back then, there was no storm management system in place. After the South Florida Water Management District was formed in the late 70's, surrounding areas started using stormwater management requirements to build at elevations generally higher than the Westgate area. As a result, Westgate became immediately a low lying area which floods consistently after any rainfall event.

Currently, there are very limited areas for detention or retention of stormwater runoff within the Westgate community. Primary storage is provided within the internal canal systems for the area. The stormwater storage areas that currently exist are significantly smaller in storage capacity relative to the overall drainage area that current regulatory agency requirements desire.

The Westgate CRA has developed a comprehensive plan to address the flooding problem in the area that include the acquisition of properties for water retention, canal improvement, pump station, and other drainage improvement projects.

The CRA has been successful in receiving some major grants to complete some of the flood mitigation projects. The grants require a local match. The CRA would like the OCR grant, alongside its other Tax Increment Financing dollars, as a local match to complement the federal grants received to address the severe flooding problem of the area.

The funds will be used as follows:

PROJECTS	AMOUNT
North Westgate Lake Property Acquisition	\$75,000.00
L-2 Canal Expansion	\$100,000.00
L-2 Canal Property Acquisition	\$225,000.00
L-2 Pump Station Matching Funds	\$100,000.00
Total	\$500,000.00

The amount of the line items may change. Please allow some flexibility in funding the above projects as funds are needed.

Submitted by Elizée Michel, AICP, Executive Director.