

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:	April 16, 2013	[X] Consent	[] Regular
		[] Ordinance	[] Public Hearing

Department:	Department of Economic Sustainability
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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Amendment No. 002 to an Agreement (R2011-0901) with the City of Lake Worth to extend the expiration date from May 1, 2013 to September 30, 2013.

Summary: On June 21, 2011, the County entered into an Agreement (R2011-0901), as amended by Amendment No. 001 (R2012-1104) on August 14, 2012, with the City of Lake Worth to provide \$200,000 in Community Development Block Grant Funds (CDBG) for a building addition to the Norman Wimbley Gymnasium located at 1515 Wingfield Street, Lake Worth. The project's construction schedule was impacted due to delays in obtaining building permits. The five (5) months time extension will allow the City to complete the project. **These are Federal CDBG funds which require no local match.** (DES Contract Development) District 7 (TKF)

Background and Justification: The City of Lake Worth has executed an Interlocal Agreement with Palm Beach County to participate in the CDBG Program as funded by the United States Department of Housing and Urban Development. This project has been determined by the Department of Economic Sustainability to be an eligible activity under the CDBG Program. Allocation of these funds to the City of Lake Worth was approved by the Board of County Commissioners on July 20, 2010, through its approval of Palm Beach County's Action Plan for Fiscal Year 2010-2011(R2010-1156).

Attachments:

1. Location Map for the Norman Wimbley Gymnasium
2. Amendment 002 to the Agreement with the City of Lake Worth
3. Amendment 001 (R2012-1104) to the Agreement with the City of Lake Worth
4. Agreement (R2011-0901) with the City of Lake Worth with Exhibits A to C
5. City of Lake Worth request for time extension letter dated February 11, 2013

Recommended By:		3/22/2013
	Department Director	Date

Approved By:		4-5-13
	Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	*				

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included In Current Budget? Yes _____ No _____

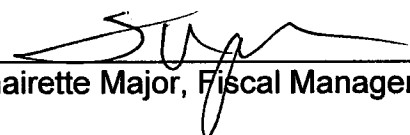
Budget Account No.:

Fund _____ Dept _____ Unit _____ Object _____ Program Code/Period _____

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

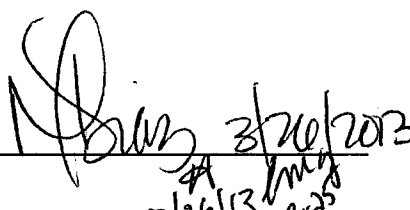
* No Fiscal Impact

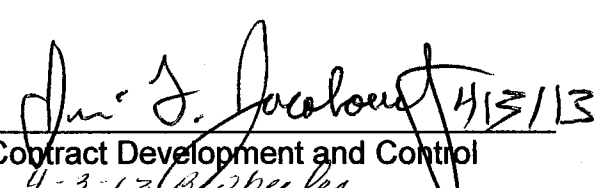
C. Departmental Fiscal Review:


 Shairette Major, Fiscal Manager I

III. REVIEW COMMENTS

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

 3/26/2013
 OFMB

 4/13/13
 Contract Development and Control

B. Legal Sufficiency:

 4/4/13
 Chief Assistant County Attorney

C. Other Department Review:

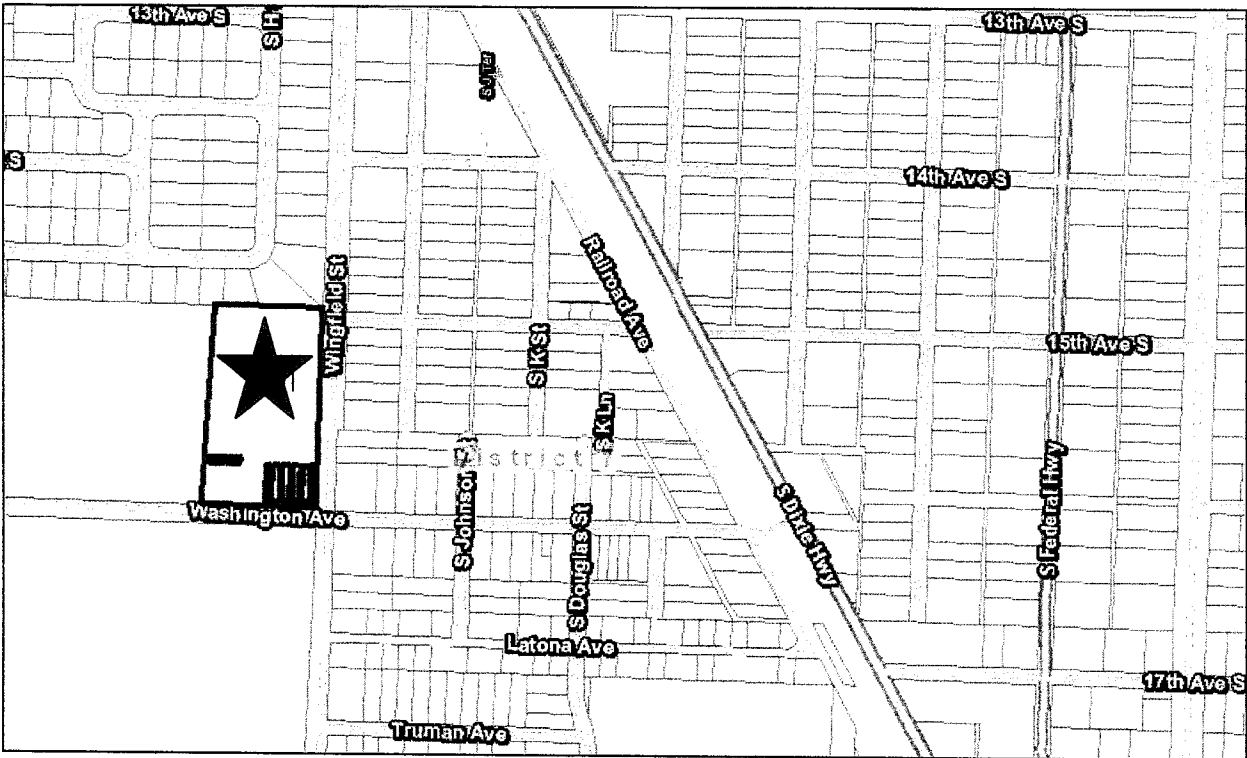
Department Director

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

LOCATION MAP

★ Wimbley Gymnasium

North ↑



**AMENDMENT 002 TO THE AGREEMENT
WITH
CITY OF LAKE WORTH**

Amendment 002 entered into on _____ by and between Palm Beach County and the City of Lake Worth.

WITNESSETH:

WHEREAS, Palm Beach County entered into an Agreement (R2011-0901) with the City of Lake Worth on June 21, 2011, as amended by Amendment 001 (R2012-1104) on August 14, 2012, to provide \$200,000 of Community Development Block Grant (CDBG) funds for a building addition to the Norman Wimbley Gymnasium; and

WHEREAS, both parties wish to modify the Agreement to extend the time of performance, and

WHEREAS, both parties mutually agree that the original Agreement, as amended, is hereby further amended as follows:

A. PART III – SECTION 1 - MAXIMUM COMPENSATION

Replace "May 1, 2013" with "September 30, 2013".

B. PART III – SECTION 2 - TIME OF PERFORMANCE

Replace "May 1, 2013" with "September 30, 2013".

C. PART IV – SECTION 26 – EXCLUSION OF THIRD PARTY BENEFICIARIES

Add Section 26 to PART IV of the Agreement as follows:

26. Exclusion of Third Party Beneficiaries

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or the Municipality.

D. Exhibit "A" – WORK PROGRAM NARRATIVE – SECTION I.H. WORK SCHEDULE

Delete the contents of this section and replace them with the following:

H. MONTHLY PERFORMANCE REQUIREMENTS: The time frame for completion of the outlined activities shall be September 30, 2013. The Municipality shall meet these requirements by the timely performance, documentation, and completion of the following tasks:

Start Construction by:	March 1, 2013
Complete Construction by:	August 15, 2013
Submit Final Reimbursement Request by:	September 1, 2013

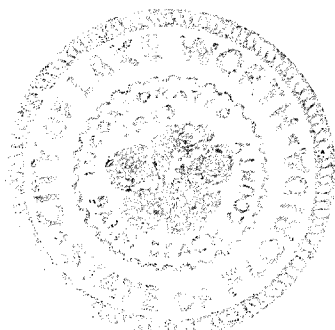
This Agreement may be amended to decrease and/or recapture grant funds from the Agency depending upon the timely completion of the Monthly Performance Benchmarks, as determined by DES.

The Municipality agrees that it may be subject to decrease and/or recapture of project funds by the County if the Monthly Performance Benchmarks herein are not met. **Failure by the Municipality to comply with these Performance Benchmarks may negatively impact the ability to receive future grant awards.**

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

NOW THEREFORE, 1) all items in the previous Agreement in conflict with this Amendment shall be and are hereby changed to conform to this Amendment, and 2) all provisions not in conflict with this aforementioned Amendment are still in effect and shall be performed at the same level as specified in the Agreement.

(MUNICIPALITY SEAL BELOW)



CITY OF LAKE WORTH

By: [Signature]
Pam Triolo, Mayor
Andy Amoroso, Vice Mayor Pro Tem
By: [Signature]
Pamela J. Lopez, City Clerk

Reviewed and Approved for Execution:

By: [Signature]
Michael Bornstein, City Manager

Approved As to Form and Legal Sufficiency:

By: [Signature] FOR
Glen J. Torcivia, City Attorney

(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: _____
Steven L. Abrams, Mayor
Palm Beach County

By: _____
Deputy Clerk

Document No.: _____

Approved as to Form and
Legal Sufficiency

Approved as to Terms and Conditions
Department of Economic Sustainability

By: _____
Tammy K. Fields
Chief Assistant County Attorney

By: [Signature] FOR
Sherry Howard, Deputy Director

R2012-1104

**AMENDMENT 001 TO THE AGREEMENT
WITH
CITY OF LAKE WORTH**

Amendment 001 entered into this _____ day of AUG 14 2012 by and between Palm Beach County and City of Lake Worth.

WITNESSETH:

WHEREAS, Palm Beach County entered into an Agreement (R2011-0901) with the City of Lake Worth on June 21, 2011, to provide \$200,000 of Community Development Block Grant (CDBG) funds for building expansion of the Norman Wimbley Gymnasium; and

WHEREAS, both parties wish to modify the Agreement to extend the time of performance, and

WHEREAS, both parties mutually agree that the original Agreement is hereby further amended as follows:

A. PART I - SECTION 1(3) DEFINITIONS

The parties recognize that the County has changed the name of Palm Beach County Housing and Community Development to Palm Beach County Department of Economic Sustainability. Accordingly, the term "HCD" as it appears in the Agreement, is hereby deleted and replaced with the term "DES" which shall mean Palm Beach County Department of Economic Sustainability.

B. PART III - SECTION 1 - MAXIMUM COMPENSATION

Replace "November 30, 2012" with "May 1, 2013".

C. PART III - SECTION 2 - TIME OF PERFORMANCE

Replace "November 30, 2012" with "May 1, 2013".

D. PART III - SECTION 23 - PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL

Delete the entire section and replace with the following:

Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Municipality, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

E. Exhibit "A" - WORK PROGRAM NARRATIVE - Section I.H. WORK SCHEDULE

Delete the contents of this section and replace with the following:

H. MONTHLY PERFORMANCE REQUIREMENTS: The time frame for completion of the outlined activities shall be May 1, 2013. The Municipality shall meet these requirements by the timely performance, documentation, and completion of the following tasks:

Award Contract by:	July 31, 2012
Start Construction by:	September 30, 2012
Complete Construction by:	March 1, 2013
Submit Final Reimbursement Request by:	May 1, 2013

ATTACHMENT 3

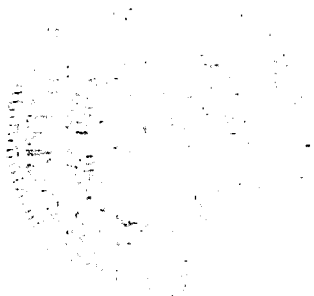
This Agreement may be amended to decrease and/or recapture grant funds from the Agency depending upon the timely completion of the Monthly Performance Benchmarks, as determined by DES.

The Municipality agrees that it may be subject to decrease and/or recapture of project funds by the County if the Monthly Performance Benchmarks herein are not met. **Failure by the Municipality to comply with these Performance Benchmarks may negatively impact ability to receive future grant awards.**

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

NOW THEREFORE, 1) all items in the previous Agreement in conflict with this Amendment shall be and are hereby changed to conform to this Amendment, and 2) all provisions not in conflict with this aforementioned Amendment are still in effect and shall be performed at the same level as specified in the Agreement.

(MUNICIPALITY SEAL BELOW)



CITY OF LAKE WORTH

By:
Pam Triolo, Mayor

By:
Pamela J. Lopez, City Clerk

Reviewed and Approved for Execution:

By:
Michael Bornstein, City Manager

Approved As to Form and Legal Sufficiency:

By:
Elaine A. Humphreys, City Attorney

(COUNTY SEAL BELOW)

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

By:
Shelley Vana, Chair
Board of County Commissioners

ATTEST: Sharon R. Bock,
Clerk & Comptroller

By:
Deputy Clerk

Document No.: R2012.1104

AUG 14 2012

Approved as to Form and
Legal Sufficiency

By:
Tammy K. Fields
Senior Assistant County Attorney

Approved as to Terms and Conditions
Department of Economic Sustainability

By:
Journey Beard, Director
Contract Development and Quality Control

R2011 0901
AGREEMENT BETWEEN PALM BEACH COUNTY

CITY OF LAKE WORTH

AND

CITY OF LAKE WORTH

THIS AGREEMENT, entered into this JUN 21 2011 day of , 2011, 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 City of Lake Worth, a municipality duly organized and existing by virtue of the laws of the State of Florida, having its principal office at 7 North Dixie Highway, Lake Worth, FL 33460.

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 City of Lake Worth, desire to provide the activities specified in Part II of this Agreement; and

WHEREAS, Palm Beach County desires to engage the City of Lake Worth 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) "Municipality" means the City of Lake Worth.
- (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 Municipality will implement the Scope of Services set forth in Part II of this Agreement.

PART II

SCOPE OF SERVICES

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

PART III

COMPENSATION, TIME OF PERFORMANCE, METHOD, AND CONDITIONS OF PAYMENT1. MAXIMUM COMPENSATION

The Municipality agrees to accept as full payment for services rendered pursuant to this Agreement the actual amount of budgeted, eligible, and HCD Director or designee-approved expenditures and encumbrances made by the Municipality under this Agreement, which shall not be unreasonably withheld. Said services shall be performed in a manner satisfactory to HCD. In no event shall the total compensation or reimbursement to be paid hereunder exceed the maximum and total authorized sum of \$200,000 for the period of June 21, 2011, through and including November 30, 2012. 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-10-UC-12-0004. The effective date shall be the date of execution of this Agreement, and the services of the Municipality shall be undertaken and completed in light of the purposes of this Agreement. In any event, all services required hereunder shall be completed by the Municipality prior to November 30, 2012.

3. METHOD OF PAYMENT

The County agrees to make payments and to reimburse the Municipality for all budgeted costs permitted by Federal, State, and County guidelines. The Municipality shall not request reimbursement for payments made by the Municipality before the effective date of this Agreement, nor shall it request reimbursement for payments made after the expiration date of this Agreement, and in no event shall the County provide advance funding to the Municipality or any subcontractors hereunder. The Municipality shall request payments or reimbursements from the County by submitting to HCD proper documentation of expenditures consisting of originals of invoices, receipts, or other evidence of indebtedness, and when original documents cannot be presented, the Municipality may furnish copies if deemed acceptable by HCD. Each request for payment or reimbursement submitted by the Municipality shall be accompanied by a letter from the Municipality, provided on the Municipality'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 Municipality may at any time after the expiration of this agreement request from the County reimbursement for payments made by the Municipality during the term of this Agreement by submitting to HCD the aforesaid proper documentation of expenditures, and the Palm Beach County Finance Department shall make payment as stated above, provided that HCD has determined that the funds allocated to the Municipality through this agreement are still available for payment, and provided that HCD approves such payment.

4. CONDITIONS ON WHICH PAYMENT IS CONTINGENT(1) IMPLEMENTATION OF PROJECT ACCORDING TO REQUIRED PROCEDURES

The Municipality shall implement this Agreement in accordance with applicable Federal, State, County, and local laws, ordinances and codes. 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.

(2) FINANCIAL ACCOUNTABILITY

The County may have a financial systems analysis and/or an audit of the Municipality, or of any of its subcontractors, by an independent auditing firm employed by the County or by the County Internal Audit Department at any time the County deems necessary to determine if the project is being managed in accordance with Federal, State, and County requirements.

(3) SUBCONTRACTS

Any work or services subcontracted hereunder shall be specifically by written contract,

written agreement, or purchase order. All subcontracts shall be submitted by the Municipality to HCD and approved by HCD prior to execution of any subcontract hereunder. All subcontracts shall be subject to Federal, State and County laws and regulations. This includes ensuring that all consultant contracts and fee schedules meet the minimum standards as established by the Palm Beach County Engineering Department and 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-87, A-102, A-128, and 24CFR Part 85 (also known as the Common Rule), which are incorporated herein by reference.

(5) REPORTS, AUDITS, AND EVALUATIONS

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

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

HCD shall have the right under this Agreement to suspend or terminate payments if after fifteen (15) days written notice the Municipality 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;
- (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

The Municipality shall comply with the program income requirements imposed by federal and rules and regulations. All income earned by the Municipality from activities financed, in whole or in part, by funds provided hereunder must be reported and returned to HCD on a monthly basis. 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-102 and other applicable regulations incorporated herein by reference.

The Municipality may request such program income be used to fund other eligible uses, subject to HCD approval, and among other things, the Municipality being in compliance with its obligations as contained within this Agreement (including the attached Exhibits herein). If said request is approved by HCD, the Municipality shall only use such program income to fund "basic eligible activities" as defined by Federal CDBG Regulations (24 CFR 570). The Municipality hereby agrees that the provisions of this Agreement shall also apply to these "basic eligible activities" as funded with the Municipality's program income.

PART IV

GENERAL CONDITIONS

1. OPPORTUNITIES FOR RESIDENTS AND CIVIL RIGHTS COMPLIANCE

The Municipality agrees that no person shall on the ground of race, color, disability, national origin,

religion, age, financial status, 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 Municipality shall comply with the Section 3 Clause of the Housing and Community Development Act of 1968.

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

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

3. PROGRAM BENEFICIARIES

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

4. EVALUATION AND MONITORING

The Municipality agrees that HCD will carry out periodic monitoring and evaluation activities as determined necessary by HCD or the County and that payment, reimbursement, or the continuation of this Agreement is dependent upon satisfactory evaluation conclusions based on the terms of this Agreement. The Municipality agrees to furnish upon request to HCD, the County, or the County's designees copies of transcriptions of such records and information as is determined necessary by HCD or the County. The Municipality shall submit status reports required under this Agreement on forms approved by HCD to enable HCD to evaluate progress. The Municipality shall provide information as requested by HCD to enable HCD to complete reports required by the County or HUD. The Municipality shall allow HCD, the County, or HUD to monitor the Municipality 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 Municipality 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 Municipality expends over \$500,000 of Federal awards, the Municipality shall comply with the provisions of OMB Circular A-133. The Municipality 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 Municipality's choosing, subject to the County's approval. In the event the Municipality anticipates a delay in producing such audit, the Municipality shall request an extension in advance of the deadline. The cost of said audit shall be borne by the Municipality. In the event the Municipality is exempt from having an audit conducted under A-133, the Municipality shall submit audited financial statements and/or the County reserves the right to conduct a "limited scope audit" of the Municipality as defined by A-133. The County will be responsible for providing technical assistance to the Municipality, as deemed necessary by the County.

6. UNIFORM ADMINISTRATIVE REQUIREMENTS

The Municipality 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 Municipality 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 Municipality's control upon expiration of this Agreement which was acquired or improved in whole or part with CDBG in the 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 Municipality 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 Municipality for the purpose of this Agreement shall be made available to the County by the Municipality at any time upon request by the County or HCD. Upon completion of all work contemplated under this Agreement copies of all documents and records relating to this Agreement shall be surrendered to HCD if requested. In any event the Municipality shall keep all documents and records for five (5) years after expiration of this Agreement.

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

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

10. INSURANCE

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

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

The Municipality agrees to provide a statement, or Certificate of Insurance, evidencing insurance or self-insurance for the above required coverages, which the Municipality shall deliver to HCD at its office at 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406.

The Municipality agrees its self-insurance or insurance shall be primary as respects to any coverage afforded to or maintained by County.

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

11. MAINTENANCE OF EFFORT

The intent and purpose of this Agreement is to increase the availability of the Municipality's services. This Agreement is not to substitute for or replace existing or planned projects or activities

of the Municipality. The Municipality agrees to maintain a level of activities and expenditures, planned or existing, for projects similar to those being assisted under this Agreement which is not less than that level existing prior to this Agreement.

12. CONFLICT OF INTEREST

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

13. CITIZEN PARTICIPATION

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

14. RECOGNITION

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

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-87, A-102, A-133, and 24CFR Part 85;
- (3) Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Title II of the Americans with Disabilities Act of 1990;
- (4) Executive Orders 11246, 11478, 11625, 12432, the Davis Bacon Act, and Section 3 of the Housing and Community Development Act of 1968, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended;
- (5) Executive Orders 11063, 12259, 12892, the Fair Housing Act of 1988, and Section 109 of the Housing and Community Development Act of 1974, as amended;
- (6) Florida Statutes, Chapter 112;
- (7) Palm Beach County Purchasing 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 Municipality's personnel policies and job descriptions; and
- (10) The Municipality's Certificate of Insurance.

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

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

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

(1) TERMINATION FOR CAUSE

If through any cause either party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if either party shall violate any of the covenants,

agreements, or stipulations of this Agreement, either party shall thereupon have the right to terminate this Agreement in whole or part by giving a fifteen (15) working day written notice of such termination to the other party and specifying therein the effective date of termination.

(2) TERMINATION 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 Municipality 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 the governing body of the Municipality, 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 Municipality when delivered to its address on page one (1) of this Agreement.

20. INDEPENDENT AGENT AND EMPLOYEES

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

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 Municipality certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133 (3)(a).

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 Municipality, 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 Municipality, 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 seventeen (17) enumerated pages which include the exhibits referenced herein, shall be executed in three (3) counterparts, each of which shall be deemed to be

CITY OF LAKE WORTH

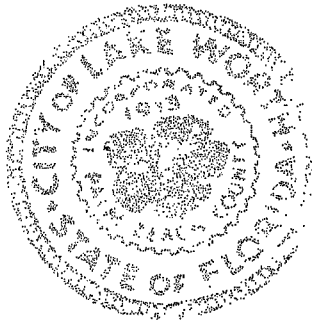
an original, and such counterparts will constitute one and the same instrument. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.

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 JUN 21 2011, 2011.

(MUNICIPALITY SEAL BELOW)



CITY OF LAKE WORTH

By: Suzanne Mulvihill 5-17-11
~~Rene Varela, Mayor~~
Suzanne Mulvihill, Vice Mayor

By: Pamela J. Lopez
Pamela J. Lopez, City Clerk

Reviewed And Approved For Execution:

By: Susan Stanton 5-16-11
Susan Stanton, ICMA-CM
City Manager

Approved As to Form and Legal Sufficiency:

By: Elaine A. Humphreys 5-16-11
Elaine A. Humphreys
City Attorney

(COUNTY SEAL BELOW)

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

BOARD OF COUNTY COMMISSIONERS

By: Karen T. Marcus
Karen T. Marcus, Chair
Board of County Commissioners

ATTEST: Sharon R. Bock,
Clerk & Comptroller

By: Nancy Powell
Deputy Clerk

Approved as to Form and Legal Sufficiency

By: Tammy K. Fields
Tammy K. Fields
Senior Assistant County Attorney

R2011 09 01

Document No.: _____

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

By: Journey Beard
Journey Beard, Director
Contract Development and Quality Control

EXHIBIT "A"
WORK PROGRAM NARRATIVE

I. THE MUNICIPALITY AGREES TO:

- A. **PROFESSIONAL SERVICES:** The Municipality, using its own resources, shall retain a consultant (a Florida professional engineer or registered architect) for the below described Norman Wimbley Gymnasium building addition located at 1515 Wingfield Street in the City of Lake Worth. The consultant shall provide design services and create plans and specifications for the below described gymnasium building addition. The Municipality and 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 this type of project. The consultant shall also coordinate the design and construction work with the asbestos abatement contractor, should such abatement become necessary.

Alternatively, the Municipality shall have the option of performing any portion of the consultant's services described above by its own staff provided such staff possesses the necessary competency to do so.

- B. **PROJECT SCOPE:** The scope of this project, subject to funding availability, shall include the following building addition on the Norman Wimbley Gymnasium in the City of Lake Worth:

Construction of a building addition (of approximately 1,000 square feet) on the west side of the gymnasium to include installation of utility lines (electrical and HVAC), a metal roof, a storage and mechanical room, exterior and interior wall surfacing, an accordion-style room partition, lighting, flooring, locking door system, panic bars, an Americans with Disabilities Act (ADA) compliant sidewalk from the parking lot to the southeast corner of the gymnasium addition, a covered entrance, exterior security lighting, and an ADA-compliant entranceway from the building addition to the adjacent gymnasium.

NOTE 1: Should the Municipality use brand names in the bid package/drawings/ specifications for this project, then these documents shall:

- (a) Clearly note that the specified brand name is used for descriptive purposes only,
- (b) State that "equal" equipment or materials will be accepted, and
- (c) Identify the minimum requirements to establish equality.

The Municipality understands that the use of more than one brand name shall not be regarded as having met the above requirements.

NOTE 2: The Municipality shall submit its bid package/drawings/specifications, 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. In submitting the bid package and drawings/specifications to HCD, the Municipality shall also demonstrate that it has submitted its drawings/specifications to the City of Lake Worth building department for plan review, and that these drawings/specifications comply with all applicable building and zoning codes. Furthermore, the Municipality shall obtain HCD approval prior to issuing any addenda to its bid documents for this project.

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

NOTE 4: The Municipality shall 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 Municipality 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 Municipality such waiver.

NOTE 5: The Municipality shall not award the construction contract for the project until sufficient funding is available to complete the established scope of work. All construction work shall be included in one contract. The Municipality shall obtain HCD approval prior to awarding the

construction contract to be funded through this Agreement. After awarding such contract, the Municipality shall obtain HCD approval prior to executing any change orders to such contract.

NOTE 6: Should the construction contract amount for this project exceed the amount to be funded by the County for construction costs through this Agreement, then the Municipality shall fund all amounts in excess of the amount to be funded by the County. The Municipality may request the County to participate with a portion of the County's funding for construction costs first prior to participating with its funds. Under such a scenario, the Municipality would disburse an amount up to 75% of the County's funding amount made available for the project through this Agreement for construction costs and request reimbursement from the County for such amount, then disburse its portion of funding for the project (without being reimbursed by the County for such amount), and finally, the Municipality would disburse an amount equivalent to the County's remaining funding amount made available for the project through this Agreement for construction costs and request reimbursement from the County for such amount.

NOTE 7: The Municipality shall not request reimbursement from HCD for materials or equipment received and stored on the project site or elsewhere. The Municipality shall only request reimbursement for materials and equipment that have been installed.

NOTE 8: The Municipality shall inform HCD of any environmental findings or conditions discovered during activity implementation. Applicable mitigation measures must be incorporated in order to proceed with the project. Such mitigation measures may affect the total project cost.

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

- C. ASBESTOS REQUIREMENTS: The Municipality shall comply with all applicable requirements contained in Exhibit "C", attached hereto, for construction work in connection with the project funded through this Agreement.
- D. DAVIS-BACON ACT: The Municipality shall request the County to obtain a Davis-Bacon wage decision for the project prior to advertising the construction work. The Municipality shall incorporate a copy of the Davis-Bacon wage decision and disclose the requirements of the Davis-Bacon Act in its construction bid solicitation and contract.
- E. BONDING REQUIREMENTS: The Municipality shall comply with the requirements of 24 CFR Part 85 in regard to bid guarantees, performance bonds, and payment bonds. For contracts exceeding \$100,000, the Municipality 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 Municipality 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 Municipality 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 Municipality shall apply a retainage of at least 5% on all construction draws, which retainages shall be released in conjunction with the final draw upon satisfactory completion of the project. The Municipality agrees not to release such retainages until it has obtained approval from the County that the contractor and subcontractors have complied with the requirements of the Davis-Bacon Act.
- G. FORMER PROJECTS: The Municipality shall maintain all previously completed CDBG funded projects. Failure to do so will result in forfeiture of future CDBG funds and will delay funding for ongoing activities.
- H. MONTHLY PERFORMANCE REQUIREMENTS: The time frame for completion of the outlined activities shall be November 30, 2012. The Municipality shall meet these monthly requirements by

the timely performance, documentation, and completion of the following tasks:

- (1) Complete Design & Bid Documents
Must Obtain HCD Approval to Proceed to Bid by..... July 15, 2011
- (2) Advertise & Receive / Accept Bids
Must Obtain HCD Approval to Award Contract by..... August 30, 2011
- (3) Award Contract by September 30, 2011
- (4) Start Construction by..... October 30, 2011
- (5) Complete Construction by October 30, 2012
- (6) Submit Final Reimbursement Request by..... November 30, 2012

- I. **REPORTS:** The Municipality shall submit to HCD a detailed Monthly Performance Report in the form provided as Exhibit "B" to this Agreement. Each Report must account for the total activity for which the Municipality is funded under this Agreement, and a Municipality representative must certify that all of the Municipality's Monthly Performance Requirements have been met during the reporting period as referenced within this Agreement. The Monthly Performance Report(s) shall be used by HCD to assess the Agency's progress in implementing the project and as an additional basis for invoice reimbursement. This Agreement may be amended to decrease and/or recapture grant funds from the Municipality depending upon the timely completion of the monthly performance requirement deadlines and/or the rate of expenditure of funds, as determined by HCD.

The Municipality agrees that it may be subject to decrease and/or recapture of project funds by the County if the above Monthly Performance Requirements are not met. Failure by the Municipality to comply with these performance requirements may negatively impact ability to receive future grant awards.

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

- J. **USE OF THE PROJECT FACILITY:** The Municipality agrees in regard to the use of the facility/property whose acquisition or improvements are being funded in part or in whole by CDBG funds as provided by this Agreement, that for a period of ten (10) years after the expiration date of this Agreement (as may be amended from time to time):
- (a) The Municipality may not change the use or planned use, or discontinue use, of the facility/property (including the beneficiaries of such use) from that for which the acquisition or improvements are made, unless the Municipality provides affected citizens with reasonable notice of, and opportunity to comment on, any such proposed change and either:
 1. The new use of the facility/property qualifies as meeting one of the national objectives defined in the regulations governing the CDBG program, and is not a building for the general conduct of government; or
 2. The requirements of paragraph (b) of this section are met.
 - (b) If the Municipality determines, after consultation with affected citizens, that it is appropriate to change the use of the facility/property to a use which does not qualify under paragraph (a) (1) of this section or discontinue the use of the facility/property, it may retain or dispose of the facility for such use if the County is reimbursed in the amount of the current fair market value of the facility/property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of, or improvements to the facility/property. The final determination of the amount of any such reimbursement to the County under this paragraph shall be made by the County.
 - (c) Following the reimbursement of CDBG funds by the Municipality to the County pursuant to paragraph (b) above, the facility/property will then no longer be subject to any CDBG requirements.
 - (d) Pursuant to the 24 Code of Federal Regulations (CFR) 570.200 (b)(2), reasonable fees may be charged for the use of the facilities assisted with CDBG funds, but charges such as excessive membership fees, which will have the effect of precluding low and moderate income persons from using the facilities, are not permitted. The facility shall be operated so as to be open for use by the general public during all normal hours of operation, as required

by 24 CFR 570.201 (c).

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

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

Section 3 Clause

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

- L. **ENVIRONMENTAL CONDITIONS:** The Municipality shall immediately inform HCD of any environmental findings or conditions discovered during activity implementation, and agrees that applicable mitigation measures, subject to HCD approval, shall be incorporated in order to proceed with the project. The Municipality agrees that such mitigation measures may affect the total project cost, as determined by HCD.

The subject property is located within the Palm Beach County Wellfield Protection Zone of Influence, Zone 4. The Municipality agrees that construction activities must comply with Best Management Practices for the Construction Industry.

The Municipality agrees that, in the event the project scope for the gymnasium expansion requires that construction dewatering be performed for the installation of underground utilities and/or infrastructure, the presence of impacted groundwater at the adjacent closed City of Lake Worth landfill could pose a degree of restriction on development activities. Prior to proceeding with said installation, HCD recommends that all applicable regulatory agencies, including the South Florida Water Management District (SFWMD), be immediately contacted by the Municipality to determine what permit requirements each agency requires in order to ensure that no adverse impacts occur that might allow contaminated groundwater to migrate as a result of groundwater lowering caused by the dewatering activities.

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 \$200,000. However, the County shall not provide any funding for the construction work until the Municipality provides documentation showing that sufficient funds are available to complete the project.
- B. Provide project administration and inspection to the Municipality to ensure compliance with U.S. HUD and the Department of Labor, and applicable State, Federal and County laws and regulations.
- C. Monitor the Municipality at any time during the term of this Agreement. Visits may be announced or unannounced, as determined by HCD, and will serve to ensure compliance with 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 Municipality for expenditures on the above items prior to undertaking the services associated with them, and approve any such expenditure it deems appropriate for this project.

EXHIBIT "B"

PALM BEACH COUNTY

HOUSING & COMMUNITY DEVELOPMENT

MONTHLY PERFORMANCE REQUIREMENTS REPORT

Report For:	Month: _____ Year: _____
Subrecipient Name:	City of Lake Worth
Project Name:	Norman Wimbley Gym - 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: _____

I, _____, do hereby certify that the City of Lake Worth has met all of its Monthly Performance Requirements (Exhibit A, Paragraph H) referenced in the Agreement during this reporting period.

Name & Signature of Certifying Representative

Send Report to: Bud Cheney, Manager of CREIS
Department of Housing and Community Development
100 Australian Avenue, Suite 500
West Palm Beach, FL 33406

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

III. ASBESTOS ABATEMENT**A. RENOVATION**

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

HCD will provide a copy of all contractor and consultant documents to the Municipality.

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

B. DEMOLITION

All "friable" 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 Municipality must obtain approval for all exceptions from HCD and the PBCAC.

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

IV. NESHAPS NOTIFICATION

A. RENOVATION

A NESHAP form must be received by the Palm Beach County Health Department at least ten working days prior to an asbestos renovation that includes regulated asbestos containing material

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

B. DEMOLITION

A NESHAP form must be received by the Palm Beach County Health Department at least ten working days prior to the demolition. The NESHAP notification shall be sent return receipt requested to the address shown below with a copy to HCD. HCD shall provide a copy to the PBCAC. All fees shall be paid by the Municipality.

Palm Beach County Department of Health
Asbestos Coordinator
800 Clematis Street
Post Office Box 29
West Palm Beach, Florida 33402

V. APPLICABLE ASBESTOS REGULATIONS/GUIDELINES

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

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



CITY OF LAKE WORTH

7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1689 · Fax: 561-586-1750

February 11, 2013

Edward W. Lowery, Director
Palm Beach County Department of Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, FL 33406

RE: CDBG Wimbley Gym Room Addition Project Request for Time Extension

Dear Mr. Lowery:

Please be advised that the Notice to Proceed for the CDBG Wimbley Gymnasium Room Addition Project was issued on February 6, 2013. West Construction, Inc. has begun its mobilization of the site and construction is scheduled to begin this week.

In view of the considerable delay in obtaining applicable permits for the project, it will be necessary to request an extension of the time for performance set forth in the Project Agreement that is currently scheduled to end on May 1, 2013. It is respectfully requested that this date be extended to September 30, 2013. This will provide sufficient time to complete construction and project close-out activities.

The City is aware that any such amendment is subject to approval of an Amendment to the Project Agreement initially by DES and ultimately by the City Commission and Board of County Commissioners. If the requested extension were granted, the City is confident that the project can be completed in a timely manner.

The completion of this project is very important to the City of Lake Worth to honor its commitment to the recreational needs of its residents. These improvements are critical to the development of a safe and accessible facility for the recreational needs of the community and cannot be provided without the financial assistance of CDBG funds from Palm Beach County.

Should you have any questions or require additional information, please do not hesitate to contact Jerry Kelly, Grants Analyst, at 561.533.7358. The City will respond in a timely manner. As always, thank you for your continued cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Bornstein", is written over a horizontal line.

Michael Bornstein
City Manager

cc: Carlos Serrano, Director, Operations and External Affairs, Palm Beach County DES
Lynette Scraper, Community Development Project Coordinator, Palm Beach County DES
Juan Ruiz, Director, City of Lake Worth Leisure Services Department
Karla White, Project Manager, City of Lake Worth Public Services Department

Office of the City Manager, City of Lake Worth

Lake Worth, Florida

ATTACHMENT 5

The insurance certificate for Amendment No. 002 to the Agreement (R2011-0901) with the City of Lake Worth has been requested from the City.

It will replace this page as soon as it is received. Please contact Joe Greco at 233-3672 for any further follow-up.