

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

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<b>Meeting Date:</b>	<b>December 5, 2017</b>	<input checked="" type="checkbox"/> <b>Consent</b>	<input type="checkbox"/> <b>Regular</b>
		<input type="checkbox"/> <b>Ordinance</b>	<input type="checkbox"/> <b>Public Hearing</b>
<b>Department:</b>	<b>Department of Housing and Economic Sustainability</b>		

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**I. EXECUTIVE BRIEF**

**Motion and Title: Staff recommends motion to approve: A)** Amendment 001 to an Agreement (R2016-0567) with the City of South Bay to clarify the scope of work, revise performance benchmarks and extend the project completion date from December 31, 2017 to December 31, 2018: **and B)** Delegated authority to the County Administrator, or designee, to execute future amendments to the Agreement (R2016-0567) with the City of South Bay.

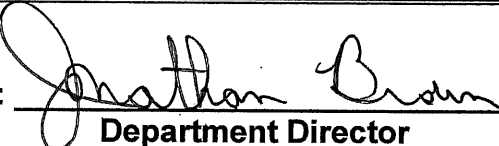
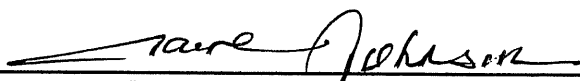
**Summary:** On May 3, 2016, the County entered into an Agreement (R2016-0567), with the City of South Bay to provide \$456,101 in Community Development Block Grant (CDBG) funding for the design and installation of improvements at Cox Park and Tanner Park in South Bay. The improvements at Cox Park include basketball court renovations, playground equipment, a gazebo, cooking grilles, benches, litter receptacles and site improvements. Tanner Park improvements include tennis court, basketball court and restroom renovations, community center exterior safety improvements, gazebos, benches, litter receptacles and site improvements. The design for the project is now complete, the improvements at each location have been identified and the project is ready for the bid process. The project design was delayed while surveying and soil borings were being obtained and while the City worked with Florida Power & Light Company to assess the relocation of poles in the parks. These delays have caused the need to extend the project completion date and the interim performance benchmarks. This Amendment will provide one (1) additional year to complete construction and process all required project close out documents. Delegation of authority to the County Administrator, or designee, to execute future amendments will allow timely execution of such amendments in order to facilitate continuous project implementation and allow for timely expenditure of CDBG funds in order to meet U.S. Department of Housing and Urban Development (HUD) expenditure deadlines. **These are Federal CDBG funds which require no local match.** District 6 (JB)

**Background and Justification:** The City of South Bay has an executed Interlocal Agreement with Palm Beach County to participate in the CDBG Program as funded by HUD. The improvements at Cox Park include basketball court renovations, playground equipment, a gazebo, cooking grilles, benches, litter receptacles and site improvements. Tanner Park improvements include tennis court, basketball court and restroom renovations, community center exterior safety improvements, gazebos, benches, litter receptacles and site improvements. Approval of this Amendment will identify the improvements to be installed at each location, revise the performance benchmark dates and allow additional time for project completion and close out activities to be undertaken.

- Attachment(s):**
- 1. Amendment No. 001 to the Agreement with the City of South Bay
  - 2. Agreement (R2016-0567) with the City of South Bay
  - 3. Letter of October 30, 2017, from the City of South Bay

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<b>Recommended By:</b>	 Department Director	<u>11/29/17</u> Date
<b>Approved By:</b>	 Assistant County Administrator	<u>12/1/17</u> Date

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>	*				

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included In Current Budget? Yes      No   X    
 Does this Item include the use of Federal funds? Yes   X   No     

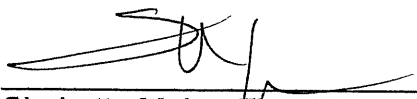
Budget Account Nos:

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 II

**III. REVIEW COMMENTS**

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

 11/30/17  
 OFMB 11/30/17

 12/1/17  
 Contract Development and Control

**B. Legal Sufficiency:**

 12/1/17  
 Assistant County Attorney

**C. Other Department Review:**

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

**AMENDMENT 001 TO THE AGREEMENT  
WITH  
CITY OF SOUTH BAY**

Amendment 001 entered into on \_\_\_\_\_ by and between Palm Beach County and the City of South Bay.

**WITNESSETH:**

**WHEREAS**, Palm Beach County entered into an Agreement (R2016-0567) with the City of South Bay on May 3, 2016 to provide \$456,101 of Community Development Block Grant (CDBG) funds for project design and construction improvements to Cox Park and Tanner Park; and

**WHEREAS**, the parties wish to identify the improvements, modify both the project completion date and performance requirements associated with the project; and

**WHEREAS**, both parties desire to amend the original Agreement in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, and various other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**A. INCORPORATION OF RECITALS**

The foregoing recitals are true and correct and incorporated herein by reference. Terms not defined herein shall have the same meaning as ascribed to them in the Agreement.

**B. SECTION 6: MAXIMUM COMPENSATION**

Replace "December 31, 2017" with "December 31, 2018".

**C. SECTION 7: TIME OF PERFORMANCE**

Replace "December 31, 2017" with "December 31, 2018".

**D. SECTION 9 (D): CONDITIONS ON WHICH PAYMENT IS CONTINGENT: PURCHASING**

Delete the current language and replace it with the following:

"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 Municipality's Purchasing Code, with the procedures prescribed by the Palm Beach County Purchasing Code, as well as 2 CFR 200.501 through 2 CFR 200.507 which are incorporated herein by reference".

**E. SECTION 19: INSURANCE BY MUNICIPALITY**

Delete the language in this Section and replace it with the following:

"Without waiving the right to sovereign immunity as provided by s.768.28 F.S., the Municipality acknowledges to be self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$200,000 Per Person and \$300,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. In the event the Municipality maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance of self insurance under s.768.28 F.S., the Municipality shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage.

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

When requested, the Municipality shall agree to provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which County agrees to recognize as acceptable for the above mentioned coverage. Compliance with the foregoing requirements shall not relieve the Municipality of its liability and obligations under this Agreement.

**Certificate(s) of Insurance** Prior to execution of this Agreement, the Municipality shall deliver to the COUNTY via the Insurance Company/Agent a signed Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Agreement have been obtained and are in full force and effect. During the term of the Agreement and prior to each subsequent renewal thereof, the Municipality shall provide this evidence to ITS at [pbc@instracking.com](mailto:pbc@instracking.com) or fax (562) 435-2999, which is Palm Beach County's insurance management system, prior to the expiration date of each and every insurance required herein. Said Certificate(s) of Insurance shall, to the extent allowable by the insurer, include a minimum thirty (30) day endeavor to notify due to cancellation (10 days for nonpayment of premium) or non-renewal of coverage

Palm Beach County  
c/o Insurance Tracking Services, Inc. (ITS)  
P. O. Box 20270  
Long Beach, CA 90801

In the event COUNTY discontinues its use of the insurance tracking system named herein, the COUNTY shall provide written notice to the Municipality with instructions regarding a substitute delivery address".

F. **SECTION 35: INCORPORATION BY REFERENCE**

Delete the language in this Section and replace it with the following:

"Exhibits attached hereto and referenced herein or in Exhibit "A" shall be deemed to be incorporated into this Agreement by reference".

G. **NEW SECTION 38:** Insert this language as Section 38.

**38. PUBLIC RECORDS**

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the MUNICIPALITY: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the MUNICIPALITY shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The MUNICIPALITY is specifically required to:

- A. Keep and maintain public records required by the County to perform services as provided under this Agreement.
- B. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The MUNICIPALITY further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement, if the MUNICIPALITY does not transfer the records to the County.
- D. Upon completion of the Agreement the MUNICIPALITY shall transfer, at no cost to the County, all public records in possession of the MUNICIPALITY unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the MUNICIPALITY transfers all public records to the County upon completion of the Agreement, the MUNICIPALITY shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the MUNICIPALITY keeps and maintains public records upon completion of the Agreement, the MUNICIPALITY shall meet all applicable requirements for retaining public records. All records stored electronically by the MUNICIPALITY must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

Failure of the MUNICIPALITY to comply with the requirements of this article shall be a material breach of this Agreement. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. MUNICIPALITY acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

**IF THE MUNICIPALITY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE MUNICIPALITY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.**

**H. EXHIBIT A – WORK PROGRAM NARRATIVE: SECTION I.B (I) and (II) – PROJECT CONSTRUCTION:**

Delete the language in these two Sections and replace with the following:

**I. Proposed Scope of Work: Cox Park**

Improvements, subject to the availability of funds, may include, but not be limited to the following:

- Restroom painting and door replacement
- Resurface/restripe basketball courts
- New equipment for basketball courts
- New playground equipment
- BBQ grilles (2), benches and litter receptacles
- Sidewalk and grading improvements
- Gazebo
- Fencing

**II. Proposed Scope of Work: Tanner Park**

Improvements, subject to the availability of funds, may include, but not be limited to the following:

- Community Center exterior safety improvements
- Resurface/restripe basketball and tennis courts
- New equipment for tennis and basketball courts
- New playground equipment
- Restroom building renovations including ADA compliance
- Fencing
- Benches and litter receptacles
- Gazebos (2)
- Grading improvements and sidewalks

**I. EXHIBIT A: WORK PROGRAM NARRATIVE: SECTION 1. B (2)**

Delete the current language and replace it with the following:

“The Municipality shall submit its bid packages/drawings/specifications along with a certification that the procurement documents are in conformity with the Municipality's Purchasing Code and with the procedures prescribed by the Palm Beach County Purchasing Code, as well as 2 CFR 200.501 through 2 CFR 200.507. The Municipality shall also submit an itemized opinion of probable construction costs, prepared by its consultant, to DES and obtain a letter of approval prior to bidding the construction contract. Furthermore, the Municipality shall obtain HES approval prior to issuing any addenda to its bid documents for either contract”.

**J. EXHIBIT A: WORK PROGRAM NARRATIVE: SECTION 1. B (6)**

Delete the current language and replace it with the following:

"Should the amount of eligible costs exceed the amount to be funded by the County 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 HES Department Director to participate with a portion of the County's funding for eligible costs first prior to participating with its funds. Under such a scenario, the HES Director, or his/her designee, will make the determination. The Municipality would then disburse an amount up to 75% of the County's funding amount made available for the project through this Agreement for eligible 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.

Unless otherwise approved by the HES Director, or by his/her designee, the Municipality shall first disburse 100% of their funds toward the contract amount, and shall provide HES with satisfactory documentation in this regard. HES will then fund the contract amount contained herein and as presently available in this project's budget in the form of a reimbursement to the City.

**K. EXHIBIT A: WORK PROGRAM NARRATIVE: SECTION 1. B (7)**

Delete the current language and replace it with the following:

"The Municipality may request reimbursement for payments made for eligible costs for materials and/or equipment stored on the Premises or in a bonded warehouse provided that such materials are securely stored, properly inventoried, and clearly stenciled or otherwise marked to indicate that they are the property of the Municipality, and provided that the County shall have received, reviewed, and approved documentation from the Municipality evidencing that for the life of the project:

- the Municipality's Insurance policy includes a sublimit of coverage for the full replacement value of supplies that are awaiting installation, and that said policy includes the County as an additional insured, or
- the Municipality has insurance coverage in place in the form of an Installation Floater or Inland Marine coverage for the full replacement value of supplies that are awaiting installation, with an endorsement showing the County as an additional insured.

**L. EXHIBIT A – WORK PROGRAM NARRATIVE: SECTION 1. H – PERFORMANCE REQUIREMENTS**

Replace "December 31, 2017" with "December 31, 2018" and

Delete the Performance Requirements and replace them with the following:

Advertise, Accept bids, Award Contract by	February 2018
Start Construction by	March 2018
Complete Construction by	October 2018
Submit Final Reimbursement by	November 2018

If unforeseen circumstances occur that impact the accuracy of the performance dates and require revisions thereto, the Municipality shall request, in writing, that the dates be revised. The HES Director, or his/her designee may, at his/her sole discretion, revise the performance dates via written notification to the sub-recipient. The Completion Date for all activities may be revised only by an Amendment to this Agreement.

**50% of the CDBG funds awarded must be expended by July 1, 2018 and all necessary reimbursement documentation to meet this expenditure requirement must be submitted to HES, no later than June 15, 2018.**

**The Municipality may forfeit all funds not expended during the term of this Agreement unless otherwise approved in writing by the HES Director or his/her designee, based on circumstances not under the Municipality's control.**

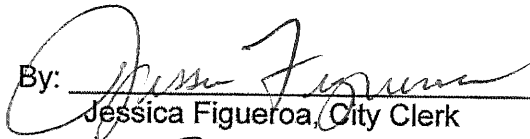
Except as modified by this Amendment 001, the Agreement remains unmodified and in full force and effect in accordance with the terms thereof. This Amendment 001 is expressly contingent upon the approval of the County and shall become effective only when signed by all parties.

IN WITNESS WHEREOF, the Municipality and the County have caused this Amendment 001 to be executed on the date first above written.

(MUNICIPALITY SEAL BELOW)

**CITY OF SOUTH BAY**

By:   
Joe Kyle, Mayor

By:   
Jessica Figueroa, City Clerk

By:   
Attorney for Municipality (Optional)

(COUNTY SEAL BELOW)

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

By: \_\_\_\_\_  
Mayor  
Palm Beach County

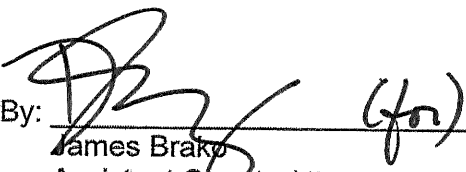
ATTEST: Sharon R. Bock,  
Clerk & Comptroller

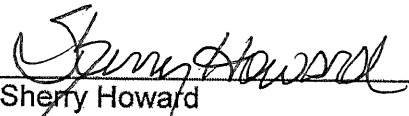
By: \_\_\_\_\_  
Deputy Clerk

Document No.: \_\_\_\_\_

Approved as to Form and  
Legal Sufficiency

Approved as to Terms and Conditions  
Department of Housing & Economic Sustainability

By:  (for)  
James Brako  
Assistant County Attorney

By:   
Sherry Howard  
Deputy Director

**AGREEMENT BETWEEN PALM BEACH COUNTY**

**AND**

**CITY OF SOUTH BAY**

R 2016 05 67

**THIS AGREEMENT**, entered into on    MAY 03 2016   , 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 South Bay**, a Municipality duly organized and existing by virtue of the laws of the State of Florida, having its principal office at **335 S.W. 2<sup>ND</sup> Avenue, South Bay, FL 33493**.

**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 its annual Action Plans, and the **City of South Bay**, desire to provide the activities specified in this Agreement; and

**WHEREAS**, **Palm Beach County** desires to engage the **City of South Bay** 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:

**1. DEFINITIONS**

- (A) "County" means Palm Beach County.
- (B) "CDBG" means the Community Development Block Grant Program of Palm Beach County.
- (C) "DES" means Palm Beach County Department of Economic Sustainability
- (D) "Municipality" means the **City of South Bay**.
- (E) "DES Approval" means the written approval of the DES Director or his designee.
- (F) "U.S. HUD" means the Secretary of Housing and Urban Development or a person authorized to act on its behalf.
- (G) "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 this Agreement.

**3. CDBG ELIGIBLE ACTIVITIES AND NATIONAL OBJECTIVE**

The Municipality shall implement the herein described improvements to Cox Park and Tanner Park in the City of South Bay, which activities have been determined to be **Public Facilities and Improvements**, under 24 Code of Federal Regulations (CFR) 570.201(c). Both Parties acknowledge that the eligible activities carried out under this Agreement, as described in the scope of work in Exhibit A, will benefit **Low- and Moderate- Income Persons on an Area-Wide Basis** and meet the National Objective as defined in 24 CFR 570.208(a)(1)(i).



**4. GENERAL COMPLIANCE**

The Municipality shall comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)), including subpart K of these regulations, except that (1) the Municipality does not assume the County's environmental responsibilities described in 24 CFR 570.604 and (2) the Municipality does not assume the County's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Municipality also agrees to comply with all other Federal, state and local laws, regulations, and policies governing the funds provided under this Agreement. The Municipality further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available. Any legal action necessary to enforce this Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida.

**5. SCOPE OF SERVICES**

The Municipality shall, in a satisfactory and proper manner as determined by DES, perform the tasks necessary to complete the improvements outlined in Exhibit A as attached hereto and made a part hereof.

**6. MAXIMUM COMPENSATION**

The Municipality agrees to accept as full payment for services rendered pursuant to this Agreement the actual amount of budgeted, eligible, and DES Director or designee-approved expenditures and encumbrances made by the Municipality under this Agreement, which shall not be unreasonably withheld. These services shall be performed in a manner satisfactory to DES. In no event shall the total compensation or reimbursement to be paid hereunder exceed the maximum and total authorized sum of \$456,101 for the period of May 3, 2016 through and including December 31, 2017. Any funds not obligated by the Agreement expiration date shall remain with the County and no longer be eligible for reimbursement to the Municipality.

**7. 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 Nos. B-10-UC-12-0004 and B-12-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 prior to December 31, 2017.

**8. 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 DES 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 DES. 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 DES. 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 DES the aforesaid proper documentation of expenditures, and the Palm Beach County Finance Department shall make payment as stated above, provided that DES has determined that the funds allocated to the Municipality through this Agreement are still available for payment, and provided that DES approves such payment.

**9. CONDITIONS ON WHICH PAYMENT IS CONTINGENT**

- (A) **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 DES. No payments for projects funded by more than one funding source will be made until a cost allocation plan has been approved by the DES Director or designee. Should a project receive additional funding after the commencement of this Agreement, the Municipality shall notify DES in writing within thirty (30) days of receiving notification from the funding source and submit a cost allocation plan for approval by the DES Director or designee within forty-five (45) days of said official notification.
- (B) **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.
- (C) **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 DES and approved by DES 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 Palm Beach County 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 without prior written approval of the DES Director or his designee.
- (D) **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 24 CFR Part 85 (also known as the Common Rule), which are incorporated herein by reference.
- (E) **REPORTS, AUDITS, AND EVALUATIONS**  
Payment may 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.
- (F) **ADDITIONAL DES, COUNTY, AND U.S. HUD REQUIREMENTS**  
DES 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 DES, the County, or U.S. HUD.
- (G) **PRIOR WRITTEN APPROVALS - SUMMARY**  
The following activities among others require the prior written approval of the DES Director or designee to be eligible for reimbursement or payment:
- (1) All subcontracts and agreements pursuant to this Agreement;
  - (2) All capital equipment expenditures of \$1,000 or more;

- (3) All out-of-county travel; (travel shall be reimbursed in accordance with Florida Statutes, Chapter 112.061);
- (4) All change orders;
- (5) All requests to utilize uncommitted funds after the expiration of this Agreement for programs described in Exhibit A; and
- (6) All rates of pay and pay increases paid out of CDBG funds, whether for merit or cost of living.

(H) PROGRAM - GENERATED INCOME

All income earned by the Municipality from activities financed, in whole or in part, by funds provided hereunder must be reported and returned annually to DES. Such income shall only be used to undertake the activities authorized by this Agreement, or shall be returned to DES. Accounting and disbursement of such income shall comply with OMB Circular A-110 and other applicable regulations incorporated herein by reference.

The Municipality may request that said program income be used to fund other eligible uses, subject to DES approval, and provided that the Municipality is in compliance with its obligations as contained within this Agreement (including the attached Exhibits herein). The Municipality shall only use such program income to fund "basic eligible activities" as defined by Federal Community Development Block Grant Regulations (24 CFR Part 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.

**The requirements of this section shall survive the expiration or termination of this Agreement.**

10. NON-DISCRIMINATION

The Municipality warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

Municipality has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as amended, or in the alternative, if the Municipality does not have a written non-discrimination policy or one that conforms to the County's policy, it has acknowledged through a signed statement provided to County that Municipality will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

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

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.

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.

**12. 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. Upon request from DES, the Municipality shall provide written verification of compliance.

**13. EVALUATION AND MONITORING**

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

**14. AUDITS AND INSPECTIONS**

At any time during normal business hours and as often as DES, 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 DES, 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 DES-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 shall provide technical assistance to the Municipality, as deemed necessary by the County.

**15. UNIFORM ADMINISTRATIVE REQUIREMENTS**

The Municipality agrees to comply with the applicable uniform administrative requirements as described in Federal CDBG Regulations 24 CFR 570.502.

**16. CDBG FUNDING AT EXPIRATION**

Upon expiration or termination of this Agreement, any funds not obligated by the Municipality shall remain with the County and no longer be available for reimbursement to the Municipality. Municipality shall transfer to the County any accounts receivable that are 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.

**17. 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, DES, or the Palm Beach County Inspector General's office, as indicated herein. Upon completion of all work contemplated under this Agreement copies of all documents and records relating to this Agreement shall be surrendered to DES if requested. In any event, the Municipality shall keep all documents and records for five (5) years after expiration of this Agreement.

**18. 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 expiration or termination of this Agreement.

**19. INSURANCE BY MUNICIPALITY:**

Without waiving the right to sovereign immunity as provided by S. 768.28 F.S., the Municipality acknowledges to be self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$200,000 Per Person and \$300,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. In the event the Municipality maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance of self-insurance under s.768.28 F.S., the Municipality shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage. The Municipality agrees to maintain or to be self-insured for Workers' Compensation & Employer's Liability insurance in accordance with Florida Statute 440.

When requested, the Municipality shall agree to provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which County agrees to recognize as acceptable for the above mentioned coverage.

Compliance with the foregoing requirements shall not relieve the Municipality of its liability and obligations under this Agreement.

**20. 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.

**21. 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 DES 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.

**22. CITIZEN PARTICIPATION**

The Municipality shall cooperate with DES 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 this Agreement. Representatives of the Municipality shall attend meetings and assist DES in the implementation of the Citizen Participation Plan, as requested by DES.

**23. 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 DES in all publications and publicity. In addition, the Municipality will make a good faith effort to recognize DES's support for all activities made possible with funds made available under this Agreement.

**24. AGREEMENT DOCUMENTS**

The following documents are herein incorporated by reference and made a part hereof, and 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:

- (A) This Agreement, including its Exhibits, which the County may revise from time to time, as required, and to be provided for use by the Municipality;
- (B) Office of Management and Budget Circulars A-87, A-102, A-133, and 24CFR Part 85;
- (C) 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;
- (D) 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;
- (E) Executive Orders 11063, 12259, 12892, Fair Housing Act of 1988, and Section 109 of the Housing and Community Development Act of 1974, as amended;
- (F) Florida Statutes, Chapter 112;
- (G) Palm Beach County Purchasing Code;
- (H) Federal CDBG Regulations (24 CFR Part 570), and Federal Consolidated Plan Regulations (24 CFR Part 91), as amended;
- (I) The Municipality's personnel policies and job descriptions; and
- (J) The Municipality's Certificate of Insurance.

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

**25. TERMINATION AND SUSPENSION**

In the event of early 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 until such time as the exact amount of damages due to the County from the Municipality is determined.

(A) **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 or suspend payments, in whole or part, by giving written notice to the other party of such termination or suspension and specify the effective date of termination or suspension. Upon early termination, the County shall pay the Municipality for services rendered pursuant to this Agreement, through and including the date of termination.

(B) **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 early termination, the County shall pay the Municipality for services rendered pursuant to this Agreement, through and including the date of termination.

(C) **TERMINATION DUE TO CESSATION**

In the event the Grant to the County under Title I of the Housing and Community Development Act of 1974 (as amended) is suspended or terminated, this Agreement shall be suspended or terminated effective on the date U.S. HUD specifies.

In the event the Municipality ceases to exist, or ceases or suspends its operation for any reason, this Agreement shall be suspended or terminated on the date the County specifies. The determination that the Municipality has ceased or suspended its operation shall be made solely by the County, and the Municipality, its successors or assigns in interest agrees to be bound by the County's determination. Upon early termination, the County shall pay the Municipality for services rendered pursuant to this Agreement, through and including the date of termination.

26. **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.

27. **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.

28. **NOTICES**

All notices required to be given under this Agreement shall be sufficient when delivered to DES 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 1 of this Agreement.

29. **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.

30. **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.

31. **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 thirty six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133 (3)(a).

32. **PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL**

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 the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 to 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

33. **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.

34. **SOURCE OF FUNDING**

This Agreement and all obligations of County hereunder are subject to and contingent upon receipt of funding from U.S. HUD. Nothing in this Agreement shall obligate the Palm Beach County Board of County Commissioners to provide funding from the County's annual budget and appropriations.

35. **INCORPORATION BY REFERENCE**

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

36. **COUNTERPARTS OF THE AGREEMENT**

This Agreement, consisting of twenty-one (21) enumerated pages which include the Exhibits referenced herein, shall be executed in three (3) counterparts, each of which shall be deemed to be an original, and such counterparts will constitute one and the same instrument. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.

37. **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 MAY 03 2016, 2016.

(MUNICIPALITY SEAL BELOW)

CITY OF SOUTH BAY

By: [Signature]  
Joe Kyles, Mayor

By: [Signature]  
Jessica Figueroa, City Clerk

By: [Signature]  
Attorney for Municipality  
(Signature Optional)

(COUNTY SEAL BELOW)

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

BOARD OF COUNTY COMMISSIONERS

By: [Signature]  
Mary Lou Berger, Mayor  
Palm Beach County

ATTEST: Sharon R. Bock,  
Clerk & Comptroller

By: [Signature]  
Deputy Clerk



Document No.: R20160567  
MAY 03 2016

Approved as to Form and  
Legal Sufficiency

Approved as to Terms and Conditions  
Department of Economic Sustainability

By: [Signature]  
James Brako,  
Assistant County Attorney III

By: [Signature]  
Sherry Howard,  
Deputy Director

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

**1. MUNICIPALITY OBLIGATIONS:**

**PROJECT OVERVIEW:**

The project contained herein is a reprogramming of CDBG funds originally allocated to the City of South Bay for improvements to Palm Beach Road which will not be undertaken through the use of these funds. The improvements to Cox Park and Tanner Park (collectively "Parks") will require multiple tasks as listed below:

- Professional Services, Phase One, will provide the City with a choice of architectural designs for the Parks, including cost estimates for construction.
- By way of an amendment to Colome' & Associates' contract, Professional Services, Phase Two, will identify the specific improvements for the Parks, provide the necessary documents for contractor procurement and provide construction management services during the construction phase of the project.
- Construction/Installation of the improvements

**A. PROFESSIONAL SERVICES:**

1. **Phase One:** The Municipality shall piggyback on an existing Palm Beach County contract (R2014-1916, dated December 16, 2014) with Colome' & Associates, Inc. to provide two (2) architectural conceptual design studies for Cox Park and Tanner Park, including architectural construction cost estimating for each conceptual study. The proposal outlining these services is dated February 16, 2016 in correspondence from Colome' & Associates to the City of South Bay. The City shall enter into a contract with Colome' & Associates for said services *after* the execution of this Agreement.
2. **Phase Two (Optional):** Following a review of the Phase One results the Municipality, *upon written approval from the County*, may amend the above contract with Colome' & Associates to engage the consultant to create plans and specifications for the improvements to Cox Park and/or Tanner Park. Colome' & Associates' Phase Two tasks shall include, but may not be limited to the preparation of contract documents, assist in obtaining bids, reviewing bids, inspecting work in progress, recommending payment to contractors, and providing 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, if necessary.

**B. PROJECT CONSTRUCTION:**

The improvements described below may be made at Cox Park and/or Tanner Park. Depending on the cost estimates provided by Colome' & Associates, the Municipality may opt to make some, all, or none of the improvements listed below in Sections B.I and B.II. *This Agreement shall be amended to identify the improvements selected and to incorporate any additional terms that may be required.*

The Parks' close proximity to one another and similar scope of work will allow for the improvements at Cox Park and/or Tanner Park to be bid as one construction contract. The planned improvements may include renovation to all or part of existing structures, related site improvements including upgrades to existing play areas and/or creation of new play areas, supply and installation of new playground equipment, landscaping, lighting and park related amenities consistent with this type of project.

Specific improvements to be undertaken at Cox Park and Tanner Park shall be determined following the completion of each Park's Phase One design. All improvements must be eligible under the CDBG program and approved in writing by DES as part of DES's review of the Parks' plans and specifications.

**I. Proposed Scope of Work: Cox Park**

Improvements, subject to the availability of funds, may include, but not be limited to the following:

- Restroom renovations
- Resurface/restripe basketball courts
- New equipment for basketball courts
- New playground equipment
- Benches and litter receptacles
- Landscaping

**II. Proposed Scope of Work: Tanner Park**

Improvements, subject to the availability of funds, may include, but not be limited to the following:

- Community Center renovations
- Resurface/restripe basketball, multi-purpose and tennis courts
- New equipment for tennis and basketball courts
- New playground equipment
- Resurface parking areas
- Site lighting
- Benches and litter receptacles
- Landscaping

- (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 agrees that the use of more than one brand name shall not be regarded as having met the above requirements.

(2) The Municipality shall submit its bid packages/drawings/specifications, and an itemized opinion of probable construction costs, prepared by its consultant, to DES and obtain a letter of approval prior to bidding the construction contract. Furthermore, the Municipality shall obtain DES approval prior to issuing any addenda to its bid documents for either contract.

(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 DES.

(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 DES for a waiver to the above requirement should the nature of the project so necessitate, and in such instance, DES may, at its discretion, grant the Municipality such waiver.

(5) The Municipality shall not award the construction contract until sufficient funding is available to complete the established scopes of work. All construction work **at both locations** shall be included in **one** contract. The Municipality shall obtain DES approval prior to awarding the contract to be funded through this Agreement. After awarding said contract, the Municipality shall obtain DES approval prior to executing any change orders to the contract.

(6) Should the construction contract amount exceed the amount to be funded by the County 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.

The Municipality shall first disburse 100% of their funds toward the contract amount, and shall provide DES with satisfactory documentation in this regard. DES will then fund the contract amount contained herein and as presently available in this project's budget in the form of a reimbursement to the City.

(7) The Municipality shall not request reimbursement from DES 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.

(8) The Municipality shall inform DES 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 agrees that DES, in consultation with any parties it deems necessary, shall be the final arbiter on Municipality's compliance with the above.**

- C. **ASBESTOS REQUIREMENTS:** The Municipality shall comply with all applicable requirements contained in Exhibit C, attached hereto, for demolition and 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 and lighting 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:** Throughout the term of the contracts, the Municipality shall withhold retainage upon each progress draw at the maximum percentage allowed by Florida law. The Municipality shall abide by Florida law regarding the payment of retainage funds and project closeout procedures. The Municipality shall ensure that its contractor and subcontractors have complied with the requirements of the Davis-Bacon Act, and that satisfactory project closeout documentation has been submitted and approved by DES.

**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. PERFORMANCE REQUIREMENTS:** The time frame for completion and project close-out shall be December 31, 2017. The Municipality shall meet these performance requirements by the timely performance, documentation, and completion of the following tasks:

Conceptual Design Complete by:	August 30, 2016
Bid Document Completion by:	November 30, 2016
Advertise, Accept Bids, & Award Contract by:	February 28, 2017
Start Construction by:	April 1, 2017
Complete Construction by:	October 31, 2017
Submit Final Reimbursement Request by:	November 30, 2017

**I. REPORTS:** The Municipality shall submit to DES 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 contained herein have been met during the reporting period. These Monthly Performance Reports shall be used by DES to assess the Municipality’s progress in implementing the project.

This Agreement may be amended to decrease and/or recapture funds from the Municipality depending upon the timely completion of the performance requirement deadlines and/or the rate of expenditure of funds, as determined by DES.

**The Municipality 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 requirements may negatively impact ability to receive future grant awards.**

**J. USE OF THE PROJECT FACILITY/PROPERTY:** The Municipality agrees in regard to the use of the facility/property whose improvements are being funded in part or in whole by CDBG funds as provided by this Agreement, that for a period of five (5) years after the expiration date of this Agreement (as may be amended from time to time):

- (1) 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:
  - a. 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
  - b. The requirements of paragraph (2) of this section are met.
- (2) 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 (1) (a) 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.

- (3) Following the reimbursement of CDBG funds by the Municipality to the County pursuant to paragraph (2) above, the facility/property will then no longer be subject to any CDBG requirements.

**The provisions of this clause shall survive the expiration or termination 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 DES 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**

- (1) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 170 1u (Section 3). 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.
- (2) 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 24 CFR Part 135.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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 County shall perform the first Environmental Review (ER) of the project to accommodate the consulting services portion of the Agreement as contained in Exhibit A, Section 1. A. Professional Services.

The County shall perform a second Environmental Review (ER) to assess existing conditions and identify all potential environmental impacts, whether beneficial or adverse, and any required conditions or mitigation measures that Municipality must consider in the final design and implementation of the Project, as identified by Amendment to this Agreement. The Municipality shall acknowledge that it has received notification from DES containing the results of the ER. The notification letter from DES shall include a description of any conditions and mitigation measures required to be undertaken by the Municipality. Where applicable, the Municipality shall submit to DES a plan of action and an implementation schedule for complying with the identified conditions requiring mitigation. The Municipality shall comply with all requirements established by the County emulating from the completion of the ER.

ER costs incurred by the County may be charged to the project identified above. In addition, the Municipality shall immediately inform DES of any environmental findings or conditions discovered during project implementation, and agrees that applicable mitigation measures, subject to DES approval, shall be incorporated in order to proceed with the project. The Municipality acknowledges that such mitigation measures may affect the total project cost and that Municipality may be responsible for implementation of corrective actions and the costs associated therewith.

**2. COUNTY OBLIGATIONS:**

- A. Provide funding for the above specified architect/engineer and the improvements as described above in "Project Scope", during the term of this Agreement, in the amount of **\$456,101**. However, the County shall not provide any funding for the construction work until the Municipality provides documentation showing that sufficient funds are committed and 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 DES, 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 DES on program activities.
- D. Perform Davis-Bacon Act Labor Standards monitoring and enforcement.
- E. Allowable costs that may be paid by the County under this Agreement in addition to those stated in 2.A above:
  - (1) Costs of asbestos surveys, asbestos abatement, and abatement monitoring.
  - (2) 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 ECONOMIC SUSTAINABILITY**

**MONTHLY PERFORMANCE REPORT**

<b>Report For:</b>	Month: _____ Year: _____
<b>Sub-recipient Name:</b>	City of South Bay
<b>Project Name:</b>	Cox Park and Tanner Park Improvements
<b>Report Prepared By:</b>	_____
	Name Signature Date

**BUDGETING AND EXPENDITURES**

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

**Amounts Expended to Date:**

////////////////////////////////////	BUDGETED	EXPENDED	PERCENTAGE
CDBG Funds:	\$ 456,101	\$	%
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 South Bay has met all of its Monthly Performance Requirements (Exhibit A, Paragraph H) referenced in the Agreement during this reporting period.

\_\_\_\_\_  
**Name & Title of Certifying Representative**

Send Monthly Performance Report to: Bud Cheney, Manager of CIREIS  
 Department of Economic Sustainability  
 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**

ACM:	Asbestos Containing Materials
AHERA:	Asbestos Hazard Emergency Response Act
EPA:	Environmental Protection Municipality
FLAC:	Florida Licensed Asbestos Consultant
DES:	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 Safety & Health Administration
PBCAC:	Palm Beach County Asbestos Coordinator (in Risk Management)
PLM:	Polarized Light Microscopy
RACM:	Regulated Asbestos Containing Materials
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 should be conducted on all RACM indicating 1% - 10% asbestos by PLM analysis. If the asbestos content by PLM is less than 10%, the building owner/operator can elect to:
  1. Assume the material is greater than 1% and treat it as RACM, or
  2. Require verification by point counting
- Samples of resilient 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 will be presumed to contain asbestos

For Demolition Projects:

- Point counting should be conducted on all RACM indicating 1% - 10% asbestos by PLM analysis. If the asbestos content by PLM is less than 10%, the building owner/operator can elect to:
  1. Assume the material is greater than 1% and treat it as RACM, or
  2. Require verification by point counting
- Composite sample analysis is permitted for drywall systems (combining the drywall and joint compound constituents)
- All Category I and II non-friable materials, as defined in EPA/NESHAP, shall be sampled to determine asbestos content

If the Municipality has a recent asbestos survey report prepared by a Florida Licensed Asbestos Consultant, a copy may be provided to DES for review by the PBCAC 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 DES. If the survey is through DES, a copy of the completed survey will be forwarded to the Municipality.

### 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 DES prior to the removal. The Municipality must obtain approval for all exceptions from DES. DES will request the PBCAC to review and approve all exceptions.
- (b) Asbestos abatement work may be contracted by the Municipality or by DES upon request.
- (c) If the Municipality contracts the asbestos abatement, the following documents are required to be provided to the DES.
  1. An Asbestos Abatement Specification (Work Plan)
  2. Post Job submittals, reviewed and signed by the FLAC
- (d) If the Municipality requests DES to contract the asbestos abatement, DES will initiate the request through the PBCAC who will contract the asbestos abatement. DES 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 include training, wet methods, prompt cleanup in leak tight containers, etc. The renovation contractor must comply with US Dept of Labor, OSHA Standard Interpretation, "Compliance requirements for renovation work involving material containing <1% asbestos", dated 11/24/2003. The renovation contractor must submit a work plan to DES prior to removal of the materials.

#### B. DEMOLITION

All RACM must be removed by a Florida Licensed Asbestos Contractor under the direction of an FLAC prior to demolition. Examples of RACM include: popcorn ceiling finish, drywall systems, felt or paper-backed linoleum, resilient floor tile which is not intact, asbestos cement panels/pipes/shingles ("transite").

NESHAP Category I non-friable materials, such as intact resilient floor tile & mastic and intact roofing materials, may be demolished with the structure, using adequate controls. The demolition contractor shall be made aware of the asbestos-containing materials and shall exercise adequate control techniques (wet methods, etc.). Any exceptions to these guidelines shall be requested through and approved by DES prior to the removal. Demolition work should be monitored by a FLAC to ensure proper control measures and waste disposal. This is the responsibility of the Municipality.

- (a) Asbestos Abatement work may be contracted by the Municipality.
- (b) If the Municipality contracts the asbestos abatement, the following documents must be provided to the DES and reviewed by the PBCAC.
  1. An Asbestos Abatement Specification (Work Plan).
  2. Post Job submittals, reviewed and signed by the FLAC.

- (c) If the Municipality requests DES to contract the asbestos abatement, DES will initiate the request through the PBCAC who will contract the asbestos abatement. DES 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) If suspect materials are discovered that were not previously sampled and identified in the survey, stop all work that will disturb these materials and immediately notify DES.

**IV. NESHAP NOTIFICATION**

**A. RENOVATION**

A NESHAP form must be prepared by the Municipality or its Contractor and submitted to the Palm Beach County Health Department at least ten (10) working days prior to an asbestos activity that involves removal of regulated asbestos containing material, including linoleum, greater than 160 square feet or 260 linear feet or 35 cubic feet. For floor tile removal greater than 160 square feet, the Municipality or its Contractor shall provide a courtesy NESHAP notification to the Palm Beach County Health Department at least three (3) working days prior to removal.

The Municipality shall provide a copy of the asbestos survey to the renovation contractor to keep onsite during the work activity.

**B. DEMOLITION**

A NESHAP form must be prepared by the Municipality or its Contractor and submitted to the Palm Beach County Health Department at least ten (10) working days prior to the demolition for projects demolished by the Municipality.

**C. NESHAP FORM**

The NESHAP form is available online through the Florida Department of Environmental Regulations. The notification shall be sent to the address shown below. A copy shall be included in the Municipality post job documentation submitted to DES. 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 Municipality (EPA) NESHAP, 40 CFR Parts 61 Subpart M National Emission Standard for Asbestos, revised July 1991
- (b) Occupational Safety & Health 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 (RFCI), Updated Recommended Work Practices and Asbestos Regulatory Requirements, current version.
- (h) Florida Roofing Sheet Metal and Air Conditioning Contractors Association, NRCA, June 1995, or current version.
- (i) US Dept of Labor, OSHA Standard Interpretation
  1. Application of the asbestos standard to demolition of buildings with ACM in Place, dated 8/26/2002.
  2. Requirements for demolition operations involving material containing <1% asbestos, dated 8/13/1999.
  3. Compliance requirements for renovation work involving material containing <1% asbestos, dated 11/24/2003.



*Office of the City  
Manager*

South Bay City Hall  
335 SW 2<sup>nd</sup> Avenue  
South Bay, FL 33493  
Telephone: 561-996-6751  
Facsimile: 561-996-7950

[www.southbaycity.com](http://www.southbaycity.com)

**Commission**

Joe Kyles Sr.  
Mayor

John Wilson  
Vice Mayor

Esther E. Berry  
Taranza L. McKelvin  
Shanique S. Scott

Leondrae D. Camel  
City Manager

Jessica Figueroa  
City Clerk

Burnadette Norris-Weeks  
City Attorney

"An equal Opportunity  
Affirmative Action Employer"

October 30, 2017

Mr. Jonathan Brown, Director  
Department of Housing and Economic Sustainability  
100 Australian Avenue  
Suite 500  
West Palm Beach, FL 33406

Dear Mr. Brown,

The City of South Bay (City) respectfully requests an amendment to Subgrant Agreement R2016-0567 which provides the City \$456,101 of Community Development Block Grant funds for project design and construction improvements to Cox Park and Tanner Park (Property).

The City kindly requests a twelve (12) month extension of Subgrant Agreement R2016-0567 which expires on December 31, 2017.

The requested extension is necessary due to surveying scheduling and boring testing that was required for some of the additions that are planned for the modernization of the parks. The City was also working with Florida Power & Light assessing the possibility of relocating poles that are in an with the park area. Considering the insurmountable cost it was decided to design around those facilities.

Thank you for your consideration in this matter and should you have any questions, please do not hesitate to contact me.

Sincerely,

Leondrae D. Camel  
City Manager  
City of South Bay