

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

Meeting Date: February 6, 2018 Consent Regular
 Ordinance Public Hearing

Department: Department of Housing and Economic Sustainability

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A) an Agreement with the Village of Palm Springs in the amount of \$114,259 for the installation of a shade shelter, exercise equipment and related improvements at the Municipal Park Complex at 226 Cypress Lane in Palm Springs for the period of February 6, 2018 to September 30, 2018; and **B)** Delegated authority to the County Administrator, or designee, to execute future amendments to the Agreement with the Village of Palm Springs.

Summary: This Agreement provides Community Development Block Grant (CDBG) funding for the installation of a shade shelter, exercise equipment and related improvements at the Municipal Park Complex at 226 Cypress Lane in Palm Springs. On July 11, 2017, the Board of County Commissioners approved the Fiscal Year 2017-2018 Action Plan (R2017-0941) which allocated \$114,259 for these park improvements. 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 3 (JB)

Background and Justification: The Village of Palm Springs has an executed Inter-local Agreement with Palm Beach County to participate in the CDBG Program as funded by HUD.

Attachment(s):

1. Agreement with the Village of Palm Springs

Recommended By: Jonathan Brown 1/22/18
 Department Director Date

Approved By: Laure Johnson 1/29/18
 Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

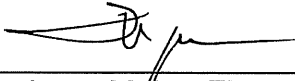
Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures					
Operating Costs	\$114,259				
External Revenues	(\$114,259)				
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	-0-				
# ADDITIONAL FTE POSITIONS (Cumulative)	-0-				

Is Item Included In Current Budget? Yes X No
 Does this Item include the use of Federal funds? Yes X No
 Budget Account No.:

Fund 1101 Dept. 143 Unit 1431 Object 8101 Program Code/Period BG187B/GY17

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

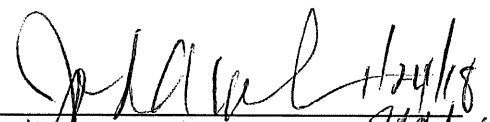
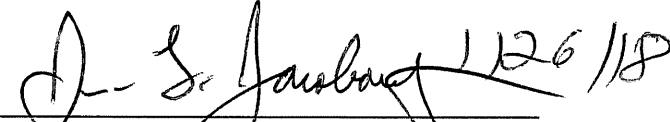
Approval of this agenda item will allocate \$114,259 in CDBG funds to the Village of Palm Springs for the installation improvements at its Municipal Complex Park.

C. Departmental Fiscal Review: 

 Shairette Major, Fiscal Manager II

III. REVIEW COMMENTS

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

 1/24/18
 OFMB 1/25/18 1/24/18
 1/26/18
 Contract Development and Control 1/26/18

B. Legal Sufficiency:

 1/29/18
 Assistant County Attorney

C. Other Department Review:

 Department Director

AGREEMENT BETWEEN PALM BEACH COUNTY

AND

VILLAGE OF PALM SPRINGS

THIS AGREEMENT, entered into on _____, 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 Village of Palm Springs, a Municipality duly organized and existing by virtue of the laws of the State of Florida, having its principal office at 226 Cypress Lane, Palm Springs, FL 33461.

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 accordance with the annual Action Plan, and the Village of Palm Springs, desire to provide the activities specified by this Agreement; and

WHEREAS, Palm Beach County desires to engage the Village of Palm Springs 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) "HES" means Palm Beach County Dept. of Housing & Economic Sustainability
- (D) "Municipality" means the Village of Palm Springs.
- (E) "HES Approval" means the written approval of the HES Director or his/her 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 at its Municipal Complex Park. These 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 contract. 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 HES, perform the tasks necessary to conduct the program 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 HES 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 HES. In no event shall the total compensation or reimbursement to be paid hereunder exceed the maximum and total authorized sum of \$114,259 for the period of February 6, 2018, through and including September 30, 2018. Any funds not obligated by the expiration date of this Agreement shall automatically revert to the County.

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 No. B-17-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 September 30, 2018.

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 work performed and/or 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 HES 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 HES. 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 HES. 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 HES the aforesaid proper documentation of expenditures, and the Palm Beach County Finance Department shall make payment as stated above, provided that HES has determined that the funds allocated to the Municipality through this agreement are still available for payment, and provided that HES 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 HES. No payments for projects funded by more than one funding source will be made until a cost allocation plan has been approved by the HES Director or designee. Should a project receive additional funding after the commencement of this Agreement, the Municipality shall notify HES in writing within thirty (30) days of receiving notification from the funding source and submit a cost allocation plan for approval by the HES 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 HES and approved by HES 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 HES 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 Village of Palm Springs, the Palm Beach County Purchasing Code, as well as 2 CFR 200.501 through 200.507, which are incorporated herein by reference.
- (E) 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.
- (F) ADDITIONAL HES, COUNTY, AND U.S. HUD REQUIREMENTS
 HES 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 HES, the County, or U.S. HUD.
- (G) PRIOR WRITTEN APPROVALS - SUMMARY
 The following activities among others require the prior written approval of the HES 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 HES. Such income shall only be used to undertake the activities authorized by this Agreement. HES must verify and approve the eligibility and reasonableness of all expenses which the Municipality requests to be deducted. 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 HES 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 of this Agreement.

10. CIVIL RIGHTS COMPLIANCE AND NON-DISCRIMINATION POLICY

The Municipality acknowledges that it is the express policy of the Board of County Commissioners of Palm Beach County, Florida that the County shall not conduct business with nor appropriate any funds to any organization that practices discrimination on the basis of race, color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, sexual orientation, gender identity and expression, or genetic information.

In furtherance of such policy, the Municipality shall not, on the basis of race, color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, sexual orientation, gender identity and expression, or genetic information, exclude any person from the benefits of, or subject any person 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.

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

To the greatest extent feasible, lower-income residents of the project area 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 area 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 and minority, and women-owned business enterprises, 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 HES, the Municipality shall provide written verification of compliance.

13. EVALUATION AND MONITORING

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

14. AUDITS AND INSPECTIONS

At any time during normal business hours and as often as HES, 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 HES, 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 \$750,000 of Federal awards, the Municipality shall comply with the provisions of 2 CFR 200. The Municipality shall submit a single audit, including any management letter, made in accordance with the general program requirements of 2 CFR 200.502 through 200.507, 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 HES-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 2 CFR 200, 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 2 CFR 200. The County will be responsible to 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. 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. This provision shall survive the expiration or termination of this Agreement.

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, HES, 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 HES 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 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.

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 psc@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.

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 HES 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 HES 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 HES in the implementation of the Citizen Participation Plan, as requested by HES.

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 HES in all publications and publicity. In addition, the Municipality will make a good faith effort to recognize HES'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 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:

- (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) 2 CFR Part 200
- (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, the 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 Community Development Block Grant 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 or those persons to whom such authority is formally designated. 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, or those persons to whom such authority is formally designated, and the governing body of the Municipality, and signed by both parties.

28. NOTICES

All notices to be given under this Agreement shall be sufficient when delivered to HES 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.

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 or in Exhibit "A" shall be deemed to be incorporated into this Agreement by reference.

36. 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.

37. 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.

38. ENTIRE UNDERSTANDING

This Agreement and its provisions merge any prior agreements, if any, between the parties hereto and constitutes the entire understanding. The parties hereby acknowledge that there have been and are no representations, warranties, covenants, or undertakings other than those expressly set forth herein.

WITNESS our Hands and Seals on this _____ day of _____, 20__.

(MUNICIPALITY SEAL BELOW)



VILLAGE OF PALM SPRINGS

By: [Signature]
Bev Smith, Mayor

By: [Signature]
Kimberly M. Wynn, Village Clerk 4/11/18

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

ATTEST: Sharon R. Bock,
Clerk & Comptroller

By: _____
Melissa McKinlay, Mayor
Palm Beach County

By: _____
Deputy Clerk

Document No.: _____

Approved as to Form and
Legal Sufficiency

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

By: [Signature]
James Brako,
Assistant County Attorney

By: [Signature]
Sherry Howard,
Deputy Director

EXHIBIT "A"
WORK PROGRAM NARRATIVE

1. MUNICIPALITY OBLIGATIONS:

- A. PROFESSIONAL SERVICES:** The Municipality, using its own resources, shall retain an engineering consultant (a Florida Professional Engineer) to provide design services to create plans and specifications for the installation of improvements at the Municipal Complex Park. Additionally, the Municipality and consultant shall 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 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. All costs associated with the above services shall be paid for by the Municipality.

- B. PROJECT SCOPE:** The scope of the park improvements shall consist of, but not be limited to, the purchase and installation of a shade shelter and exercise equipment, related site work, parking improvements and site amenities consistent with these types of improvements.

(1) Should the Municipality use a brand name or multiple brand names in its 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.

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

(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 HES.

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

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

(6) 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.

(7) The Municipality may request reimbursement for payments made for materials and/or equipment stored on the Premises or in a bonded warehouse provided such materials are securely stored, properly inventoried, and clearly stenciled or otherwise marked to indicate that they are the property of the Municipality for a specific purpose/project. **The Municipality shall receive prior approval from HES prior to undertaking the request for reimbursement for stored materials and equipment.** The approval of payment for stored materials shall be contingent on, among other things, sufficient insurance approved by the County and that HES has received, reviewed, and approved documentation from the Municipality evidencing proper procedures are in place.

(8) The Municipality shall inform HES 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 HES, 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 (DBA):** The Municipality shall request the County to obtain a DBA Wage Decision for the project prior to advertising the construction work. The Municipality shall incorporate a copy of the DBA Wage Decision and disclose the requirements of the DBA in its construction bid solicitation and contract. When requested by HES, the Municipality shall assist with DBA compliance, by performing on-site interviews of construction workers on the project and completing reports requested by HES staff. HES staff shall provide technical assistance to the Municipality's staff for DBA compliance.
- 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 this contract, 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 HES.
- 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 September 30, 2018.

Advertise, Accept Bids and Award Contract by:	March 2018
Start Construction by:	March 2018
50% of Funds Expended by:	April 2018
Complete Construction by:	June 2018
Submit Final Reimbursement no later than:	June 2018
100% of Funds Expended by:	July 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 County Administrator, or his/her designee may, at their 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.

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.

- I. **REPORTS:** The Municipality shall submit to HES 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 HES to assess the Municipality's progress in implementing the project.
- J. **USE OF THE PROJECT FACILITY/PROPERTY:** 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 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 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 early 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 HES 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 the Part 135 regulations.
- (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 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 has performed an Environmental Review (ER) of the project to assess existing conditions and identify all potential environmental impacts, whether beneficial or adverse, and any required conditions or mitigation measures that the Municipality must consider in the design and implementation of the project. The Municipality acknowledges receipt of the letter dated December 20, 2017, detailing the results of the ER. Where applicable, the Municipality shall submit to HES a plan of action and an implementation schedule for complying with any identified conditions requiring mitigation. The Municipality shall comply with all requirements established by the County emulating from the completion of the ER.

The installation of improvements contained in this Agreement shall not begin until the results of the ER have been conveyed to the Municipality and the County has received a Release of Funds from HUD.

ER costs incurred by the County may be charged to the project identified above. In addition, the Municipality shall immediately inform HES of any environmental findings or conditions discovered during activity implementation, and agrees that applicable mitigation measures, subject to HES 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 improvements as described above in "Project Scope", during the term of this Agreement, in the amount of \$114,259. 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 HES, 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 HES 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 identified above.
- 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

Report For:	Month: _____ Year: _____			
Sub-recipient Name:	Village of Palm Springs			
Project Name:	Purchase and installation of a shade shelter & equipment @ Village Center Complex Park			
Report Prepared By:	<table border="0" style="width:100%"> <tr> <td style="width:33%">Name _____</td> <td style="width:33%">Signature _____</td> <td style="width:33%">Date _____</td> </tr> </table>	Name _____	Signature _____	Date _____
Name _____	Signature _____	Date _____		

BUDGETING AND EXPENDITURES

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

Amounts Expended to Date:

////////////////////////////////////	BUDGETED	EXPENDED	PERCENTAGE
CDBG Funds:	\$ 114,259	\$	%
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 Village of Palm Springs 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
- HES: 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 HES 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 HES. If the survey is through HES, a copy of the completed survey will be forwarded to the.

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 HES prior to the removal. The Municipality must obtain approval for all exceptions from HES. HES will request the PBCAC to review and approve all exceptions.
- (b) Asbestos abatement work may be contracted by the Municipality or by HES upon request.
- (c) If the Municipality contracts the asbestos abatement, the following documents are required to be provided to the HES.
 1. An Asbestos Abatement Specification (Work Plan)
 2. Post Job submittals, reviewed and signed by the FLAC
- (d) If the Municipality requests HES to contract the asbestos abatement, HES will initiate the request through the PBCAC who will contract the asbestos abatement. HES 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 HES 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 HES 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 or by HES upon request.
- (b) If the Municipality contracts the asbestos abatement, the following documents must be provided to the HES 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 HES to contract the asbestos abatement, HES will initiate the request through the PBCAC who will contract the asbestos abatement. HES 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 HES.

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 HES. 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.