



**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2022	2023	2024	2025	2026
Grant Expenditures	\$150,000				
Operating Costs					
External Revenues	(\$96,000)				
Program Income					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>	<b>\$54,000</b>				
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<b>-0-</b>				

Is Item Included In Proposed Budget? Yes  X  No       
 Does this Item include the use of Federal funds? Yes  X  No    

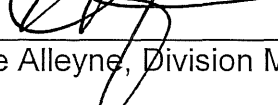
Budget Account No.:

Fund 1539 Dept 143 Unit 1034 Object 8201 Program Code/Period N/A

Fund 1101 Dept. 143 Unit 1431 Object 8201 Program Code/Period    

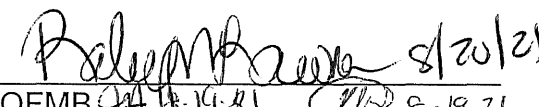

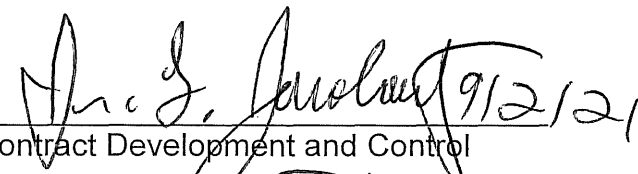
**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

Approval of this agenda item will allocate \$54,000 in General Fund Ad Valorem dollars and \$96,000 in CDBG Funds

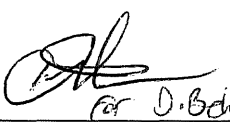
C. Departmental Fiscal Review:   
9/2/21 Valerie Alleyne, Division Manager

**III. REVIEW COMMENTS**

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

 8/20/21  
 OFMB 9/14/21  8-19-21       9/2/21  
 Contract Development and Control  
 9-26-21 TW

**B. Legal Sufficiency:**

 9/3/2021  
 for J. Behar  
 Assistant County Attorney

**C. Other Department Review:**

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

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

**AGREEMENT BETWEEN PALM BEACH COUNTY**  
**AND**  
**PALM BEACH COUNTY BLACK BUSINESS INVESTMENT CORPORATION**

**THIS AGREEMENT** is made as of the **1st** day of **October, 2021** by and between **Palm Beach County**, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the "**COUNTY**", and **Palm Beach County Black Business Investment Corporation**, a not-for-profit authorized to do business in the State of Florida, hereinafter referred to as the "**AGENCY**" or "**CONTRACTOR**", whose Federal I.D. is 59-2829862 (the "Agreement")

**WHEREAS**, COUNTY has entered into an Agreement with the United States Department of Housing and Urban Development (U.S. HUD) for a grant for the execution and implementation of a Community Development Block Grant (CDBG) 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**, COUNTY and AGENCY, desire to provide the activities specified in Exhibit A of this Agreement; and;

**WHEREAS**, COUNTY desires to engage AGENCY to implement such undertakings, and, pursuant to the terms of this Agreement, shall make available funding not to exceed **\$96,000.00 in CDBG funds** and **\$54,000.00 in County Ad Valorem funds** (collectively, "Grant Funds") to the AGENCY in exchange for said services; and;

**WHEREAS**, the COUNTY finds that providing the Grant Funds to the AGENCY for the purposes set forth herein serves a local public purpose and complies with all applicable provisions of law, including meeting a National Objective as required by HUD.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained, it is agreed as follows:

**ARTICLE 1 – SERVICES**

The AGENCY's responsibility under this Agreement is to provide professional/consultation services in the area of business recruitment, retention and expansion and to promote the general business and industrial interests of the COUNTY, as more specifically set forth in the Scope of Work detailed in Exhibit "A".

The COUNTY's representative/liaison during the performance of this Contract shall be Sherry L. Howard, Deputy Director, Department of Housing & Economic Development, telephone number: (561) 233-3653, email showard@pbcgov.org.

The AGENCY's representative/liaison during the performance of this Contract shall be Marlon D. White, President, Palm Beach COUNTY Black Business Investment Corporation, telephone no. (561) 845-8055, email: Marlon.White@PBCBBIC.biz.

**ARTICLE 2 – SCHEDULE**

The AGENCY shall commence services on **October 1, 2021** and complete all services by **September 30, 2022**.

Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in Exhibit "A".

**ARTICLE 3 – PAYMENTS TO AGENCY**

- A. The total amount to be paid by the COUNTY under this Contract for all services and materials including, if applicable, "out of pocket" expenses (specified in paragraph C below) shall not exceed a total contract amount of **One Hundred Fifty Thousand Dollars (\$150,000.00)**. The AGENCY shall notify the COUNTY's representative in writing when 90% of the "not to exceed amount" has been reached. The AGENCY will bill the COUNTY on a monthly basis, or as otherwise provided, at the amounts set forth in Exhibit "A" for services rendered toward the completion of the Scope of Work. Where incremental billings for partially completed items are permitted, the total billings shall not exceed the estimated percentage of completion as of the billing date.
- B. Invoices received from the AGENCY pursuant to this Agreement will be reviewed and approved by the COUNTY's representative, to verify that services have been rendered in conformity with the Contract. Approved invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the COUNTY representative's approval.
- C. "Out-of-pocket" expenses will not be reimbursed.
- D. **Final Invoice:** In order for both parties herein to close their books and records, the AGENCY will clearly state "**Final invoice**" on the AGENCY's final/last billing to the COUNTY. This shall constitute AGENCY's certification that all services have been properly performed and all charges and costs have been invoiced to Palm Beach COUNTY. Any other charges not properly included on this final invoice are waived by the AGENCY.
- E. In order to do business with Palm Beach COUNTY, Agencies are required to create a Vendor Registration Account OR activate an existing Vendor Registration Account through the Purchasing Department's Vendor Self Service (VSS) system, which can be accessed at <https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService>. If AGENCY intends to use sub-consultants, AGENCY must also ensure that all sub-consultants are registered as consultants in VSS. All subcontractor agreements must include a contractual provision requiring that the sub-consultant register in VSS. COUNTY will not finalize a contract award until the COUNTY has verified that the AGENCY and all of its sub-consultants are registered in VSS.

**ARTICLE 4 – TRUTH-IN-NEGOTIATION CERTIFICATE**

Signature of this Contract by the AGENCY shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the AGENCY's most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The COUNTY shall exercise its rights under this Article 4 within three (3) years following final payment.

**ARTICLE 5 – TERMINATION**

This Agreement may be terminated as provided or in the attached Exhibit A. Unless the AGENCY is in breach of this Contract, the AGENCY shall be paid for services rendered to the COUNTY's satisfaction through the date of termination. After receipt of a Termination Notice, except as otherwise directed by the COUNTY, in writing, the AGENCY shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
- D. Continue and complete all parts of the work that have not been terminated.

**ARTICLE 6 – PERSONNEL**

The AGENCY represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required herein under shall be performed by the AGENCY or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the AGENCY's key personnel, as may be listed in Exhibit "A", must be made known to the COUNTY's representative and written approval must be granted by the COUNTY's representative before said change or substitution can become effective.

The AGENCY warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

All of the AGENCY's personnel (and all Subcontractors), while on COUNTY premises, will comply with all COUNTY requirements governing conduct, safety and security.

**ARTICLE 7 – SUBCONTRACTING**

The COUNTY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The AGENCY is encouraged to seek additional small business enterprises for participation in subcontracting opportunities. If the AGENCY uses any subcontractors on this project the following provisions of this Article shall apply:

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the AGENCY shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.

**ARTICLE 8 – FEDERAL AND STATE TAX**

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the AGENCY. The AGENCY shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the AGENCY authorized to use the COUNTY's Tax Exemption Number in securing such materials. The AGENCY shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Agreement.

## **ARTICLE 9 – AVAILABILITY OF FUNDS**

The COUNTY's performance and obligation to pay under this Agreement for subsequent fiscal years are contingent upon annual appropriations for its purpose by the Board of County Commissioners. In addition, this Agreement and all obligations of COUNTY hereunder are subject to and contingent upon receipt of funding from U.S. HUD for the purposes provided for herein. Nothing in this Agreement shall obligate the COUNTY to provide funding from any other source, including, but not limited to, funds from the COUNTY's annual budget and appropriations.

## **ARTICLE 10 – INSURANCE**

The AGENCY shall maintain at its sole expense, in force and effect at all times during the term of this Contract, insurance coverage and limits (including endorsements) as described herein. Failure to maintain at least the required insurance shall be considered default of the Agreement. The requirements contained herein, as well as COUNTY's review or acceptance of insurance maintained by AGENCY, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by AGENCY under the Contract. AGENCY agrees to notify the COUNTY at least ten (10) days prior to cancellation, non-renewal or material change to the required insurance coverage. Where the policy allows, coverage shall apply on a primary and non-contributory basis.

- A. **Commercial General Liability:** AGENCY shall maintain Commercial General Liability at a limit of liability not less than \$500,000 combined single limit for bodily injury and property damage each occurrence. Coverage shall not contain any endorsement(s) excluding Contractual Liability or Cross Liability.

Additional Insured Endorsement: The Commercial General Liability policy shall be endorsed to include, "Palm Beach COUNTY Board of COUNTY Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees, and Agents" as an Additional Insured. A copy of the endorsement shall be provided to COUNTY upon request.

- B. **Workers' Compensation Insurance & Employer's Liability:** AGENCY shall maintain Workers' Compensation & Employer's Liability in accordance with Chapter 440 of the Florida Statutes.
- C. **Professional Liability:** AGENCY shall maintain Professional Liability, or equivalent Errors & Omissions Liability, at a limit of liability not less than \$1,000,000 each occurrence, and \$2,000,000 per aggregate. When a self-insured retention (SIR) or deductible exceeds \$10,000, COUNTY reserves the right, but not the obligation, to review and request a copy of AGENCY's most recent annual report or audited financial statement. For policies written on a "claims-made" basis, AGENCY warrants the Retroactive Date equals or precedes the effective date of this Agreement. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the term of this Agreement, AGENCY shall purchase a SERP with a minimum reporting period not less than three (3) years after the expiration of the Agreement term. The requirement to purchase a SERP shall not relieve the AGENCY of the obligation to provide replacement coverage. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims-made" form. If coverage is provided on a "claims-made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage.
- D. **Waiver of Subrogation:** Except where prohibited by law, AGENCY hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy except Professional Liability. When required by the insurer, or should a policy condition not

permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then AGENCY shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy that includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should AGENCY enter into such an agreement on a pre-loss basis.

- E. **Certificates of Insurance:** On execution of this agreement, prior to each subsequent renewal of this Agreement, within forty-eight (48) hours of a request by COUNTY, and subsequently, prior to expiration of any of the required coverage throughout the term of this Agreement, the AGENCY shall deliver to the COUNTY a signed Certificate(s) of Insurance evidencing that all types and minimum limits of insurance coverage required by this Agreement have been obtained and are in full force and effect. Said Certificate(s) of Insurance shall, to the extent allowable by the insurer, include a minimum thirty (30) days endeavor to notify due to cancellation (10 days for nonpayment of premium) or non-renewal of coverage. The Certificate shall be issued to:

Palm Beach County Board of County Commissioners  
c/o Department of Housing & Economic Development  
100 Australian Avenue, Suite 500  
West Palm Beach, FL 33406

- F. **Right to Revise or Reject:** COUNTY, by and through its Risk Management Department in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverage, or endorsements.

#### **ARTICLE 11 – INDEMNIFICATION**

AGENCY shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Agreement or due to the acts or omissions of AGENCY.

In addition, AGENCY agrees to take prompt corrective action, including paying amounts resulting from an adverse finding or penalty if the COUNTY, U.S. HUD, or any other federal agency or other organization determines compliance has not been achieved with the CDBG Program.

#### **ARTICLE 12 – SUCCESSORS AND ASSIGNS**

The COUNTY and the AGENCY each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the AGENCY shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other.

#### **ARTICLE 13 – REMEDIES**

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

Moreover, if the AGENCY fails to comply with any of the provisions of this Agreement, the COUNTY may exercise any and all legal rights and remedies including, without limitation, withholding, temporarily or permanently, all, or any, unpaid portion of the Grant Funds upon giving written notice to the AGENCY, terminating this Agreement, and/or demanding a refund of the Grant Funds, which shall be reimbursed upon demand. In the event of AGENCY's failure to comply with any provisions of this Agreement, the COUNTY shall have no further funding obligation to the AGENCY under this Agreement.

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 AGENCY.

**ARTICLE 14 – CONFLICT OF INTEREST**

The AGENCY represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and the Palm Beach County Code of Ethics, or any other applicable law, including, but not limited to, any U.S. HUD regulations relating to conflict of interest. The AGENCY further represents that no person having any such conflict of interest shall be employed for said performance of services.

The AGENCY shall promptly notify the COUNTY's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the AGENCY's judgement or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the AGENCY may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the AGENCY. The COUNTY agrees to notify the AGENCY of its opinion by certified mail within thirty (30) days of receipt of notification by the AGENCY. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the AGENCY, the COUNTY shall so state in the notification and the AGENCY shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the AGENCY under the terms of this Contract.

**ARTICLE 15 – EXCUSABLE DELAYS**

The AGENCY shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the AGENCY or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.

Upon the AGENCY's request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the AGENCY's failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Agreement shall be revised accordingly, subject to the COUNTY's rights to change, terminate, or stop any or all of the work at any time.

**ARTICLE 16 – ARREARS**

The AGENCY shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness. The AGENCY further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.



## **ARTICLE 17 – DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

The AGENCY shall deliver to the COUNTY's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Agreement.

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the AGENCY and will not be disclosed to any other party, directly or indirectly, without the COUNTY's prior written consent unless required by a lawful court order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Agreement for or at the COUNTY's expense shall be and remain the COUNTY's property and may be reproduced and reused at the discretion of the COUNTY.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

Notwithstanding any other provision in this Agreement, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of the Inspector General, Palm Beach County Code, Section 2-421 – 2-440, as amended.

## **ARTICLE 18 – INDEPENDENT CONTRACTOR RELATIONSHIP**

The AGENCY is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the AGENCY's sole direction, supervision, and control. The AGENCY shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the AGENCY's relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY. The AGENCY does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

## **ARTICLE 19 – CONTINGENT FEES**

The AGENCY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the AGENCY to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the AGENCY, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

## **ARTICLE 20 – ACCESS AND AUDITS**

The AGENCY shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least five (5) years after completion or termination of this Agreement. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the AGENCY's place of business.

Palm Beach COUNTY has established the Office of the 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 AGENCY, 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 2-421-2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

**ARTICLE 21 – NONDISCRIMINATION**

The COUNTY is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach COUNTY Resolution R2017-1770, as may be amended, the AGENCY warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, 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 or expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.

As a condition of entering into this Agreement, the AGENCY represents and warrants that it will comply with the COUNTY's Commercial Nondiscrimination Policy as described in Resolution 2017-1770, as amended. As part of such compliance, the AGENCY shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the AGENCY retaliate against any person for reporting instances of such discrimination. The AGENCY shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the COUNTY's relevant marketplace in Palm Beach COUNTY. The AGENCY understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification or debarment of the company from participating in COUNTY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. AGENCY shall include this language in its subcontracts.

**ARTICLE 22 – AUTHORITY TO PRACTICE**

The AGENCY hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY's representative upon request.

**ARTICLE 23 – SEVERABILITY**

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

**ARTICLE 24 – PUBLIC ENTITY CRIMES**

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

**ARTICLE 25 – MODIFICATIONS OF WORK**

The COUNTY reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the AGENCY of the COUNTY’s notification of a contemplated change, the AGENCY shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the COUNTY of any estimated change in the completion date, and (3) advise the COUNTY if the contemplated change shall affect the AGENCY’s ability to meet the completion dates or schedules of this Agreement.

If the COUNTY so instructs in writing, the AGENCY shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the COUNTY’s decision to proceed with the change. If the COUNTY elects to make the change, the COUNTY shall initiate an Agreement Amendment and the AGENCY shall not commence work on any such change until such written amendment is signed by the AGENCY and approved and executed on behalf of Palm Beach County.

**ARTICLE 26 – NOTICE**

All notices required in this Agreement shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance.

If sent to the COUNTY, notices shall be addressed to:

**Sherry Howard, Deputy Director**  
Department of Housing & Economic Development  
100 Australian Avenue, Suite 500  
West Palm Beach, Florida 33406

With copy to:

**David Behar, Assistant County Attorney**  
Palm Beach County Attorney’s Office  
301 North Olive Ave.  
West Palm Beach, Florida 33401

If sent to the AGENCY, notices shall be addressed to:

**Marlon D. White, President**  
Palm Beach County Black Business Investment Corporation  
2001 Broadway, Suite 210  
West palm Beach, Florida 33404

**ARTICLE 27 – ENTIRETY OF CONTRACTUAL AGREEMENT**

The COUNTY and the AGENCY agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 25-Modifications of Work.

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.

## **ARTICLE 28 – CRIMINAL HISTORY RECORDS CHECK**

The AGENCY, AGENCY's employees, subcontractors of AGENCY and employees of subcontractors shall comply with Palm Beach COUNTY Code, Section 2-371 - 2-377, the Palm Beach COUNTY Criminal History Records Check Ordinance ("Ordinance"), for unescorted access to critical facilities ("Critical Facilities") or criminal justice information facilities ("CJI Facilities") as identified in Resolutions R2013-1470 and R2015-0572, as amended. The AGENCY is solely responsible for the financial, schedule, and/or staffing implications of this Ordinance. Further, the AGENCY acknowledges that its Agreement price includes any and all direct or indirect costs associated with compliance with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the COUNTY.

This Agreement may include sites and/or buildings which have been designated as either "critical facilities" or "criminal justice information facilities" pursuant to the Ordinance and above referenced Resolutions, as amended. COUNTY staff representing the COUNTY department will contact the AGENCY(S) and provide specific instructions for meeting the requirements of this Ordinance. Individuals passing the background check will be issued a badge. The AGENCY shall make every effort to collect the badges of its employees and its subcontractors' employees upon conclusion of the contract and return them to the COUNTY. If the AGENCY or its subcontractor(s) terminates an employee who has been issued a badge, the AGENCY must notify the COUNTY within two (2) hours. At the time of termination, the AGENCY shall retrieve the badge and shall return it to the COUNTY in a timely manner.

The COUNTY reserves the right to suspend the AGENCY if the AGENCY 1) does not comply with the requirements of COUNTY Code Section 2-371 - 2-377, as amended; 2) does not contact the COUNTY regarding a terminated AGENCY employee or subcontractor employee within the stated time; or 3) fails to make a good faith effort in attempting to comply with the badge retrieval policy.

## **ARTICLE 29 – REGULATIONS; LICENSING REQUIREMENTS**

The AGENCY shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. AGENCY is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

## **ARTICLE 30 – SCRUTINIZED COMPANIES**

- A. As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the AGENCY certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725. Pursuant to F.S. 287.135(3)(b), if AGENCY is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Agreement may be terminated at the option of the COUNTY.
- B. **When contract value is greater than \$1 million:** As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the AGENCY certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria.

If the COUNTY determines, using credible information available to the public, that a false certification has been submitted by AGENCY, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of

Agreement renewal, if applicable.

### **ARTICLE 31 – PUBLIC RECORDS**

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the AGENCY: (i) provides a service; and (ii) acts on behalf of the COUNTY as provided under Section 119.011(2) F.S., the AGENCY shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The AGENCY 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 AGENCY 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 contract term and following completion of the Agreement, if the AGENCY does not transfer the records to the public AGENCY.
- D. Upon completion of the Agreement the AGENCY shall transfer, at no cost to the COUNTY, all public records in possession of the AGENCY 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 AGENCY transfers all public records to the COUNTY upon completion of the Agreement, the AGENCY shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the AGENCY keeps and maintains public records upon completion of the Agreement, the AGENCY shall meet all applicable requirements for retaining public records. All records stored electronically by the AGENCY 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 AGENCY 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. AGENCY 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 AGENCY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE AGENCY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, 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](mailto:RECORDSREQUEST@PBCGOV.ORG) OR BY TELEPHONE AT 561-355-6680.**

### **ARTICLE 32 – COUNTERPARTS**

This Agreement, including the exhibits referenced herein, may be executed in one or more counterparts, all of which shall constitute collectively but one and the same Agreement. The COUNTY may execute the Agreement through electronic or manual means. AGENCY shall execute by manual means only, unless the COUNTY provides otherwise.

### **ARTICLE 33 – E-VERIFY - EMPLOYMENT ELIGIBILITY**

AGENCY warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended, and that it: (1) is registered with the E-Verify System (E-Verify.gov), and beginning January 1, 2021, uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of AGENCY's subconsultants performing the duties and obligations of this CONTRACT are registered with the E-Verify System, and beginning January 1, 2021, use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

AGENCY shall obtain from each of its subconsultants an affidavit stating that the subconsultant does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. AGENCY shall maintain a copy of any such affidavit from a subconsultant for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.

COUNTY shall terminate this Agreement if it has a good faith belief that AGENCY has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If COUNTY has a good faith belief that AGENCY's subconsultant has knowingly violated section 448.09(1), Florida Statutes, as may be amended, COUNTY shall notify AGENCY to terminate its contract with the subconsultant and AGENCY shall immediately terminate its contract with the subconsultant. If COUNTY terminates this Agreement pursuant to the above, AGENCY shall be barred from being awarded a future contract by COUNTY for a period of one (1) year from the date on which this Agreement was terminated. In the event of such Agreement termination, AGENCY shall also be liable for any additional costs incurred by COUNTY as a result of the termination.

### **ARTICLE 34 – INCORPORATION BY REFERENCE**

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference. To the extent of a conflict between the terms of this Agreement and any Exhibit, the terms of the Exhibit shall govern. To the extent that any provision of this Agreement or any Exhibit conflicts with the terms of Exhibit "I", the terms of Exhibit "I" shall govern.

### **ARTICLE 35 – RECOGNITION**

The AGENCY shall include a reference to the financial support herein provided by the COUNTY in all publications, publicity events, and provide the COUNTY copies of all such publications. The AGENCY shall also notify the COUNTY prior to any ceremonies or events relating to facilities or items funded by this agreement and shall provide to COUNTY all required admissions to said events to, as part of the consideration for this Agreement, allow for participation of the Mayor, County Commissioners, County Administration, Department Staff or other County Official. In addition, the AGENCY will make good faith efforts to recognize the COUNTY's support for all activities made possible with funds made available under this Agreement.

**ARTICLE 36 – REPORTS**

- A. In addition to all other reports required by this Agreement and/or applicable law, in compliance with Section 125.045(4), Florida Statutes, the AGENCY shall submit an annual report to the COUNTY detailing how the COUNTY funds were spent and the results of the AGENCY's efforts on behalf of the COUNTY. The annual report shall cover the period from October 1 through September 30 of the reporting year and be due to the COUNTY no later than December 31<sup>st</sup> following the reporting year. Once the AGENCY has submitted the report to the COUNTY, the COUNTY is required to submit the report to the Office of Economic & Demographic Research by January 15<sup>th</sup> of each year and post a copy of said report of the COUNTY'S public website.
- B. The AGENCY shall provide the COUNTY with its independent audit of the immediately preceding fiscal year no later than January 31 of each year.

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**IN WITNESS WHEREOF**, AGENCY has hereunto set its hand the day and year above written.

**WITNESS:**

**PALM BEACH COUNTY BLACK  
BUSINESS INVESTMENT CORPORATION**

By: \_\_\_\_\_  
Name (type or print)

By: \_\_\_\_\_  
Marlon D. White, President

\_\_\_\_\_  
Signature

(CORPORATE SEAL BELOW)

By: \_\_\_\_\_  
Name (type or print)

\_\_\_\_\_  
Signature



**IN WITNESS WHEREOF** the Board of County Commissioners of Palm Beach County, Florida has made and executed this Agreement on behalf of the COUNTY.

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

**BOARD OF COUNTY COMMISSIONERS**

**ATTEST: Joseph Abruzzo,  
Clerk & Comptroller**

By: \_\_\_\_\_  
Dave Kerner, Mayor  
Palm Beach County

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

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

**Approved as to  
Legal Sufficiency**

**Approved as to Terms and Conditions  
Department of Housing and Economic Development**

By: \_\_\_\_\_  
Jonathan B. Brown, Director  
Dept. of Housing & Economic Development

By: \_\_\_\_\_  
David Behar  
Assistant County Attorney

By: \_\_\_\_\_  
Sherry Howard  
Deputy Director

## EXHIBIT "A"

### SCOPE OF SERVICES

#### A. DEFINITIONS

- (1) "CDBG" means the Community Development Block Grant Program.
- (2) "DHED" means Palm Beach County Department of Housing & Economic Development.
- (3) "DHED Approval" means the written approval of the DHED Director or his designee.
- (4) "Low and moderate income persons" means the definition set by U.S. HUD.
- (5) "U.S. HUD" means the Secretary of the U.S. Department of Housing and Urban Development or a person authorized to act on its behalf.
- (6) "Held by" means the definition set by U.S. HUD.
- (7) "African-American Owned Business" means a business that is at least fifty-one (51%) percent owned by African-Americans.
- (8) "Minority Woman Business Enterprise" means a business enterprise in which at least fifty-one percent (51%) is owned, operated and controlled by citizens or permanent resident aliens who are meeting one of the ethnicities as follows: (African American, Hispanic, Asian-Pacific, Asian Indian, Native American or Alaskan Native)
- (9) "Approved Loan" means a business loan approved by a bank or financial institution

#### B. PURPOSE

The purpose of this Agreement is to state the covenants and conditions under which the AGENCY will implement the Scope of Services set forth within this Agreement.

#### C. SCOPE OF SERVICES

The AGENCY shall, in a satisfactory and proper manner as determined by DHED, perform the tasks outlined herein, and shall submit invoices on the AGENCY's letterhead, using the Invoice Cover Sheet in Exhibit "B" (attached hereto and made a part hereof).

#### D. NATIONAL OBJECTIVE AND ELIGIBLE ACTIVITIES

The project is constituted by **activities determined to be Special Economic Development Activities, 24 Code of Federal Regulations (CFR) 570.203(b) and Microenterprise Assistance per 24 CFR 570.201(o)(1)**. The AGENCY certifies that the eligible activities carried out under this Agreement will satisfy a **National Objective per 24 CFR 570.208(a)(4) Job Creation or Retention Activities, by creating jobs where at least fifty-one percent (51%) of the jobs must be held or made available to low and moderate income persons**, and that no less than fifty-one percent (51%) of businesses and persons assisted under this Agreement shall be located within the Palm Beach County's Urban County Program Jurisdiction, as described herein.

#### E. CONDITIONS ON WHICH PAYMENT IS CONTINGENT

##### (1) IMPLEMENTATION OF PROJECT ACCORDING TO REQUIRED PROCEDURES

The AGENCY shall implement this Agreement in accordance with applicable Federal, State, and County laws, ordinances and codes, and amendments and additions thereto as may from time to time be made. The Federal, State, and County laws, ordinances and codes are minimal regulations which may be supplemented by more restrictive guidelines set forth by DHED. No reimbursements will be made without evidence of the appropriate insurance required by this Agreement on file with DHED. No payments for multi-funded projects will be made until a cost allocation plan has been approved by the DHED Director or designee. Should a project receive additional funding after the commencement of this Agreement, the AGENCY shall notify DHED in writing within thirty (30) days of receiving notification from the funding source and submit a cost allocation plan for approval by the DHED Director or designee within forty-five (45) days of said notification.

(2) FINANCIAL ACCOUNTABILITY

The COUNTY may have a financial systems analysis and/or an audit of the AGENCY or any of its subcontractors performed by a DHED staff at any time the COUNTY deems necessary to determine if the project is being managed in accordance with Federal, State, and County requirements.

(3) 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 Ordinance and 2 CFR 200, which are incorporated herein by reference.

(4) REPORTS, MONITORING, AND EVALUATIONS

a. Payment will be contingent upon receipt of complete and accurate reports required by applicable law, including, but not limited to, the reporting requirements in this Agreement, including monitoring findings identified pursuant to this Agreement.

b. The AGENCY agrees that DHED shall carry out at least one annual monitoring and evaluation activity, as determined necessary by DHED, during the term of this Agreement. Upon DHED request, the AGENCY agrees to furnish and make copies or transcriptions of such records and information, as is determined necessary by DHED. Additionally, the AGENCY shall submit information and status reports required by DHED or U.S. HUD to enable DHED to evaluate the AGENCY's progress and to enable DHED to complete reports required by U.S. HUD. The AGENCY shall allow DHED or U.S. HUD to monitor the AGENCY on site. Such site visits may be scheduled or unscheduled as determined by DHED or U.S. HUD.

(5) ADDITIONAL COUNTY AND U.S. HUD REQUIREMENTS

The State or Federal funds being provided hereunder cannot be used as a match for other State or Federal grants to the AGENCY and the AGENCY cannot submit requests for the same expenses to more than one funding source or under more than one program. Additionally, DHED shall have the right under this Agreement to suspend or terminate payments until the AGENCY complies with any additional conditions that may be imposed by the COUNTY or U.S. HUD.

(6) PRIOR WRITTEN APPROVALS - SUMMARY

The following includes but is not limited to, activities that require the prior written approval of the DHED Director or his designee to be eligible for reimbursement or payment:

- (1) All subcontracts and agreements pursuant to this Agreement; and
- (2) Requests to utilize uncommitted funds after the expiration of this Agreement for programs described herein.

**1. The AGENCY agrees to:**

**A. PROJECT SCOPE**

- (1) Pursuant to the terms of this Agreement, and in accordance with the below deliverables, the AGENCY shall be reimbursed for services to existing and new small businesses. The AGENCY shall assist such businesses in efforts to obtain business loans, bonding, equity capital, and/or other business services.

The AGENCY further agrees that DHED shall be the final arbiter on the AGENCY's compliance with the above.

**B. DELIVERABLES**

(1) Job Creation

Subsequent to the effective date of this Agreement and within the contract period, the AGENCY shall as a result of its project scope, create and/or retain a minimum of seventy-five (75) permanent full-time equivalent (FTE) jobs and at least fifty-one percent (51%) of the jobs created/retained must be held by, or made available to, low and moderate income persons, and at least fifty-one percent (51%) must reside in unincorporated Palm Beach County or in municipalities participating in the COUNTY's Urban County Program jurisdiction, which includes unincorporated areas and all municipalities that have entered into Inter-local Agreements with the COUNTY. This excludes the following municipalities: City of Boca Raton, City of Boynton Beach, City of Delray, Town of Jupiter, Town of Ocean Ridge, City of Palm Beach Gardens, Village of Wellington and City of West Palm Beach.

A full-time job shall mean employment for a minimum of 2,080 hours per year and for a wage or salary equal to or better than the minimum wage as determined by the U.S. Department of Labor. Low and moderate income status is based on the person's income at the time of hire and is not affected by subsequent raises or promotions. **To be counted towards the job creation requirement, a newly created job must be maintained for a period of no less than one (1) year from the date of the initial hire.** Jobs created or retained through this Agreement cannot be counted or used toward receiving any additional Palm Beach County grants.

If the minimum FTE job requirement has not been met, or falls below the minimum, as required by this Agreement, the AGENCY shall be considered by the COUNTY to have breached this Agreement and the COUNTY shall have the right to terminate the Agreement. In the event of termination or breach of this Agreement, the AGENCY agrees that it shall, within sixty (60) days of the date of termination or breach of the Agreement, make restitution to the COUNTY the per job grant award (**\$2,000 per job**) paid by the COUNTY to the AGENCY for each position not created/retained and maintained as required by this Agreement.

**The provisions of this section shall survive the expiration of this Agreement.**

(2) Business Assistance

The AGENCY shall provide assistance to five hundred (500) African American or MWBE businesses and/or entrepreneurs. Types of assistance to be provided are listed on the Activity Sheet Form (Exhibit F).

(3) Develop a Direct Loan Program

The Consultant agrees develop a direct loan program for MWBEs that meets Community Development Financial Institution (CDFI) certification requirements.

(4) Secure Loans for African-American or MWBE Businesses

The AGENCY shall assist twelve (12) African-American Owned Businesses or MWBEs in low to moderate income areas (collectively "Assisted Businesses") to secure a total amount of **\$1,500,000** in approved Loans. The Assisted Businesses that receive the approved Loans shall collectively create and /or retain a total of (75) full-time equivalent jobs.

**C. REPORTS**

The AGENCY shall submit the following monthly reports listed below to DHED along with the AGENCY's invoice requests:

- 1) **Invoice Cover Sheet** (Exhibit "B") during the contract period. This cover sheet shall be placed on the Consultant's Letterhead and include company name, invoice number, dollar amount requested, and the invoice period.
- 2) **Written verification of Cumulative Job Creation** (Exhibit "C") during the contract period. This verification shall include company name, full-time or part-time, employee initials, job title, employee address, parcel control number, date of hire, salary at time of hire, family household income, number of household, low-moderate income level base, present salary, presently employed and date of termination.
- 3) An **Economic Development Compliance Table** (Exhibit "D") to be completed for each client provided technical assistance during the contract period and certified by the company owner or his designee.
- 4) A **Record of Employee Hiring Form** (Exhibit "E") for each owner/employee hired during the contract period, identifying the family/household number and income prior at the time of hire, and certified by the owner and/or employee.
- 5) An **Activity Summary Form** (Exhibit "F") describing the business and type of assistance received, including assisting the business in efforts to obtain business loans, bonding, equity capital, and/or other business services.
- 6) A **Racial/Ethnicity Characteristics Form** (Exhibit "G") for jobs created and businesses assisted.
- 7) A **Business Lending Record** (Exhibit "H") providing information on each loan made to businesses receiving assistance through this agreement.
- 8) A **monthly cumulative report** listing the name of the workshop conducted including the date, location and number of attendees with a copy of the agenda and sign-in sheet.
- 9) As set forth in ARTICLE 36 of this Agreement, pursuant to Section 125.045(4), Florida Statutes, the AGENCY shall also submit a report to the COUNTY detailing how COUNTY Ad Valorem funds and CDBG funds were spent and the result of the AGENCY's efforts on behalf of the COUNTY.

**D. ENVIRONMENTAL CONDITIONS**

The AGENCY shall comply with all requirements resulting from the COUNTY's environmental review(s) of the project, including the incorporation of any applicable mitigation measures, in order to proceed with the project.

**2. General Conditions To Agreement:**

**A. 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 these documents taken as a whole constitute

the Agreement between the parties and are as fully a part of the Agreement as if they were set forth verbatim and at length herein:

- (1) This Agreement, including its Exhibits, which the COUNTY may revise;
- (2) 48 CFR Part 31 – Contract Cost Principles and Procedures
- (3) Palm Beach County Purchasing Ordinance
- (4) Palm Beach County's Tangible Property Disposal Ordinance
- (5) CDBG regulations (24 CFR Part 570), as amended
- (6) The AGENCY's Incorporation Certificate
- (7) The AGENCY's Certificates of Insurance and Bonding
- (8) 2 CFR Part 200: Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards
- (9) Section 448.095, Florida Statutes (F.S.) (E-Verify): <https://www.e-verify.gov/>

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

**B. 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 extent feasible, eligible business concerns located in or owned in substantial part by persons residing in the project areas shall be awarded Agreements in connection with the project. At a minimum, the AGENCY shall comply with the Section 3 Clause of the Housing and Community Development Act of 1968, as amended.

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

**C. CITIZEN PARTICIPATION**

The AGENCY will cooperate with DHED in the implementation of the Citizen Participation Plan by informing project beneficiaries and the community of the activities that the AGENCY is undertaking in carrying out the provisions of this Agreement.

**D. DEFAULTS**

The occurrence of any one or more of the following events shall constitute a Default hereunder:

- (1) Vacating, abandoning, or closing the AGENCY's business.
- (2) Relocating the AGENCY's existing business in Palm Beach County outside Palm Beach County.
- (3) Failure of the AGENCY to observe or perform any of the terms, covenants, conditions, obligations, or provisions of this Agreement, or any of the requirements imposed by applicable law.
- (4) The making by the AGENCY of any general assignment, or general arrangement for the benefit of creditors.
- (5) The filing by or against AGENCY of a petition to have the AGENCY adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against AGENCY, the same is dismissed within sixty (60) days).
- (6) The appointment of a trustee or receiver to take possession of substantially all of AGENCY's assets where possession is not restored to AGENCY within thirty (30) days.
- (7) The attachment, execution or other judicial seizure of substantially all of AGENCY's assets located within Palm Beach County where such seizure is not discharged within thirty (30) days.

E. TERMINATION

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

- (1) Termination for Cause: If, through any cause, either party shall fail to fulfill in 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 early or suspend payments, in whole or part, by giving written notice of such termination or suspension of payments and specifying the effective date of termination or suspension. The AGENCY shall repay the full value of this grant, unless otherwise specified by DHED, within thirty (30) days of receiving the termination notice from the COUNTY.
- (2) Termination Due To Cessation: In the event the grant to the COUNTY containing the funds herein provided is suspended or terminated, this Agreement may be suspended or terminated upon notice from the COUNTY, effective on the date specified therein or as otherwise specified by U.S. HUD. In the event the AGENCY 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 AGENCY has ceased or suspended its operation shall be made solely by the COUNTY, and the AGENCY, its successors or assigns in interest agrees to be bound by the COUNTY's determination. At the COUNTY's sole discretion, pursuant to this Section, the AGENCY shall return all funds received through this Agreement to the COUNTY within sixty (60) days of receiving the termination notice from the COUNTY.
- (3) Termination for Convenience of the COUNTY: The COUNTY may terminate this Agreement at any time by giving at least ten (10) working days' notice in writing from the COUNTY to the AGENCY. If this Agreement is terminated early by the COUNTY as provided herein, the AGENCY may be paid for allowable services and allowable expenses until the effective date of the early termination.
- (4) Termination for Convenience of the AGENCY: The AGENCY may terminate this Agreement at any time by giving at least ten (10) working days prior written notice to DHED. If the AGENCY has received funds through this Agreement, the AGENCY shall return all funds to the COUNTY prior to the termination of this Agreement.

F. 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.

G. OMITTED

H. ANTI - PIRACY PROVISION

The AGENCY hereby certifies that it is in compliance with Section 105H of U.S.C. 5305 and 24 CFR 570.210 and 570.482 and 570.506 in that the CDBG funds provided herein will not cause the AGENCY to locate a facility, plant or operation, including the expansion of a business that will result in the loss of jobs from one Labor Market Area to another.

I. SOURCE OF FUNDING

This Agreement and all obligations of COUNTY hereunder are subject to and contingent upon receipt of funding from U.S. HUD for the purposes provided for herein. Nothing in this Agreement shall obligate the Palm Beach County Board of County Commissioners to provide funding from any other source, including, but not limited to, funds from the COUNTY's annual budget and appropriations.

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**EXHIBIT "B"**

**INVOICE COVER SHEET**

USE AGENCY LETTERHEAD STATIONERY:

DATE: \_\_\_\_\_

TO: **Sherry Howard, Deputy Director**  
Department of Housing & Economic Development  
100 Australian Avenue, Suite 500  
West Palm Beach, FL 33406

FROM: **Marlon D. White, President**  
The Palm Beach County Black Business Investment Corporation  
2001 Broadway Ave, Unit 210  
Riviera Beach, FL 33404

SUBJECT: **The Palm Beach County Black Business Investment Corporation**  
Reimbursement Request No. \_\_\_\_\_  
Contract No. \_\_\_\_\_

=====

Attached you will find Invoice # \_\_\_\_\_ requesting reimbursement for \$ \_\_\_\_\_. The expenditures for this invoice cover the period of \_\_\_\_\_ through \_\_\_\_\_.

Additionally, please find the attached, back-up original documentation relating to the expenditures being involved.

\_\_\_\_\_  
Marlon D. White, President

**EXHIBIT "C"**

Cumulative Job Creation and Retention (Oct. 1, 2021 thru Sept. 30, 2022)  
The Black Business Investment Corporation (BBIC)

Company	1	FT or PT	Empl Initials	Job Title	Employee Address	PCN	Date of Hire	Salary at Time of Hire	Family Household Income	No. of Hsehold	Low-Mod. Income Level Base	Present Salary	Present Employment	Date Terminated
	2													
	3													
	4													
	5													
	6													
	7													
	8													
	9													
	19													
	11													
	12													
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	24													
	25													
	26													

**EXHIBIT "D"**

**Economic Development Compliance Table**

Company Name: \_\_\_\_\_ Industry Type (NAICS Code) \_\_\_\_\_  
 Address: \_\_\_\_\_ PCN: \_\_\_\_\_

Please Note the Following: **CENSUS TRACT or BLOCK GROUP:** \_\_\_\_\_

- A job is considered to be Full Time if it provides 2,080 hours of employment per year (40 hours per week).

Job Title	Employee Initials	Employee Zip Code	Date Hired	Salary at Time of Hire	Specify: Full Time (FT) or Part Time (PT) <u>And</u> number of hours per week	Low-Mod Income Employee ( <b>See Attached Chart</b> ) (Yes) or (No)	Present Employee (Yes) or (No)	Date Terminated (If Applicable)

I certify this report to be accurate, based upon actual company records, which will be maintained by The BBIC for monitoring purposes, according to the terms of The BBIC's Agreement with Palm Beach COUNTY.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Employer Signature

\_\_\_\_\_  
Date

**EXHIBIT "E"**

**Record of Employee Hiring**

**For HUD and Economic Development Compliance  
Oct. 1, 2021 thru Sept. 30, 2022**

\_\_\_\_\_  
(Business Name)

Employee Name: \_\_\_\_\_

Employee Home Address and Parcel Control Number: \_\_\_\_\_

The first two digits of the 17 digit Parcel Control Number (PCN) xx-xx-xx-xx-xx-xxx-xxxx help to find out if the location is in or outside of the Palm Beach COUNTY CDBG Jurisdiction. If the first two digits of the PCN are 06, 08, 12, 30, 52, 73 or 74, then the location is outside the Palm Beach COUNTY CDBG Jurisdiction. The first two digits of the PCNs for the following cities are:

**Boca Raton: 06 Boynton Beach: 08 Delray Beach: 12 Jupiter: 30 Palm Beach Gardens: 52 Wellington: 73  
West Palm Beach: 74**

Job Title: \_\_\_\_\_

Salary: \_\_\_\_\_

Fringe Benefits: \_\_\_\_\_

Date of Hire: \_\_\_\_\_ Date of Termination: \_\_\_\_\_ Still Employed: [ ] YES or [ ] NO

Please circle below income status at time of Hire:

Annual Income Limits for Palm Beach COUNTY, Florida  
***FY 2021 Income Limits Summary***

Palm Beach COUNTY, Florida										
FY 2021 Income Limit Area	Median Family Income	FY 2021 Income Limit Category	Persons in Family							
			1	2	3	4	5	6	7	8
Palm Beach COUNT Y (WPB – Boca Raton, FL HUD Metro FMR Area)	\$80,200	<u>Extremely Low (30%) Income Limits</u>	\$18,000	\$20,600	\$23,150	\$26,500	\$31,040	\$35,580	\$40,120	\$44,660
		<u>Very Low (50%) Income Limits</u>	\$30,000	\$34,250	\$38,550	\$42,800	\$46,250	\$49,650	\$53,100	\$56,500
		<u>Low (80%) Income Limits</u>	\$47,950	\$54,800	\$61,650	\$68,500	\$74,000	\$79,500	\$84,950	\$90,450

Income Limit areas are based on FY 2021 Fair Market Rent (FMR) areas. For information on FMRs, please see our associated FY 2021 Fair Market Rent documentation system.

**OR**

Number of Persons in Household: \_\_\_\_\_ Family/Household Income: \$ \_\_\_\_\_

Identify documentation used to establish very-low, low and moderate income status at time of hire. Retain copies of that documentation in AGENCY files for three (3) years for future COUNTY or Federal Audits.

Specify documentation:

\_\_\_\_\_

\_\_\_\_\_

Signature of Employer and/or Employee \_\_\_\_\_ Date \_\_\_\_\_

**EXHIBIT "F"**

**Activity Summary Form**

Month of \_\_\_\_\_ 20 \_\_\_\_

**The Palm Beach County Black Business Investment Corporation (BBIC)**

(Provide businesses assisted and check boxes for types of assistance provided.)

#	Name of Business Assisted	Date	New (N) or Existing (E)	Business Address	Business Analysis	Counseling	Incorporation Assistance	Management Strategies	Business Plan Assistance	Loan Packaging	Technical Assistance	Graphic & Web Design	Other (Specify)
1													
2													
3													
4													
5													
6													
7													
8													
9													
10													
11													
12													
13													
14													

Total Unduplicated Businesses Served This Month \_\_\_\_\_

Total Unduplicated Businesses Served Year-To -Date (YTD) \_\_\_\_\_



**EXHIBIT "H"**

<b>BBIC BUSINESS LENDING RECORD</b>	
Business Name	
Business Address/Location	
Type of Business	
Identify the <u>six (6) digit</u> NAICS code for 2017, from the following website link, which best describes the business NAICS Code and Industry Title - <a href="http://www.census.gov/eos/www/naics/">http://www.census.gov/eos/www/naics/</a> or <a href="http://www.naics.com/search.htm">http://www.naics.com/search.htm</a>	
Dollar amount of new capital investment, excluding equipment	
Dollar amount of new equipment	
Number of Full Time Equivalent Jobs Created	
Number of Full Time Equivalent Jobs Retained	
Total Number of Full Time Equivalent Jobs Created and Retained	
Name of the Bank/Financial Institution Approving the Loan	
Amount of Business Loan	

**NAICS Code and Industry Title, <http://www.naics.com/search.htm>**

<b>Code</b>	<b>Industry Title</b>	<b>Code</b>	<b>Industry Title</b>
<u>11</u>	<u>Agriculture, Forestry, Fishing and Hunting</u>	<u>53</u>	<u>Real Estate Rental and Leasing</u>
<u>21</u>	<u>Mining</u>	<u>54</u>	<u>Professional, Scientific, and Technical Services</u>
<u>22</u>	<u>Utilities</u>	<u>55</u>	<u>Management of Companies and Enterprises</u>
<u>23</u>	<u>Construction</u>	<u>56</u>	<u>Administrative and Support and Waste Management and Remediation Services</u>
<u>31-33</u>	<u>Manufacturing</u>	<u>61</u>	<u>Educational Services</u>
<u>42</u>	<u>Wholesale Trade</u>	<u>62</u>	<u>Health Care and Social Assistance</u>
<u>44-45</u>	<u>Retail Trade</u>	<u>71</u>	<u>Arts, Entertainment, and Recreation</u>
<u>48-49</u>	<u>Transportation and Warehousing</u>	<u>72</u>	<u>Accommodation and Food Services</u>
<u>51</u>	<u>Information</u>	<u>81</u>	<u>Other Services (except Public Administration)</u>
<u>52</u>	<u>Finance and Insurance</u>	<u>92</u>	<u>Public Administration</u>



**EXHIBIT "I"**

**COMMUNITY DEVELOPMENT BLOCK GRANT  
FEDERAL PROVISIONS AND CERTIFICATIONS  
INCLUDING 2 CFR Part 200 Appendix II**

**1. Equal Opportunity.**

Contractor shall at all times comply with the provisions of 41 CFR 60-1.4(b), the Equal Opportunity Clause, which is incorporated herein by reference.

During the performance of this Agreement, the contractor agrees as follows:

(a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(c) The contractor will not discharge or in any manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(d) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The contractor and all subcontractors of contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60) and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering AGENCY and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering AGENCY may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering AGENCY, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **2. Contract Work Hours and Safety Act (40 U.S.C. § 3702 and 3704).**

Contractor shall comply with the Contract Work Hours and Safety Act (for contracts in excess of \$100,000 that involve the employment of mechanics or laborers) in accordance to 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 and 29 C.F.R. Part 1926.

**(a) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**(b) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (a) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

**(c) Withholding for unpaid wages and liquidated damages.** The COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally – assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

**(d) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set

forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

### **3. Clean Air Act Clean Water Act (for contracts exceeding \$150,000).**

#### **(a) Clean Air Act (Contracts in excess of \$150,000)**

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to the U.S. HUD and the appropriate Environmental Protection AGENCY Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the U.S. HUD.

#### **(b) Federal Water Pollution Control Act (Contracts in excess of \$150,000)**

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to the U.S. HUD and the appropriate Environmental Protection AGENCY Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the U.S. HUD.

### **4. Suspension and Debarment (Certification required).**

This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 31 C.F.R. pt. 19. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The contractor must comply with 2 C.F.R. pt. 180, subpart C and 31 C.F.R. pt. 19, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by COUNTY. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 31 C.F.R. pt. 19 subpart C, in addition to remedies available to COUNTY, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 31 C.F.R. pt. 19 subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

A completed Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Participation form (attached hereto and titled Certification Regarding Debarment) is required in Contractor's sealed bid or proposal or as otherwise required by the COUNTY. Upon request, successful Contractor agrees to provide the COUNTY with subsequent certification(s) for it and/or its suppliers, subcontractors and

subconsultants after Contract award.

**5. Byrd Anti-Lobbying Amendment 31 U.S.C. § 1352 and 31 CFR Part 21 (Certification required).**

Contractors who apply or bid for or receive an award of \$100,000 or more at any tier under a federal grant shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any AGENCY, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding AGENCY.

A completed certificate (attached hereto and titled Certification Regarding Lobbying) is required in Contractor's sealed bid or proposal or as otherwise required by the COUNTY. Upon request, successful Contractor agrees to provide the COUNTY with subsequent certification(s) for it and/or its suppliers, subcontractors and subconsultants after Contract award.

**6. Recovered Materials.**

In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired:

- (a) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (b) Meeting contract performance requirements; or
- (c) At a reasonable price.

Information about this requirement along with a list of EPA-designated items is available at EPA's Comprehensive Procurement Guidelines web site:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

**7. Prohibition on Contracting for Covered Telecommunications Equipment or Services.**

**(a) Definitions.**

**Backhaul** means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

**Covered foreign country** means the People's Republic of China.

**Covered telecommunications equipment or services** means:

- 1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of such entities);
- 2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology

Company (or any subsidiary or affiliate of such entities);

3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

**Interconnection arrangements** means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

**Roaming** means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

**Substantial or essential component** means any component necessary for the proper function or performance of a piece of equipment, system, or service.

**Telecommunications equipment or services** means telecommunications or video surveillance equipment or services, such as, but not limited to, mobile phones, land lines, internet, video surveillance, and cloud servers.

**(b) Prohibitions.**

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive AGENCY on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the U.S. HUD to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this Agreement, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of

any system, or as critical technology as part of any system.

**(c) Exceptions.**

(1) This clause does not prohibit contractors from providing:

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

(i) Covered telecommunications equipment or services that:

i. Are not used as a substantial or essential component of any system; and

ii. Are not used as critical technology of any system.

(ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

**(d) Reporting requirement.**

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this Agreement are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

**(e) Subcontracts.** The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

## **8. Domestic Preference for Procurements.**

As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## **9. Notice of COUNTY Reporting Requirements.**

**(a) General.** The COUNTY is using CDBG Funds awarded by the U.S. HUD, in whole or in part, for the costs incurred under this Agreement. As a condition of this funding, the U.S. HUD requires the COUNTY to provide various financial and performance reporting.

**(1)** It is important that the contractor is aware of these reporting requirements, as the COUNTY may require the contractor to provide certain information, documentation, and other reporting in order to satisfy reporting requirements.

**(2)** Contractor shall cooperate and comply with all requests for information and documentation from the COUNTY as necessary to satisfy and comply with the award requirements. Failure to do so is a material breach of this Agreement.

**(3)** Failure of the COUNTY to satisfy reporting requirements to the U.S. HUD is a breach of its agreement with U.S. HUD and could result in loss of federal financial assistance awarded to fund this Agreement.

**(b) Applicable Reporting Requirements.** Grant reporting includes both financial and program reporting requirements. There are a variety of applicable federal, state and local laws, regulations, requirements, and policies setting forth various reporting requirements, including, but not limited to COUNTY policies and procedures, U.S. HUD guidance and federal regulations such as Subpart D, Post Federal Award requirements, Standards for Financial and Program Management, 2 C.F.R. § 200.300 through 2 C.F.R. § 200.345. Performance reporting includes, but is not limited to, the status of the project, the status of the funds, key performance indicators. Contractor shall comply with any and all reporting requirements.

## **10. Records Requirements.**

**(a) Records Retention.** Pursuant to 24 CFR § 570.502, Contractor shall retain all records, including but not limited to, all books, records, accounts and reports required under this Agreement for a period of the longer of 3 years after the expiration or termination of the subrecipient agreement under 24 CFR § 570.503 or 3 years after the submission of the annual performance and evaluation report in which the specific activity is reported on for the final time. Records for individual activities subject to the reversion of assets provisions at § 570.503(b)(7) or change of use provisions at § 570.505 must be

maintained for as long as those provisions continue to apply to the activity.

Records for individual activities for which there are outstanding loan balances, other receivables, or contingent liabilities must be retained until such receivables or liabilities have been satisfied.

Notwithstanding the foregoing, in the event of litigation or settlement of claims arising from the performance of this Agreement, Contractor agrees to maintain same until the COUNTY or the U.S. HUD, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims.

**(b) Access to Records.** The following access to records requirements apply to this Agreement:

(1) The contractor agrees to provide the COUNTY, the U.S. HUD, the U.S. Treasury's Office of Inspector General, the U.S. Government Accountability Office or any of their authorized representative's, access to any books, documents, papers, and records (electronic or otherwise) of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

**11. Compliance with Federal Laws.** This Agreement is being funded in whole or in part with federal funds awarded to the COUNTY by the U.S. HUD. The Contractor shall comply with all applicable federal statutes, regulations, and executive orders. Contractor shall insert the substance of this clause in all subcontracts and other contractual instruments.

**12. False Statements.** The Contractor understands that making false statements or claims in connection with this Agreement is a violation of federal law which may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

**13. No Obligation by the U.S. Government.** The U.S. Government is not a party to this Agreement and is not subject any obligations or liabilities to the Contractor, the COUNTY or any third party resulting from the performance of this Agreement.

**14. Increasing Seat Belt Use in the United States.** COUNTY encourages the Contractor to adopt and enforce an on-the-job seat belt policy and program for its employees.

**15. Reducing Text Messaging While Driving.** COUNTY encourages the Contractor to adopt and enforce a policy that bans text messaging while driving.

**16. Title VI of the Civil Rights Act of 1964.** The Contractor shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement. Contractor shall insert the substance of this clause in all subcontracts and other contractual instruments.

**17. Affirmative Socioeconomic Steps.** If subcontracts are to be let, the Contractor is required to take all necessary steps identified in 2 CFR 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus are firms are used when possible.



**18.** Reimbursement under this Agreement may be from funds distributed from the U.S. HUD and payments may be considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance, 2 C.F.R. § 200.303 regarding internal controls, §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements. Any party receiving such funds shall comply with said provisions, and shall fully cooperate with any other party's compliance with said provisions.

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**EXHIBIT "J"**

**CERTIFICATION REGARDING DEBARMENT**

The Contractor certifies that:

1. This Agreement is a covered transaction for purposes of 2 CFR, Part 180 and 31 CFR Part 19 such, the Contractor is required to verify that none of the Contractor, its principals (defined at 2 CFR 180.995), or its affiliates (defined at 2 CFR 180.905) are excluded (defined at 2 CFR 180.940) or disqualified (defined at 2 CFR 180.935).
2. The Contractor must comply with 2 CFR Part 180, subpart C and 31 CFR Part 19, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by the COUNTY. If it is later determined that the Contractor did not comply with 2 CFR Part 180, subpart C and 31 CFR Part 19, subpart C, in addition to remedies available to the COUNTY, the federal government may pursue available remedies, including but not limited to suspension and/ or debarment.
4. The Contractor agrees to comply with the requirements of 2 CFR Part 180, subpart C and 31 CFR Part 19, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions, including submission to Contractor of this Certification completed by its suppliers, subcontractors and subconsultants.

CONTRACTOR NAME: **Palm Beach County Black Investment Corporation**

ADDRESS: **2001 Broadway, Suite 210, West palm Beach, Florida 33404**

CONTRACTOR'S AUTHORIZED OFFICIAL:

\_\_\_\_\_  
**Marlon D. White, President**

\_\_\_\_\_  
**Date**

**EXHIBIT "K"**

**CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements  
(To be submitted with each bid, proposal, or contract exceeding \$100,000)

The undersigned Contractor certifies, to the best of his or her knowledge, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an AGENCY, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any AGENCY, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, **Palm Beach County Black Business Investment Corporation**, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
**Marlon D. White, President**

\_\_\_\_\_  
**Date**