

**AGREEMENT BETWEEN PALM BEACH COUNTY**

**AND**

**CITY OF LAKE WORTH BEACH**

**THIS AGREEMENT**, with an effective date of **October 1, 2022**, by and between **Palm Beach County**, a political subdivision of the State of Florida, for the use and benefit of its Community Development Block Grant Program, and the **City of Lake Worth Beach**, a Municipality duly organized and existing by virtue of the laws of the State of Florida, having its principal office at **7 North Dixie Highway, Lake Worth Beach, FL 33460**.

**WHEREAS**, Palm Beach County has entered into an agreement with the United States Department of Housing and Urban Development for a grant for the execution and implementation of a Community Development Block Grant Program in certain areas of Palm Beach County, pursuant to Title I of the Housing and Community Development Act of 1974 (as amended); and

**WHEREAS**, Palm Beach County, in accord with the annual Action Plan, and the **City of Lake Worth Beach**, desire to provide the activities specified by this Agreement; and

**WHEREAS**, Palm Beach County and the City of Lake Worth Beach, desire to provide CDBG funding in the amount of **\$306,691** with CDBG funding for FY2022-2023; and

**WHEREAS**, Palm Beach County desires to engage the **City of Lake Worth Beach** to implement such undertakings of the Community Development Block Grant Program, as a Subrecipient.

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

**1. DEFINITIONS**

- (A) "County" means Palm Beach County.
- (B) "CDBG" means the Community Development Block Grant Program of Palm Beach County.
- (C) "DHED" means Palm Beach County Department of Housing & Economic Development
- (D) "Subrecipient" means the **City of Lake Worth Beach**, a Subrecipient as defined in 2 CFR 200
- (E) "DHED Approval" means the written approval of the DHED Director or his designee.
- (F) "U.S. HUD" means the Secretary of Housing and Urban Development or a person authorized to act on its behalf.
- (G) "Low and Moderate Income Persons" means the definition set by U.S. HUD.

**2. PURPOSE**

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

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

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

**4. GENERAL COMPLIANCE**

The Subrecipient shall comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)), including subpart K of these regulations, except that (1) the Subrecipient does not assume the County's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the County's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other Federal, state and local laws, regulations, and policies governing the funds provided under this Agreement.

The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available. Any legal action necessary to enforce this Agreement will be held in a state court of competent jurisdiction located in Palm Beach County, Florida.

**5. SCOPE OF SERVICES**

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

**6. MAXIMUM COMPENSATION**

The Subrecipient agrees to accept as full payment for services rendered pursuant to this Agreement the actual amount of budgeted, eligible, and DHED Director or designee-approved expenditures and encumbrances made by the Subrecipient under this Agreement, which shall not be unreasonably withheld. These services shall be performed in a manner satisfactory to DHED and U.S. HUD. In no event shall the total compensation or reimbursement to be paid hereunder exceed the maximum and total authorized sum of **\$306,691** for the period of **October 1, 2022**, through and including **December 31, 2023**. Any funds not expended by the expiration date of this Agreement shall automatically revert to the County.

**7. TIME OF PERFORMANCE**

The effective date of this Agreement and all rights and duties designated hereunder are contingent upon the timely release of funds for this project by U. S. HUD. The effective date shall be the date of execution of this Agreement, and the services of the Subrecipient shall be undertaken and completed in light of the purposes of this Agreement. In any event, services required herein shall be completed by the Subrecipient prior to **December 31, 2023**.

**8. METHOD OF PAYMENT**

The County agrees to make payments and to reimburse the Subrecipient for all budgeted costs permitted by Federal, State, and County guidelines. The Subrecipient shall not request reimbursement for work performed and/or payments made by the Subrecipient, before the effective date of this Agreement, nor shall it request reimbursement for payments made after the expiration date of this Agreement, and in no event shall the County provide advance funding to the Subrecipient or any subcontractors hereunder.

The Subrecipient shall request payments or reimbursements from the County by submitting to DHED proper documentation of expenditures consisting of originals of invoices, receipts, or other evidence of indebtedness, and when original documents cannot be presented, the Subrecipient may furnish copies if deemed acceptable by DHED. Each request for payment or reimbursement submitted by the Subrecipient shall be accompanied by a letter from the Subrecipient, provided on the Subrecipient's letterhead, referencing the name of the project funded herein, the date of this Agreement and/or its document number, and containing a statement requesting the payment or reimbursement and its amount, as well as the name and signature of the person making the request. Payment shall be made by the Palm Beach County Finance Department upon presentation of the aforesaid proper documentation of expenditures as approved by DHED.

The Subrecipient may at any time after the expiration of this Agreement request from the County reimbursement for payments made by the Subrecipient during the term of this Agreement by submitting to DHED the aforesaid proper documentation of expenditures, and the Palm Beach County Finance Department shall make payment as stated above, provided that DHED has determined that the funds allocated to the Subrecipient through this Agreement are still available for payment, and provided that DHED approves such payment.

## **9. CONDITIONS FOR PROJECT IMPLEMENTATION**

### **(A) IMPLEMENTATION OF PROJECT ACCORDING TO REQUIRED PROCEDURES**

The Subrecipient shall implement this Agreement in accordance with applicable Federal, State, County, and local laws, ordinances and codes. The Federal, State, and County laws, ordinances and codes are minimal regulations supplemented by more restrictive guidelines set forth by DHED. The Subrecipient shall prepare a cost allocation plan for all project funding and submit such plan to the DHED Director or designee.

Should a project receive additional funding after the commencement of this Agreement, the Subrecipient shall notify DHED in writing within thirty (30) days of receiving notification from the funding source and submit a revised cost allocation plan to the DHED Director or designee within forty-five (45) days of said official notification.

### **(B) FINANCIAL ACCOUNTABILITY**

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

### **(C) SUBCONTRACTS**

Any work or services subcontracted hereunder shall be specifically by written contract, written agreement, or purchase order. All subcontracts shall be subject to the requirements of this Agreement.

This includes Subrecipient ensuring that all consultant contracts and fee schedules meet the minimum standards as established by Palm Beach County and HUD.

Contracts for architecture, engineering, survey, and planning shall be fixed fee contracts. All additional services shall have prior written approval with support documentation detailing categories of persons performing work plus hourly rates including benefits, number of drawings required, and all items that justify the "Fixed Fee Contract." Reimbursable items will be at cost.

(D) **PURCHASING**

All purchasing of services and goods, including capital equipment, shall be made by purchase order or by a written contract and in conformity with the procedures prescribed Subrecipient's purchasing code and 2 CFR Part 200, which is incorporated herein by reference.

(E) **REPORTS, AUDITS, AND EVALUATIONS**

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

(F) **ADDITIONAL DHED, COUNTY, AND U.S. HUD REQUIREMENTS**

DHED shall have the right via this Agreement to suspend/terminate payments if after fifteen (15) days written notice the Subrecipient has not complied with any additional conditions that may be imposed, at any time, by DHED, the County, or U.S. HUD.

(G) **PROGRAM - GENERATED INCOME**

All income earned by the Subrecipient from activities financed, in whole or in part, by funds provided hereunder must be reported and returned annually to DHED. Such income shall only be used to undertake the activities authorized by this Agreement. DHED must verify and approve the eligibility and reasonableness of all expenses which the Subrecipient requests to be deducted. Accounting and disbursement of such income shall comply with 2 CFR 200 and other applicable regulations incorporated herein by reference.

The Subrecipient may request that said program income be used to fund other eligible uses, subject to DHED approval, and provided that the Subrecipient is in compliance with its obligations as contained within this Agreement (including the attached Exhibits herein). The Subrecipient shall only use such program income to fund "basic eligible activities" as defined by Federal Community Development Block Grant Regulations (24 CFR Part 570). The Subrecipient hereby agrees that the provisions of this Agreement shall also apply to these "basic eligible activities" as funded with the Subrecipient's program income.

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

**10. CIVIL RIGHTS COMPLIANCE AND NON-DISCRIMINATION POLICY**

The County is committed to assuring equal opportunity in the award of Agreements and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient retaliate against any person for reporting instances of such discrimination. The Subrecipient 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 Subrecipient 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. Subrecipient shall include this language in its subcontracts.

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

To the greatest extent feasible, lower-income residents of the project areas shall be given opportunities for training and employment; and to the greatest feasible extent eligible business concerns located in or owned in substantial part by persons residing in the project areas shall be awarded contracts in connection with the project. The Subrecipient shall comply with the Section 3 Clause of the Housing and Community Development Act of 1968.

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

**12. PROGRAM BENEFICIARIES**

At least fifty-one percent (51%) of the beneficiaries of a project funded through this Agreement must be Low- and Moderate- Income Persons. If the project is located in an entitlement city, as defined by U.S. HUD, or serves beneficiaries countywide, at least fifty-one percent (51%) of the beneficiaries directly assisted through the use of funds under this Agreement must reside in unincorporated Palm Beach County or in municipalities participating in the County's Urban County Qualification Program. The project funded under this Agreement shall assist beneficiaries as defined above for the time period designated in this Agreement. Upon request from DHED, the Subrecipient shall provide written verification of compliance.

**13. EVALUATION AND MONITORING**

The Subrecipient agrees that DHED will carry out periodic monitoring and evaluation activities as determined necessary by DHED and that payment, reimbursement, or the continuation of this Agreement is dependent upon satisfactory evaluation conclusions based on the terms of this Agreement. The Subrecipient agrees to furnish upon request to DHED, or the County's designees copies of transcriptions of such records and information as is determined necessary by DHED. The Subrecipient shall submit status reports required under this Agreement on forms approved by DHED to enable DHED to evaluate progress. The Subrecipient shall provide information as requested by DHED to enable DHED to complete reports required by the County or HUD. The Subrecipient shall allow DHED, or HUD to monitor the Subrecipient on site. Such visits may be scheduled or unscheduled as determined by DHED or HUD.

**14. AUDITS AND INSPECTIONS**

The Subrecipient 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. As often as DHED, the County, HUD, or the Comptroller General of the United States may deem necessary, Subrecipient shall make available to DHED, HUD, or the Comptroller General for examination all its records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the Subrecipient's place of business, with respect to all matters covered by this Agreement.

**15. REPAYMENT PROVISIONS**

In the event the Subrecipient fails to comply in whole or in part with the terms and conditions of this Agreement and/or the referenced regulations pertaining to the use of CDBG funds, and where DHED, the County, or U. S. HUD has determined that the County or Subrecipient has a repayment obligation required due to the Subrecipient's performance or lack thereof, the Subrecipient shall be responsible to reimburse the County in the amount requested by the County within 60 days of the date of written notification from the County to the Subrecipient.

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

**16. UNIFORM ADMINISTRATIVE REQUIREMENTS**

The Subrecipient agrees to comply with the applicable uniform administrative requirements as described in Federal Regulations 2 CFR Part 200.

**17. REVERSION OF ASSETS**

Upon expiration of this Agreement, the Agency shall transfer to the County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Any real property under the Agency's control upon expiration or earlier termination of this Agreement which was acquired or improved, in whole or part, with CDBG funds in the excess of \$25,000 must either be used to meet one of the national objectives in Federal Community Development Block Grant Regulations 24 CFR 570.208 for a minimum of five (5) years after expiration of the Agreement, or, the Agency shall pay the County an amount equal to the current market value attributable to expenditures of non-CDBG funds for the acquisition of, or improvements to, the property. **This Reversion provision shall survive the expiration or termination of this Agreement.**

**18. DATA BECOMES COUNTY PROPERTY**

All reports, plans, surveys, information, documents, maps, and other data prepared, assembled, or completed by the Subrecipient for the purpose of this Agreement shall be made available to the County at any time upon request by the County, DHED, or the Palm Beach County Inspector General's office, as indicated herein. Upon completion of all work contemplated under this Agreement copies of all documents and records relating to this Agreement shall be surrendered to DHED if requested. In any event, the Subrecipient shall keep all documents and records for five (5) years after expiration of this Agreement.

**19. INDEMNIFICATION**

Each party to this Agreement shall be liable for its own actions and negligence and, to the extent permitted by law, the County shall indemnify, defend, and hold harmless the Subrecipient against any actions, claims, or damages arising out of the County's negligent or intentional acts in connection with this Agreement, and the Subrecipient 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 Subrecipients's performance of the terms of this Agreement or due to the intentional acts or omissions of Subrecipient.

The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statute, section 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions. The Subrecipient shall hold the County harmless and shall indemnify the County for funds which the County is obligated to refund the Federal Government arising out of the conduct of activities and administration of the Subrecipient.

**The provisions of this indemnification clause shall survive the expiration and/or early termination of this Agreement.**

**20. INSURANCE BY SUBRECIPIENT (MUNICIPALITY):**

Without waiving the right to sovereign immunity as provided by section 768.28, Florida Statutes, (Statute), the Municipality represents that it is self-insured with coverage subject to the limitations of the Statute, as may be amended.

If Municipality is not self-insured, Municipality shall maintain at its sole expense, in full force and effect at all times during the life of this Agreement, insurance coverage and limits not less than those contained in the Statute.

Should Municipality purchase excess liability coverage, Municipality agrees to include County as an Additional Insured.

The Municipality agrees to maintain or to be self-insured for Workers' Compensation insurance in accordance with Chapter 440, Florida Statutes.

**Should Municipality contract with a third-party (Contractor) to perform any service related to the AGREEMENT, Municipality shall require the Contractor to provide the following minimum insurance:**

A. **Commercial General Liability:** Municipality shall maintain limit of liability insurance with minimum limits of \$1,000,000 combined single limit for property damage and bodily injury per occurrence. Such policy shall be endorsed to include Municipality and County as Additional Insureds. Municipality shall also require that the Contractor include a Waiver of Subrogation against County.

**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. **Business Automobile Liability:** Municipality shall maintain insurance with minimum limits of \$1,000,000 combined single limits for property damage and bodily injury per occurrence.

C. **Workers' Compensation:** Municipality shall maintain Workers' Compensation & Employer's Liability in accordance with Chapter 440 of the Florida Statutes.

D. **Waiver of Subrogation:** Except where prohibited by law, Municipality 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 Municipality 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 Municipality enter into such an agreement on a pre-loss basis.

- E. **Certificates of Insurance**: 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 Municipality shall deliver to the County, a signed Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Agreement have been obtained and are in full force and effect.

**The Certificate Holder shall read:**

Palm Beach County Board of County Commissioners  
c/o Department of Housing & Economic Development  
100 Australian Ave, 5<sup>th</sup> Floor  
West Palm Beach, FL 33406

When requested, the Municipality shall provide an affidavit or Certificate of Insurance evidencing insurance or self-insurance. Compliance with the foregoing requirement shall not relieve the Municipality of its liability and obligations under this Agreement.

- 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.

**21. MAINTENANCE OF EFFORT**

The intent and purpose of this Agreement is to increase the availability of the Subrecipient's services. This Agreement is not to substitute for or replace existing or planned projects or activities of the Subrecipient. The Subrecipient agrees to maintain a level of activities and expenditures, planned or existing, for projects similar to those being assisted under this Agreement which is not less than that level existing prior to this Agreement.

**22. CONFLICT OF INTEREST**

The Subrecipient 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. The Subrecipient further represents that no person having any such conflict of interest shall be employed for said performance of services.

The Subrecipient 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 Subrecipient'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 Subrecipient 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 Subrecipient.

The County agrees to notify the Subrecipient of its opinion by certified mail within thirty (30) days of receipt of notification by the Subrecipient. If, in the opinion of the County, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Subrecipient, the County shall so state in the notification and the Subrecipient 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 Subrecipient under the terms of this Agreement.

However, these paragraphs shall be interpreted in such a manner so as not to unreasonably impede the statutory requirement that maximum opportunity be provided for employment and participation of Low and Moderate-Income Persons of the project's target area.

**23. CITIZEN PARTICIPATION**

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

**24. RECOGNITION**

The Subrecipient 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 Subrecipient shall also notify the County prior to any ceremonies or events relating to facilities or items funded by this Agreement to allow for participation of Mayor, County Commissioners, County Administration, Department Staff or other County Official. In addition, the Subrecipient will make good faith efforts to recognize the County's support for all activities made possible with funds made available under this Agreement.

**25. AGREEMENT DOCUMENTS**

The following documents are herein incorporated by reference and made a part hereof, and shall constitute and be referred to as the Agreement; and all of said documents taken as a whole constitute the Agreement between the parties hereto and are as fully a part of the Agreement as if they were set forth verbatim and at length herein:

- (A) This Agreement, including its Exhibits, which the County may revise from time to time, as required, and to be provided for use by the Subrecipient;
- (B) 2 CFR Part 200: Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards;
- (C) Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Title II of the Americans with Disabilities Act of 1990;

- (D) Executive Orders 11246, 11478, 11625, 12432, the Davis Bacon Act, and Section 3 of the Housing and Community Development Act of 1968, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended;
- (E) Executive Orders 11063, 12259, 12892, the Fair Housing Act of 1988, and Section 109 of the Housing and Community Development Act of 1974, as amended;
- (F) Florida Statutes, Chapter 112;
- (G) Palm Beach County Purchasing Code;
- (H) Federal Community Development Block Grant Regulations (24 CFR Part 570), and Federal Consolidated Plan Regulations (24 CFR Part 91), as amended;
- (I) The Subrecipient's personnel policies and job descriptions; and
- (J) The Subrecipient's Certificate of Insurance.
- (K) Section 448.095, Florida Statutes (F.S.) (E-Verify): <https://www.e-verify.gov/>

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

## **26. TERMINATION AND SUSPENSION**

In the event of early termination, the Subrecipient 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 Subrecipient, and the County may withhold any payment to the Subrecipient until such time as the exact amount of damages due to the County from the Subrecipient is determined.

### **(A) TERMINATION FOR CAUSE**

If, through any cause, either party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if either party shall violate any of the covenants, agreements, or stipulations of this Agreement, either party shall thereupon have the right to terminate this Agreement or suspend payments, in whole or part, by giving written notice to the other party of such termination or suspension and specifying the effective date of termination or suspension.

Upon early termination, the County, at its sole discretion, may reimburse the Subrecipient for eligible costs incurred that are in compliance with this Agreement up to and including the date of termination.

### **(B) TERMINATION FOR CONVENIENCE**

At any time during the term of this Agreement, either party may, at its option and for any reason, terminate this Agreement upon ten (10) working days written notice to the other party. Upon early termination, the County, at its sole discretion, may reimburse the Subrecipient for eligible costs incurred that are in compliance with this Agreement up to and including the date of termination.

### **(C) TERMINATION DUE TO CESSATION**

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

In the event the Subrecipient 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 Subrecipient has ceased or suspended its operation shall be made solely by the County, and the Subrecipient, its successors or assigns in interest agrees to be bound by the County's determination.

Upon early termination, the County, at its sole discretion, may reimburse the Subrecipient for eligible costs incurred that are in compliance with this Agreement up to and including the date of termination.

**27. SEVERABILITY OF PROVISIONS**

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.

**28. AMENDMENTS**

The County may, at its discretion, amend this Agreement to conform with changes required by Federal, State, County, or U.S. HUD guidelines, directives, and objectives. Such amendments shall be incorporated by written amendment as a part of this Agreement and shall be subject to approval of the Palm Beach County Board of County Commissioners. Except as otherwise provided herein, no amendment to this Agreement shall be binding on either party unless in writing, approved by the Board of County Commissioners and the governing body of the Subrecipient, and signed by both parties.

**29. NOTICE**

All notices required to be given under this Agreement shall be sufficient when delivered to DHED at its office at 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406, and to the Subrecipient when delivered to its address on page one (1) of this Agreement.

**30. INDEPENDENT AGENT AND EMPLOYEES**

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

**31. 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 such rights.

**32. PUBLIC ENTITY CRIMES**

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

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

Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Chapter 2 – Article XII, as may be amended. The Inspector General’s authority includes, but is not limited to, the power to review past, present and proposed County Agreements, contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Subrecipient, its officers, agents, employees, and lobbyists in order to ensure compliance with Agreement 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, Chapter 2 – Article XII, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

**34. REMEDIES**

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement 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.

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

**35. SOURCE OF FUNDING**

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

**36. INCORPORATION BY REFERENCE**

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

**37. PUBLIC RECORDS**

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Subrecipient: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Subrecipient shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The Subrecipient 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 Subrecipient further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement, if the Subrecipient does not transfer the records to the County.
- D. Upon completion of the Agreement the Subrecipient shall transfer, at no cost to the County, all public records in possession of the Subrecipient 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 Subrecipient transfers all public records to the County upon completion of the Agreement, the Subrecipient shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Subrecipient keeps and maintains public records upon completion of the Agreement, the Subrecipient shall meet all applicable requirements for retaining public records.

All records stored electronically by the Subrecipient 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 Subrecipient 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. Subrecipient 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 SUBRECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUBRECIPIENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT [RECORDSREQUEST@PBCGOV.ORG](mailto:RECORDSREQUEST@PBCGOV.ORG) OR BY TELEPHONE AT 561-355-6680.**

**38. COUNTERPARTS OF THE AGREEMENT**

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. Subrecipient shall execute by manual means only, unless the County provides otherwise. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.

**39. E-VERIFY EMPLOYMENT ELIGIBILITY**

Subrecipient 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 uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of Subrecipient's subconsultants performing the duties and obligations of this Agreement are registered with the E-Verify System, and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

Subrecipient 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. Subrecipient 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 Subrecipient has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If County has a good faith belief that Subrecipient's subconsultant has knowingly violated section 448.09(1), Florida Statutes, as may be amended, County shall notify Subrecipient to terminate its contract with the subconsultant and Subrecipient shall immediately terminate its contract with the subconsultant. If County terminates this Agreement pursuant to the above, Subrecipient shall be barred from being awarded a future Agreement 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, Subrecipient shall also be liable for any additional costs incurred by County as a result of the termination.

**40. ENTIRE UNDERSTANDING**

The County and the Subrecipient agree that this Agreement sets forth the entire understanding 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.

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**WITNESS** our Hands and Seals on this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

(SUBRECIPIENT SEAL BELOW)

**CITY OF LAKE WORTH BEACH**

By: \_\_\_\_\_  
Betty Resch, Mayor

By: \_\_\_\_\_  
Melissa Ann Coyne, CMC, City Clerk

By: \_\_\_\_\_  
Glen Torcivia, Attorney for Subrecipient

**IN WITNESS WHEREOF**, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Agreement on behalf of the County has hereunto set its hand the day and year above written.

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

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

Date: \_\_\_\_\_

**Approved as to Form and  
Legal Sufficiency**

**Approved as to Terms and Conditions  
Dept. of Housing & Economic Development**

By: \_\_\_\_\_  
Howard J. Falcon III  
Chief Assistant County Attorney

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

**EXHIBIT "A"****WORK PROGRAM NARRATIVE****1. SUBRECIPIENT OBLIGATIONS:**

- A. PROFESSIONAL SERVICES:** The Subrecipient, using its own resources, shall retain an engineering consultant (a Florida Professional Engineer) to provide design services to create plans and specifications for Phase II of the improvements to Harold Grimes Memorial Park, located at Sunrise Court, in the City of Lake Worth Beach. Additionally, the Subrecipient and consultant shall prepare, obtain and review bids, prepare contract documents, inspect work in progress, recommend payment to contractors, and provide other professional services customarily provided by similar professionals for this type of project. The consultant shall also coordinate the design and construction work with the asbestos abatement contractor, should abatement become necessary

Alternatively, the Subrecipient shall have the option of performing any portion of the consultant's services described above by its own staff provided such staff possesses the necessary competency to do so. All costs associated with the above services shall be paid for by the Subrecipient.

- B. PROJECT SCOPE:** The planned scope for the improvements to the Harold Grimes Memorial Park Phase II shall include, but not be limited to, reconstruction of the bathrooms for ADA compliance, construction of a larger storage facility and concession area, provision of new benches and tables, removal and installation of new fencing, resurfacing of the paved parking area, new sod and mulch throughout common area. Improvements typical of Park improvement projects are deemed eligible, along with restoration of areas disturbed by the installation of the above improvements. The scope of the herein improvements may be modified based on the availability of CDBG and/or City funds.

**Project Area:** The proposed location of the improvements noted herein is as follows:

- Improvements are bound by Lucerne Ave on the North, the FEC Railroad on the East, 12<sup>th</sup> Ave South on the South and I-95 on the West.

**Procurement process and contract award for all goods and services shall be in compliance with the City's Procurement Code, 2 CFR 200 and all procurement regulations applicable to CDBG funding and this Agreement.**

- (1) Should the Subrecipient use a brand name or multiple brand names in its bid package/drawings/ specifications for this project, then these documents shall:
- (a) Clearly note that specified brand name(s) are used for descriptive purposes only,
  - (b) State that "equal" equipment or materials will be accepted, and
  - (c) Identify the minimum requirements to establish equality.

- (2) The Subrecipient shall prepare a bid package complete with drawings, specifications, and any items required for a competitive bid of the project. The bid process shall not allow for any local procurement preferences with regard to contract award.

The Subrecipient's advertisement for bid shall contain language noting that the project is federally funded through funds provided by Palm Beach County via of the US Department of HUD, and that Davis-Bacon and Related Acts and wage rates apply. The advertisement shall also encourage participation by MBE/WBE and Section 3 businesses.

Following the bid process, the Subrecipient shall submit to DHED a copy of the bid document package including any addendums, a notice of contract award, a copy of the executed construction contract, and documentation regarding any protests filed regarding the bids.

Prior to the Subrecipient's first reimbursement, DHED shall review the Subrecipient's procurement process and contract award to determine compliance with 2 CFR 200 and all procurement regulations applicable to CDBG funding and this Agreement.

- (3) The Subrecipient shall prioritize the work in the project, and shall bid such work in a manner that requires the receipt of itemized costs from bidders. This would then allow the award of items that can be funded by the budget provided that the extent of work awarded will result in a functioning facility in the opinion of DHED.

- (4) The Subrecipient shall not award the construction contract for the project until sufficient funding is available to complete the established scope of work. All construction work shall be included in one contract.

- (5) Should the amount of eligible costs exceed the amount to be funded by the County through this Agreement, then the Subrecipient shall fund all amounts in excess of the amount to be funded by the County.

- (6) The Subrecipient shall inform DHED of any environmental findings or conditions discovered during project implementation. Applicable mitigation measures must be incorporated into the project by the Subrecipient in order to proceed with the project. Such mitigation measures may affect the total project cost. Where funds are not available from the CDBG allocation contained herein, the Subrecipient shall be responsible for all costs of mitigation.

- (7) The Subrecipient shall recognize Palm Beach County as a funding participant in the project's implementation and shall affix the County's logo to any project sign on the project site during the construction process. The Subrecipient shall also acknowledge the County's participation whenever the situation presents itself.

**The Subrecipient further agrees that DHED, in consultation with any parties it deems necessary, shall be the final arbiter on the Subrecipient's compliance with this Agreement's requirements and shall make the final determination of the Subrecipient's compliance with applicable regulations governing the CDBG funding of this project.**

**C. ASBESTOS REQUIREMENTS:** The Subrecipient shall comply with all applicable requirements contained in Exhibit “C”, attached hereto, for construction work in connection with the project funded through this Agreement.

**D. DAVIS-BACON AND RELATED ACTS (DBRA):**  
The Subrecipient shall request from the County a copy of the Requirements for Federally Funded Projects and the applicable DBRA Wage Decision for the project PRIOR to advertising the construction work.

The Subrecipient shall incorporate a copy of the DBRA Wage Decision and the Requirements for Federally Funded Projects in its bid documents and shall include these documents as part of the construction contract. The Subrecipient shall require the contractor to include these in all subcontracts for the work performed under the construction contract.

The Subrecipient shall perform all tasks required for DBRA compliance, including, but not limited to the following:

- Contractor and sub-contractor debarment clearance
- Obtaining contractor and subcontractor certified payrolls
- Review of certified payrolls and documentation related thereto
- Compliance actions for payroll related issues
- Employee/worker interviews and follow-up review of certified payrolls
- Ensure restitution due underpaid workers has been paid prior to project completion

The Subrecipient shall certify, at the time they request a reimbursement from DHED that payrolls from the contractor and sub-contractors are current, have been reviewed and approved by Subrecipient staff, and that any DBRA compliance issues have been or are in the process of being resolved.

The Subrecipient shall review and approve payrolls through the Labor Compliance Reporting System prior to submitting a reimbursement request to DHED.

The Subrecipient shall certify, at the time they request final reimbursement from DHED that payrolls from the contractor and sub-contractors are current, have been reviewed and approved by Subrecipient staff, and shall certify to DHED that the project meets DBRA compliance and all workers have been paid in accordance with DBRA requirements.

DHED may monitor the Subrecipient, its contractors, and subcontractors for DBRA compliance at any time per Section 13 of this Agreement.

**Required Use of the Labor Compliance Reporting System (LCRS)**

As part of the County’s commitment to assist the Subrecipient and its contractors/subcontractors to comply with legal and contractual requirements including Davis Bacon and Related Acts (DBRA), DHED has established a Labor Compliance Reporting System (“LCRS”) for this project. The Subrecipients contractors/subs will no longer be required to submit paper copies of fringe benefits statements, weekly-certified payroll reports and/or work performance reports, and shall

instead use the LCRS for all DBRA reporting and tracking. The LCRS is available for use 24-hours a day, 7 days a week, at no cost for reporting weekly certified payrolls and labor compliance related documents.

Utilization of this system should also prove helpful in expediting the process of reviewing payrolls, approving progress payments to contractors and reimbursement payments to subrecipients/developers.

### **User Responsibilities**

1. Subrecipients, and its contractors/subs shall NOT create internet links to the Service or Frame or mirror any content on any other server or wireless or internet-based device.
2. Subrecipient and its contractors/subs are responsible for all activity occurring under User account and shall abide by all applicable local, state, national laws, treaties and regulations in connection with the use of the service, including those related to data privacy, international communications and the transmission of technical data.  
The LCRS Web Address for contractors/subs use will be provided by DHED, along with Federal Requirements and Wage Decision(s).
3. Subrecipient shall require its contractor and subs to register through the Labor Compliance Reporting System. This language shall be contained in the Subrecipient's Bid and Construction documents.
4. Subrecipient shall require All fringe benefits statements, weekly-certified payroll reports to be submitted through the LCRS and this language shall be contained in the Subrecipient's Bid and Construction documents.

### **Disclaimer of Warranties for LCRS**

County make no representation, warranty, or guaranty as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the service or any content. County do not represent or warrant that:

- A. The use of the service will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data.
- B. The service will meet Subrecipient's Requirements or expectations.
- C. Any stored data will be accurate or reliable.
- D. The quality of any products, services, information or other material purchased or obtained by Subrecipient through the service will meet Subrecipient's requirements or expectations.
- E. Errors or defects will be corrected.
- F. The service or the servers that make the service available are free of viruses or other harmful components.

All content is provided to Subrecipient strictly on an "AS IS" basis. All conditions, representations and warranties, whether expressed or implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability or fitness for a particular purpose are hereby disclaimed to the maximum extent permitted by applicable law by County.

- E. **BONDING REQUIREMENTS:** The Subrecipient shall comply with the requirements of 2 CFR 200 in regard to bid guarantees, performance bonds, and payment bonds. For contracts exceeding the current Simplified Acquisition Threshold, the Subrecipient shall require a bid guarantee from each bidder equivalent to five percent (5%) of the bid price.

The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

In addition, for contracts exceeding the current Simplified Acquisition Threshold the Subrecipient shall also require a performance bond on the part of the contractor for 100 percent (100%) of the contract price and a payment bond on the part of the contractor for 100 percent (100%) of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

All bonds shall be executed by a corporate surety company of recognized standing, authorized to do business in the State of Florida. The Subrecipient may follow its own requirements relating to bid guarantees, performance bonds, and payment bonds for contracts for less than the current Simplified Acquisition Threshold.

- F. **CONSTRUCTION PAYMENT RETAINAGE:** Throughout the term of this contract, the Subrecipient shall withhold retainage upon each progress draw at the maximum percentage allowed by Florida law as specified in the construction contract. The Subrecipient shall abide by Florida law and this Agreement regarding the payment of retainage funds and project closeout procedures. The Subrecipient shall certify to DHED that the contractor and subcontractors have complied with the requirements of DBRA, that all wages and restitution due to workers has been paid, and that satisfactory project closeout documentation has been reviewed and approved by the Subrecipient prior to releasing retainage/final payment.

- G. **PERFORMANCE REQUIREMENTS:** The time-frame for completion of the outlined activities shall be as follows:

<b>Award Construction Contract by:</b>	<b>December 31, 2022</b>
<b>Submit for 50% Reimbursement of CDBG Funds by:</b>	<b>July 15, 2023</b>
<b>Complete Construction by:</b>	<b>November, 2023</b>
<b>Submit for 100% Reimbursement of CDBG funds no later than:</b>	<b>December 31, 2023</b>

If unforeseen circumstances occur that impact the accuracy of the performance dates and require revisions thereto, the Subrecipient shall request, in writing, that the dates used as performance requirements listed above be revised/amended. The County Administrator, or DHED Director may, at his/her sole discretion, revise/amend the performance dates via written notification to the Subrecipient. The Completion Date for all activities may be revised only by an Amendment to this Agreement.

**The Subrecipient may be subject to decrease and/or recapture of project funds by the County if the above Performance Requirements are not met. Failure by the Subrecipient to comply with these requirements may negatively impact Subrecipient's ability to receive future grant awards.**

**H. REPORTS:** The Subrecipient shall submit to DHED a detailed Monthly Report in the form provided as Exhibit "B" to this Agreement, or other form as may be required by DHED. Each Monthly Report must account for the total activity for which the Subrecipient is funded under this Agreement, and a Subrecipient representative must certify to the accuracy of the Report. These Monthly Reports shall be submitted to DHED beginning with the month of the effective date of the Agreement. They will be used by DHED to assess the Subrecipient's progress in implementing the project.

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

- (1) The Subrecipient shall properly maintain the facility/project, and may not change the use or planned use, or discontinue use, of the facility/property (including the beneficiaries of such use) from that for which the acquisition or improvements are made, unless the Subrecipient provides affected citizens with reasonable notice of, and opportunity to comment on, any such proposed change and either:
  - a. The new use of the facility/property qualifies as meeting one of the national objectives defined in the regulations governing the CDBG program, and is not a building for the general conduct of government; or
  - b. The requirements of paragraph (2) of this section are met.
- (2) If the Subrecipient determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (1) (a) of this section or discontinue the use of the facility/property, it may retain or dispose of the facility for such use if the County is reimbursed in the amount of the current fair market value of the facility/property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of, or improvements to the facility/property. The final determination of the amount of any such reimbursement to the County under this paragraph shall be made by the County.
- (3) Following the reimbursement of CDBG funds by the Subrecipient to the County pursuant to paragraph (2) above, the facility/property will then no longer be subject to any CDBG requirements.

**The provisions of this clause shall survive the expiration or early termination of this Agreement.**



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

**Section 3 Clause**

- (1) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 170 lu (Section 3).

The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- (2) The parties to this contract agree to comply with HUD's requirements in 24 CFR Part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.
- (3) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers representative of the contractor's commitment under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (4) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR 75.
- (5) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 75.

- (6) Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

**K. ENVIRONMENTAL CONDITIONS:** The County shall perform an Environmental Review (ER) of the project to assess existing conditions and identify all potential environmental impacts and any required conditions or mitigation measures that the Subrecipient must consider in the design and implementation of the project. The Subrecipient acknowledges that construction may not begin until DHED notifies the Subrecipient of the results of the ER and the Release of Funds from HUD. Where applicable, the Subrecipient shall submit to DHED a plan of action and an implementation schedule for complying with any identified conditions requiring mitigation.

Where applicable, mitigation measures shall be included in the bid documents. The Subrecipient shall comply with all requirements established by the County emanating from the completion of the ER.

ER costs incurred by the County may be charged to the project identified above. In addition, the Subrecipient shall immediately inform DHED of any environmental findings or conditions discovered during activity implementation, and agrees that applicable mitigation measures, subject to DHED approval, shall be incorporated in order to proceed with the project.

The Subrecipient acknowledges that such mitigation measures may affect the total project cost and that Subrecipient may be responsible for implementation of corrective actions and the costs associated therewith.

**2. COUNTY OBLIGATIONS:**

- A. Provide funding for the above-specified improvements as described above in "Project Scope", during the term of this Agreement, in the amount of **\$306,691**. However, the County shall not provide any funding for the construction work until the Subrecipient provides documentation showing that sufficient funds are available to complete the project.
- B. County shall not provide any funding for the construction work until the Subrecipient provides documentation showing that Subrecipient's procurement of the construction contract has been made in compliance with applicable requirements for the CDBG funds provided under this Agreement.
- C. Provide technical assistance to the Subrecipient when requested.
- D. Monitor the Subrecipient at any time during the term of this Agreement. Visits may be announced or unannounced, as determined by DHED, and will serve to ensure compliance with HUD regulations that planned activities are conducted in a timely manner, and to verify the accuracy of reporting to DHED on program activities.

- E. Allowable costs that may be paid by the County under this Agreement in addition to those stated in 2.A above:
- (1) Costs of asbestos surveys, asbestos abatement, and abatement monitoring.
  - (2) Costs of any other services customarily associated with projects of the nature of the project contemplated by this Agreement.

The County shall review requests by the Subrecipient for expenditures on the above items prior to undertaking the services associated with them, and approve any such expenditure it deems appropriate for this project.

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**EXHIBIT "B"  
MONTHLY REPORT**

<b>Report For:</b>	Month: _____ Year: _____
<b>Subrecipient Name:</b>	<b>CITY OF LAKE WORTH BEACH</b>
<b>Project Name:</b>	<b>HAROLD GRIMES MEMORIAL PARK IMPROVEMENTS PHASE II</b>
<b>Report Prepared By:</b>	_____ Name Signature Date

**BUDGETING AND EXPENDITURE PROJECTIONS**

<b>MONTH/YR</b>	OCT 2022	NOV 2022	DEC 2022	JAN 2023	FEB 2023	MAR 2023
Projected Expenditure	\$	\$	\$	\$	\$	\$
<b>Actual Expenditure</b>	\$	\$	\$	\$	\$	\$
<b>MONTH/YR</b>	APR 2023	MAY 2023	JUN 2023	JUL 2023	AUG 2023	SEPT 2023
Projected Expenditure	\$	\$	\$	\$	\$	\$
<b>Actual Expenditure</b>	\$	\$	\$	\$	\$	\$

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

**Amounts Expended to Date:**

FUNDING SOURCE	BUDGETED	EXPENDED	PERCENTAGE
CDBG Funds:	\$ 306,691	\$	%
Other Funds: _____	\$	\$	%
Other Funds: _____	\$	\$	%
<b>TOTAL:</b>	\$	\$	%

Describe any changes in budgeted amounts during this reporting period and the source of funds:

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Describe your efforts to obtain any additional funds for the project during this reporting period (if your project is underfunded):

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**PROJECT ACTIVITIES & SCHEDULE**

Describe your accomplishments and any problems encountered during this reporting period:

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PROJECT PERFORMANCE PHASE	DATE
COMPLETE DESIGN	Date
ADVERTISE, ACCEPT BIDS	Date
AWARD CONTRACT	Date
START CONSTRUCTION	Date
SUBMIT 50% REIMBURSEMENT REQUEST	Date
COMPLETE CONSTRUCTION	Date
SUBMIT 100% REIMBURSEMENT REQUEST	Date

Send report to: Project Coordinator or Bud Cheney,  
 Department of Housing & Economic Development  
 100 Australian Avenue, Suite 500  
 West Palm Beach, FL 33406

**EXHIBIT "C"****ASBESTOS REQUIREMENTS**  
**SPECIAL CONDITIONS FOR DEMOLITION AND RENOVATION OF BUILDINGS**

The provisions of this part apply to all demolition and renovation work contemplated in this Agreement and described in Exhibit "A" of this Agreement.

**I. DEFINITIONS**

ACM:	Asbestos Containing Materials
AHERA:	Asbestos Hazard Emergency Response Act
EPA:	Environmental Protection Agency
FLAC:	Florida Licensed Asbestos Consultant
DHED:	Palm Beach County Department of Housing and Economic Development
NESHAP:	National Emission Standards for Hazardous Air Pollutants
NRCA:	National Roofing Contractors Association
NVLAP:	National Voluntary Laboratory Accreditation Program
OSHA:	Occupational Safety & Health Administration
PBCAC:	Palm Beach County Asbestos Coordinator (in Risk Management)
PLM:	Polarized Light Microscopy
RACM:	Regulated Asbestos Containing Materials
TEM:	Transmission Electron Microscopy

**II. ASBESTOS SURVEYS**

All properties scheduled for renovation or demolition are required to have a comprehensive asbestos survey conducted by a Florida Licensed Asbestos Consultant (FLAC). The survey shall be conducted in accordance with AHERA guidelines. Analysis must be performed by a NVLAP accredited laboratory.

For Renovation Projects (projects which will be reoccupied):

- Point counting should be conducted on all RACM indicating 1% - 10% asbestos by PLM analysis. If the asbestos content by PLM is less than 10%, the building owner/operator can elect to:
  1. Assume the material is greater than 1% and treat it as RACM, or
  2. Require verification by point counting
- Samples of resilient vinyl floor tile indicating asbestos not detected must be confirmed by transmission electron microscopy (TEM)
- Joint compound shall be analyzed as a separate layer
- Roofing material shall be sampled only if a renovation requires the roof to be disturbed. In lieu of sampling the roof, it will be presumed to contain asbestos

For Demolition Projects:

- Point counting should be conducted on all RACM indicating 1% - 10% asbestos by PLM analysis.

If the asbestos content by PLM is less than 10%, the building owner/operator can elect to:

1. Assume the material is greater than 1% and treat it as RACM, or
  2. Require verification by point counting
- Composite sample analysis is permitted for drywall systems (combining the drywall and joint compound constituents)
  - All Category I and II non-friable materials, as defined in EPA/NESHAP, shall be sampled to determine asbestos content

If the Subrecipient (has a recent asbestos survey report prepared by a Florida Licensed Asbestos Consultant, a copy may be provided to DHED for review by the PBCAC to determine if the survey is adequate to proceed with renovation/demolition work. If no survey is available, a survey may be initiated by the Subrecipient or requested by DHED. If the survey is through DHED, a copy of the completed survey will be forwarded to the Subrecipient.

### III. ASBESTOS ABATEMENT

#### A. RENOVATION

- (a) Prior to a renovation, all asbestos containing materials that will be disturbed during the renovation, must be removed by a Florida Licensed Asbestos Contractor under the direction of a FLAC. Exceptions may be granted by DHED prior to the removal. The Subrecipient must obtain approval for all exceptions from DHED. DHED will request the PBCAC to review and approve all exceptions.
- (b) Asbestos abatement work may be contracted by the Subrecipient or by DHED upon request.
- (c) If the Subrecipient contracts the asbestos abatement, the following documents are required to be provided to the DHED.
  1. An Asbestos Abatement Specification (Work Plan)
  2. Post Job submittals, reviewed and signed by the FLAC
- (d) If the Subrecipient requests DHED to contract the asbestos abatement, DHED will initiate the request through the PBCAC who will contract the asbestos abatement. DHED will provide a copy of all contractor and consultant documents to the Subrecipient.
- (e) Materials containing <1% asbestos are not regulated by EPA/NESHAPS. However, OSHA compliance is mandatory. OSHA requirements include training, wet methods, prompt cleanup in leak tight containers, etc. The renovation contractor must comply with US Dept of Labor, OSHA Standard Interpretation, "Compliance requirements for renovation work involving material containing <1% asbestos", dated 11/24/2003.

The renovation contractor must submit a work plan to DHED prior to removal of the materials.

**B. DEMOLITION**

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

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

- (a) Asbestos Abatement work may be contracted by the Subrecipient or by DHED upon request.
- (b) If the Subrecipient contracts the asbestos abatement, the following documents must be provided to the DHED and reviewed by the PBCAC.
  1. An Asbestos Abatement Specification (Work Plan).
  2. Post Job submittals, reviewed and signed by the FLAC.
- (c) If the Subrecipient requests DHED to contract the asbestos abatement, DHED will initiate the request through the PBCAC who will contract the asbestos abatement. DHED will provide a copy of all contractor and consultant documents to the Subrecipient.
- (d) Recycling, salvage or compacting of any asbestos containing materials or the substrate is strictly prohibited.
- (e) In all cases, compliance with OSHA "Requirements for demolition operations involving material containing <1% asbestos" is mandatory.
- (f) If suspect materials are discovered that were not previously sampled and identified in the survey, stop all work that will disturb these materials and immediately notify DHED.

**IV. NESHAP NOTIFICATION****A. RENOVATION**

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



For floor tile removal greater than 160 square feet, the Subrecipient or its Contractor shall provide a courtesy NESHAP notification to the Palm Beach County Health Department at least three (3) working days prior to removal.

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

**B. DEMOLITION**

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

**C. NESHAP FORM**

The NESHAP form is available online through the Florida Department of Environmental Regulations. The notification shall be sent to the address shown below. A copy shall be included in the Subrecipient post job documentation submitted to DHED. All fees shall be paid by the Subrecipient .

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

**V. APPLICABLE ASBESTOS REGULATIONS/GUIDELINES**

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

- (a) Environmental Protection Subrecipient (EPA) NESHAP, 40 CFR Parts 61 Subpart M National Emission Standard for Asbestos, revised July 1991
- (b) Occupational Safety & Health Administration (OSHA) Construction Industry Standard, 29 CFR 1926.1101
- (c) EPA: A Guide to Normal Demolition Practices under the Asbestos NESHAP, September 1992
- (d) Demolition practices under the Asbestos NESHAP, EPA Region IV
- (e) Asbestos NESHAP Adequately Wet Guidance

- (f) Florida State Licensing and Asbestos Laws
  - 1. Title XVIII, Chapter 255, Public property and publicly owned buildings.
  - 2. Department of Business and Professional Regulations, Chapter 469 Florida Statute, Licensure of Asbestos Consultants and Contractors
- (g) Resilient Floor Covering Institute (RFCI), Updated Recommended Work Practices and Asbestos Regulatory Requirements, current version.
- (h) Florida Roofing Sheet Metal and Air Conditioning Contractors Association, NRCA, June 1995, or current version.
- (i) US Department of Labor, OSHA Standard Interpretation
  - 1. Application of the asbestos standard to demolition of buildings with ACM in Place, dated 8/26/2002.
  - 2. Requirements for demolition operations involving material containing <1% asbestos, dated 8/13/1999.
  - 3. Compliance requirements for renovation work involving material containing <1% asbestos, dated 11/24/2003.

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