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AGREEMENT BETWEEN PALM BEACH COUNTY

AND

TOWN OF LAKE PARK

THIS AGREEMENT, entered into this _____ day of _____, 2004, 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 Town of Lake Park, a municipality duly organized and existing by virtue of the laws of the State of Florida, having its principal office at 650 Old Dixie Highway, Lake Park, Florida 33403.

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 Consolidated Plan, and the Town of Lake Park, desire to provide the activities specified in Part II of this Agreement; and

WHEREAS, Palm Beach County desires to engage the Town of Lake Park to implement such undertakings of the Community Development Block Grant Program.

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

PART I

DEFINITION AND PURPOSE

1. DEFINITIONS

- (1) "County" means Palm Beach County.
- (2) "CDBG" means the Community Development Block Grant Program of Palm Beach County.
- (3) "HCD" means Palm Beach County Housing and Community Development.
- (4) "Municipality" means the Town of Lake Park.
- (5) "HCD Approval" means the written approval of the HCD Director or his designee.
- (6) "U.S. HUD" means the Secretary of Housing and Urban Development or a person authorized to act on its behalf.
- (7) "Low and moderate income persons" means the definition set by U.S. HUD.

2. PURPOSE

The purpose of this Agreement is to state the covenants and conditions under which the Municipality will implement the Scope of Services set forth in Part II of this Agreement. At least fifty-one percent (51%) of the beneficiaries of a project funded under this Agreement must be low-and-moderate-income persons.

PART II

SCOPE OF SERVICES

The Municipality shall, in a satisfactory and proper manner as determined by HCD, perform the tasks necessary to conduct the program outlined in Exhibit "A", and submit invoices using the cover sheet in Exhibit "B", both of which are attached hereto and made a part hereof.

PART III

COMPENSATION, TIME OF PERFORMANCE, METHOD, AND CONDITIONS OF PAYMENT

1. MAXIMUM COMPENSATION

The Municipality agrees to accept as full payment for services rendered pursuant to this Agreement the actual amount of budgeted, eligible, and HCD Director or designee-approved expenditures and encumbrances made by the Municipality under this Agreement, which shall not be unreasonably withheld. Said services shall be performed in a manner satisfactory to HCD. In no event shall the total compensation or reimbursement to be paid hereunder exceed the maximum and total authorized sum of \$58,960 for the period of October 5, 2004 through and including September 30, 2005. Any funds not obligated by the expiration date of this Agreement shall automatically revert to the County.

2. TIME OF PERFORMANCE

The effective date of this Agreement and all rights and duties designated hereunder are contingent upon the timely release of funds for this project by U. S. HUD under grant No. B-04-UC-12-0004. The effective date shall be the date of execution of this Agreement, and the services of the Municipality shall be undertaken and completed in light of the purposes of this Agreement. In any event, all services required hereunder shall be completed by the Municipality prior to Sep 30, 2005.

3. METHOD OF PAYMENT

The County agrees to make payments and to *reimburse the Municipality for all budgeted costs permitted by Federal, State, and County guidelines*. In no event shall the County provide advance funding to the Municipality or any subcontractors hereunder. Requests by the Municipality for payments or reimbursements shall be accompanied by proper documentation of expenditures. The Municipality shall not request reimbursement for payments made by the Municipality after the expiration date of this Agreement. Payment shall be made by the Palm Beach County Finance Department upon proper presentation of invoices and reports approved by the Municipality and HCD. For purposes of this section, originals of invoices, receipts, or other evidence of indebtedness shall be considered proper documentation. When original documents cannot be presented, the Municipality must adequately justify their absence, in writing, and furnish copies.

4. CONDITIONS ON WHICH PAYMENT IS CONTINGENT

(1) IMPLEMENTATION OF PROJECT ACCORDING TO REQUIRED PROCEDURES

The Municipality shall implement this Agreement in accordance with applicable Federal, State, and County laws, ordinances and codes and with the procedures outlined in HCD Policies and Procedures memoranda. The Federal, State, and County laws, ordinances and codes are minimal regulations supplemented by more restrictive guidelines set forth by HCD. No payments for projects funded by more than one funding source will be made until a cost allocation plan has been approved by the HCD Director or designee.

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

(2) FINANCIAL ACCOUNTABILITY

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

(3) SUBCONTRACTS

Any work or services subcontracted hereunder shall be specifically by written contract, written agreement, or purchase order. All subcontracts shall be submitted by the Municipality to HCD and approved by HCD prior to execution of any subcontract hereunder. All subcontracts shall be subject to Federal, State and County laws and regulations. This includes ensuring that all consultant contracts and fee schedules meet the minimum standards as established by the Palm Beach County Engineering Department and U.S. HUD. Contracts for architecture, engineering, survey, and planning shall be fixed fee contracts.

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All additional services shall have prior written approval with support documentation detailing categories of persons performing work plus hourly rates including benefits, number of drawings required, and all items that justify the "Fixed Fee Contract." Reimbursables will be at cost. None of the work or services covered by this Agreement, including, but not limited to, consultant work or services, shall be subcontracted or reimbursed without prior written approval of the HCD Director or his designee.

- (4) PURCHASING
All purchasing for services and goods, including capital equipment, shall be made by purchase order or by a written contract and in conformity with the procedures prescribed by the Palm Beach County Purchasing Ordinance, as well as Federal Management Circulars A-87, A-102, A-128, and 24CFR Part 85 (also known as the Common Rule), which are incorporated herein by reference.
- (5) REPORTS, AUDITS, AND EVALUATIONS
Payment will be contingent on the timely receipt of complete and accurate reports required by this Agreement, and on the resolution of monitoring or audit findings identified pursuant to this agreement.
- (6) ADDITIONAL HCD, COUNTY, AND U.S. HUD REQUIREMENTS
HCD shall have the right under this Agreement to suspend or terminate payments until the Municipality complies with any additional conditions that may be imposed by HCD, the County or U.S. HUD at any time.
- (7) PRIOR WRITTEN APPROVALS-SUMMARY
The following activities among others require the prior written approval of the HCD Director or designee to be eligible for reimbursement or payment:
 - (a) All subcontracts and agreements pursuant to this Agreement;
 - (b) All capital equipment expenditures of \$1,000 or more;
 - (c) All out-of-county travel; (travel shall be reimbursed in accordance with Florida Statutes, Chapter 112.061);
 - (d) All change orders; and
 - (e) All requests to utilize uncommitted funds after the expiration of this agreement for programs described in Exhibit A, and
 - (f) All rates of pay and pay increases paid out of CDBG funds, whether for merit or cost of living.
- (8) PROGRAM-GENERATED INCOME
All income earned by the Municipality from activities financed in whole or in part by funds provided hereunder must be reported to HCD. Such income would include, but not be limited to, income from service fees, sale of commodities, and rental or usage fees. The Municipality shall report its plan to utilize such income to HCD, and said plan shall require the prior written approval of the HCD Director or designee. Accounting and disbursement of such income shall comply with OMB Circular A-110 and other applicable regulations incorporated herein by reference. In addition to the foregoing, Program Income, as defined by 24 CFR 570.500(a), may be retained by the Municipality. Program Income shall be utilized to undertake activities specified in Exhibit A of this Agreement, and all provisions of this Agreement shall apply to said activities. Any Program Income on hand at, or received after, the expiration of this Agreement shall be returned to the County.

PART IV

GENERAL CONDITIONS

1. OPPORTUNITIES FOR RESIDENTS AND CIVIL RIGHTS COMPLIANCE
The Municipality agrees that no person shall on the ground of race, color, disability, national origin, religion, age, financial status, or sex be excluded from the benefits of, or be subjected to discrimination under any activity carried out by the performance of this Agreement. Upon receipt of evidence of such discrimination, the County shall have the right to terminate this Agreement.
To the greatest extent feasible, lower-income residents of the project areas shall be given opportunities for training and employment; and to the greatest feasible extent eligible business concerns located in or owned in substantial part by persons residing in the project areas shall be awarded contracts in connection with the project. The Municipality shall comply with the Section 3 Clause of the Housing and Community Development Act of 1968.

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

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

3. PROGRAM BENEFICIARIES

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

4. EVALUATION AND MONITORING

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

5. AUDITS AND INSPECTIONS

At any time during normal business hours and as often as HCD, the County, U.S. HUD, or the Comptroller General of the United States may deem necessary, there shall be made available by the Municipality to HCD, the County, U.S. HUD, or the Comptroller General for examination all its records with respect to all matters covered by this Agreement.

The Municipality agrees to comply with the provisions of the Single Audit Act of 1984, as amended, as it pertains to this Agreement. The Municipality shall submit a single audit, including any management letter, made in accordance with the general program requirements of OMB Circulars A-87, A-102, A-133, and other applicable regulations within one hundred and eighty (180) days after the end of any fiscal year covered by this agreement in which Federal funds from all sources are expended. Said audit shall be made by a Certified Public Accountant of the Municipality's choosing, subject to the County's approval. In the event the Municipality anticipates a delay in producing such audit or audited financial statements, the Municipality shall request an extension in advance of the deadline. The cost of said audit shall be borne by the Municipality. In the event the Municipality is exempt from having an audit conducted under A-133, the Municipality shall submit audited financial statements and/or the County reserves the right to conduct a "limited scope audit" of the Municipality as defined by A-133. The County will be responsible for providing technical assistance to the Municipality, as deemed necessary by the County.

6. DATA BECOMES COUNTY PROPERTY

All reports, plans, surveys, information, documents, maps, and other data procedures developed, prepared, assembled, or completed by the Municipality for the purpose of this Agreement shall be made available to the County by the Municipality at any time upon request by the County or HCD. Upon completion of all work contemplated under this agreement copies of all documents and records relating to this Agreement shall be surrendered to HCD if requested. In any event the municipality shall keep all documents and records for five (5) years after expiration of this Agreement.

7. INDEMNIFICATION

Each party to this Agreement shall be liable for its own actions and negligence and, to the extent permitted by law, the County shall indemnify, defend, and hold harmless the Municipality against any actions, claims, or damages arising out of the County's negligence in connection with this Agreement, and the Municipality shall indemnify, defend, and hold harmless the County against any actions, claims, or damages arising out of the Municipality's negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida

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Statute, section 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions. The Municipality shall hold the County harmless and shall indemnify the County for funds which the County is obligated to refund the Federal Government arising out of the conduct of activities and administration of the Municipality. The provisions of this indemnification clause shall survive the termination of this Agreement.

8. INSURANCE

Without waiving the right to sovereign immunity as provided by Florida Statute, Chapter 768.28, the Municipality reserves the right to self-insure for General Liability and Automobile Liability under Florida's sovereign immunity statute with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature.

In the event the Municipality maintains Commercial General Liability or Business Auto Liability, the Municipality agrees to maintain said insurance policies at limits not less than \$100,000 Per Person and \$200,000 Per Occurrence. The Municipality agrees to endorse Palm Beach County Board of County Commissioners as an "Additional Insured" to the Commercial General Liability, but only with respect to negligence other than County's negligence arising out of this project or Agreement. **This paragraph does not apply to liability policies which afford only indemnity based claims-bill coverage.**

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

The Municipality agrees to provide a statement, or Certificate of Insurance, evidencing insurance or self-insurance for the above required coverages, which the Municipality shall deliver to HCD at its office at 3323 Belvedere Road, Building 501, West Palm Beach, Florida 33406.

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

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

9. MAINTENANCE OF EFFORT

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

10. CONFLICT OF INTEREST

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

11. CITIZEN PARTICIPATION

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

12. RECOGNITION

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

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13. CONTRACT DOCUMENTS

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

- (1) This Agreement, including its Exhibits
- (2) Office of Management and Budget Circulars A-87, A-102, A-133, and 24CFR Part 85
- (3) Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Title II of the Americans with Disabilities Act of 1990
- (4) Executive Orders 11246, 11478, 11625, 12432, the Davis Bacon Act, and Section 3 of the Housing and Community Development Act of 1968, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended
- (5) Executive Orders 11063, 12259, 12892, the Fair Housing Act of 1988, and Section 109 of the Housing and Community Development Act of 1974, as amended
- (6) Florida Statutes, Chapter 112
- (7) Palm Beach County Purchasing Ordinance
- (8) Federal Community Development Block Grant Regulations (24 CFR Part 570), as amended
- (9) The Municipality's personnel policies and job descriptions
- (10) The Municipality's Certificate of Insurance

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

14. TERMINATION

In event of termination for any of the following reasons, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports prepared, and capital equipment secured by the Municipality with funds under this Agreement shall be returned to HCD or the County.

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

(1) TERMINATION FOR CAUSE

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

(2) TERMINATION FOR CONVENIENCE

At any time during the term of this Agreement, either party may, at its option and for any reason, terminate this Agreement upon ten (10) working days written notice to the other party. Upon termination, the County shall pay the Municipality for services rendered pursuant to this Agreement through and including the date of termination.

(3) TERMINATION DUE TO CESSATION

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

15. SEVERABILITY OF PROVISIONS

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

16. 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 signed by both parties.

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17. NOTICES
All notices required to be given under this Agreement shall be sufficient when delivered to HCD at its office at 3323 Belvedere Road, Building 501, West Palm Beach, Florida 33406, and to the Municipality when delivered to its address on page one (1) of this Agreement.

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

19. 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.

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

21. COUNTERPARTS OF THE AGREEMENT
This Agreement, consisting of sixteen (16) enumerated pages which include the exhibits referenced herein, shall be executed in three (3) counterparts, each of which shall be deemed to be an original, and such counterparts will constitute one and the same instrument. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.

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22. **ENTIRE UNDERSTANDING**

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

WITNESS our Hands and Seals on this ____ day of _____, 2004.

(MUNICIPALITY SEAL)

TOWN OF LAKE PARK

BY: _____
Paul Castro, Mayor

By: _____
Carol Simpkins, Town Clerk

BY: _____
Attorney for Municipality
(Signature Optional)

(COUNTY SEAL)

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

BOARD OF COUNTY COMMISSIONERS

ATTEST: Dorothy H. Wilken, Clerk
Board of County Commissioners

By: _____
Karen Marcus, Chair
Board of County Commissioners

By: _____
Deputy Clerk

Document No.: _____

Approved as to Form and
Legal Sufficiency

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

By: _____
Tammy K. Fields
Assistant County Attorney

By: _____
Amin Houry, Manager
Housing and Capital Improvements

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EXHIBIT "A"
WORK PROGRAM NARRATIVE

I. THE MUNICIPALITY AGREES TO:

- A. **PROFESSIONAL SERVICES:** The Municipality shall hire a consultant to prepare, obtain and review bids, prepare contract documents, inspect work in progress, recommend payment to contractor and provide other professional services customarily provided by similar professionals provision of which must be approved by the County. The consultant shall also coordinate the design and construction work with the asbestos abatement contractor, should such abatement become necessary.

The consultant's services shall include any sub-consultants which shall be funded as reimbursables under the consultant's contract for services. Reimbursement for sub-consultants shall be at cost. Such sub-consultants may include surveyors, testing services, or others as deemed necessary for the nature of the project.

- B. **PROJECT SCOPE :** The scope of this project subject to funding availability shall include storm water drainage, inlets, catch basins, manholes, reconstruction of swales and any other incidental work associated with such drainage improvements, within the following sub-areas in the Town of Lake Park:

Bayberry Drive : between 7th and 8th Street.

NOTE 1: The Municipality shall submit its bid package and drawings/specifications to HCD and obtain a letter of approval prior to bidding the construction work.

NOTE 2: The Municipality shall prioritize the work in the project, and shall bid such work in a manner that would allow the receipt of itemized costs from bidders which would then allow the award of items that can be funded by the budget provided that the extent of work awarded will result in a functioning facility in the opinion of HCD.

NOTE 3: The Municipality shall not award the construction contract for the project until sufficient funding is available to complete the established scope of work. All construction work shall be included in one contract. The Municipality shall obtain HCD approval prior to awarding the construction contract to be funded through this Agreement. After awarding such contract the Municipality shall obtain HCD approval prior to executing any change orders to such contract.

NOTE 4: Should the construction contract amount for this project exceed the amount to be funded by the County for construction costs through this Agreement, then the Municipality shall fund all amounts in excess of the amount to be funded by the County. The Municipality may request the County to participate with a portion of the County's funding for construction costs first prior to participating with its funds. Under such a scenario, the Municipality would disburse an amount up to 75% of the County's funding amount made available for the project through this Agreement for construction costs and request reimbursement from the County for such amount, then disburse its portion of funding for the project (without being reimbursed by the County for such amount), and finally, the Municipality would disburse an amount equivalent to the County's remaining funding amount made available for the project through this Agreement for construction costs and request reimbursement from the County for such amount.

NOTE 5: The Municipality shall not request reimbursement from HCD for materials or equipment received and stored on the project site or elsewhere. The Municipality shall only request reimbursement for materials and equipment that have been installed.

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

- C. **ASBESTOS REQUIREMENTS:** The Municipality shall comply with all applicable requirements contained in Exhibit C, attached hereto, for construction work in connection with the project funded through this Agreement.
- D. **DAVIS-BACON ACT:** The Municipality shall request the County to obtain a Davis-Bacon wage decision for the project prior to advertising the construction work. The Municipality shall incorporate a copy of the Davis-Bacon wage decision and disclose the requirements of the Davis-Bacon Act in its construction bid solicitation and contract.
- E. **BONDING REQUIREMENTS:** The Municipality shall comply with the requirements of 24CFR Part 85 in regard to bid guarantees, performance bonds, and payment bonds.

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- F. CONSTRUCTION PAYMENT RETAINAGE: The Municipality shall apply a retainage of at least 5% on all construction draws which retainages shall be released in conjunction with the final draw upon satisfactory completion of the project. The Municipality agrees not to release such retainages until it has obtained approval from the County that the contractor and subcontractors have complied with the requirements of the Davis-Bacon Act.
- G. FORMER PROJECTS: The Municipality shall maintain all previously completed CDBG funded projects. Failure to do so will result in forfeiture of future CDBG funds and will delay funding for ongoing activities.
- H. WORK SCHEDULE: The time frame for completion of the outlined activities shall be September 30, 2005.

Hire Consultant	Nov 30, 2004
Complete Design & Bid Documents	Jan 31, 2005
Advertise & Accept Bids	Feb 28, 2005
Award Contract	Mar 31, 2005
Start Construction	Apr 30, 2005
Complete Construction	Aug 31, 2005
Submit Final Invoice	Sep 30, 2005

- I. REPORTS: The Municipality shall submit detailed monthly progress reports to Housing and Community Development outlining the status of specific activities under each project. Each report must account for the total activity for which the Municipality is reimbursed in part or in whole, with CDBG funds and which is required in fulfillment of their obligations regarding the projects. The progress reports should be mainly in the form of a narrative. The progress reports shall be used as an additional basis for invoice reimbursement.
- J. USE OF THE PROJECT FACILITY: The Municipality agrees in regard to the use of the facility/property whose acquisition or improvements are being funded in part or in whole by CDBG funds as provided by this Agreement, that for a period of ten (10) years after the expiration date of this agreement (as may be amended from time to time):
 - a. The Municipality may not change the use or planned use, or discontinue use, of the facility/property (including the beneficiaries of such use) from that for which the acquisition or improvements are made, unless the Municipality provides affected citizens with reasonable notice of, and opportunity to comment on, any such proposed change and either:
 - 1. The new use of the facility/property qualifies as meeting one of the national objectives defined in the regulations governing the CDBG program, and is not a building for the general conduct of government; or
 - 2. The requirements of paragraph (b) of this section are met.
 - b. If the Municipality determines after consultation with affected citizens, that it is appropriate to change the use of the facility/property to a use which does not qualify under paragraph (a) (1) of this section or discontinue the use of the facility/property, it may retain or dispose of the facility for such use if the County is reimbursed in the amount of the current fair market value of the facility/property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of, or improvements to the facility/property. The final determination of the amount of any such reimbursement to the County under this paragraph shall be made by the County.
 - c. Following the reimbursement of CDBG funds by the Municipality to the County pursuant to paragraph (b) above, the facility/property will then no longer be subject to any CDBG requirements.

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

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

Section 3 Clause

- a. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U. S.C. 170 1u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

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

II. THE COUNTY AGREES TO:

- A. Provide funding for the above specified improvements (including consultant services) as described above in "Project Scope", during the term of this Agreement, in the amount of \$58,960. However, the County shall not provide any funding for the construction work until it is assured that sufficient funds are available to complete the project.
- B. Provide project administration and inspection to the Municipality to ensure compliance with U.S. HUD and the Department of Labor, and applicable State, Federal and County laws and regulations.
- C. Monitor the Municipality at any time during the term of this Agreement. Visits may be announced or unannounced as determined by HCD and will serve to ensure compliance with U.S. Department of HUD regulations, that planned activities are conducted in a timely manner, and to verify the accuracy of reporting to HCD on program activities.
- D. The County shall perform an environmental review of the project, and review and approve project design and bids submitted for the work. The County shall also perform Davis Bacon Act Labor Standards monitoring and enforcement. Environmental review costs incurred by the County may be charged to the project budget identified above.
- E. Allowable costs that may be paid by the County under this Agreement in addition to those stated in II.A above:
 - i) Costs of asbestos surveys, asbestos abatement, and abatement monitoring.
 - ii) Cost of soil testing.
 - iii) Reproduction costs of plans and specifications for the project.
 - iv) Costs of any other services customarily associated with projects of the nature of the project contemplated by this Agreement.

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

Town of Lake Park

EXHIBIT "B" LETTERHEAD STATIONARY

TO: Remar M. Harvin, Director
Housing and Community Development
3323 Belvedere Road, Building #501
West Palm Beach, FL 33406

FROM: Name of Subgrantee: _____

Address: _____

Phone: _____

RE: INVOICE REIMBURSEMENT

Attached, you will find Invoice # _____, requesting reimbursement in the amount of \$_____. The expenditures for this invoice covers the period _____ through _____. You will also find attached back-up original documentation relating to the expenditures being invoiced.

Approved for Payment

EXHIBIT "C"
ASBESTOS REQUIREMENTS

PART A - SPECIAL CONDITIONS - ASBESTOS - PROCEDURES FOR REHABILITATION AND DEMOLITION OF STRUCTURES: The provisions of this part apply to all rehabilitation and demolition work contemplated in this agreement and described in Exhibit A of this agreement:

1. ASBESTOS NOTIFICATION

Federal and state asbestos regulations require, prior to the rehabilitation or demolition of any structure:

- (1) an inspection for asbestos-containing materials (ACM),
- (2) removal of specified ACM, and
- (3) an asbestos notification of rehabilitation or demolition received at least ten (10) business days prior to demolition.

To meet requirements #1 and #2 above, the Municipality shall request the County to survey the all structure(s) to be rehabilitated or demolished in connection with this agreement for the presence of ACM and the Municipality shall make every effort to remove Regulated Asbestos-Containing Material (RACM) and Category II Non-Friable ACM (e.g. asbestos-cement board and shingles) before commencing any rehabilitation or demolition work on such structure(s). If not attached, it is the Municipality responsibility to contact the Project Manager of the County department overseeing this project, or the County's Risk Management/Loss Control section to obtain:

- (A) a copy of the pre-rehabilitation or pre-demolition asbestos, inspection report; and
- (B) a copy of the County's Risk Management/Loss Control's memo addressed to the County department overseeing this project.

To meet requirement #3 above for rehabilitation or demolition work, the Municipality is responsible for submitting a complete and accurate asbestos notification form titled "Notice of Asbestos Removal Project" [i.e. NESHAP notification, 40 CFR Part 61.145(b)], for each separate address where work will be performed to the below listed agencies at least 10 business days prior to demolition. The 4-copy forms are available from the Department of Environmental Protection and the County's Risk Management/Loss Control.

SEND ORIGINAL TO:

State Asbestos Coordinator
FL Dept. of Environmental Protection
2600 Blair Stone Road
Tallahassee, FL 32399-2409

SEND YELLOW COPY TO:

Environmental Specialist
FL Dept. Of Environmental Protection
P. O. Box 15425
West Palm Beach, FL 33416-5425

SEND PINK COPY OR FAX OF ORIGINAL TO:

PBC Risk Management/Loss Control
Attn: NESHAP
P.O. Box 21229
West Palm Beach, FL 33416-1229
FAX: (561) 233-5420

The Municipality must notify the County's Risk Management/Loss Control (phone (561) 233-5430) immediately if the demolition Start Date changes. No demolition may start before the Start Date on the NESHAP notification and no demolition may occur without the notice to proceed from the County department. It is the responsibility of the Municipality to call and submit revised NESHAP notification to the above listed agencies, adhering to required NESHAP time frames.

The Municipality is responsible for physical checking the structure(s) before submitting the NESHAP notification to ensure that all RACM and Category II ACM, as identified in the pre-rehabilitation or pre-demolition asbestos inspection report, have been removed. If RACM or Category II ACM is discovered, the Municipality shall immediately contact the County's Project Manager or Loss Control.

2. WORK PRACTICES

The Municipality will utilize wet methods to control airborne emissions during the demolition process and during loading onto transport vehicles, regardless whether Category I is present or not. The Municipality is responsible for supplying water meters, hoses, and adequate volume of water to the demolition site.

Town of Lake Park

Recycling of any building materials with either presumed or confirmed asbestos-containing Category I (e.g. floor tile, sheet vinyl, and/or roofing materials) is not permitted, unless written authorization is provided to the Municipality by the County.

3. OSHA AND FLORIDA STATUTES COMPLIANCE

In accordance with OSHA, (reference 29 CFR 1926.1101) in the event ACM is present the Municipality must have a competent person onsite who: (1) is capable of identifying existing asbestos hazards in the workplace, (2) is capable of selecting the appropriate control strategy for asbestos exposure, and (3) has the authority to take prompt corrective action to eliminate them. This person must be trained in accordance with Chapter 469 Florida Statutes as an onsite supervisor.

Copies of training certificates of the onsite supervisor shall be made available to the County upon request.

4. ROOFING - REMOVAL OF CONFIRMED OR PRESUMED ASBESTOS-CONTAINING BITUMINOUS ROOFING MATERIALS

It is the responsibility of the Municipality to determine if the roofing materials do not contain asbestos. If the Municipality wishes not to sample and analyze for asbestos, the materials will be presumed to contain asbestos and handled accordingly. If the Municipality elects to sample the roof system, she/he must first notify the County of the sampling, including date, location, and number of samples to be collected. The bulk sample analyses must be performed by a NVLAP-accredited laboratory (NVLAP is the National Voluntary Laboratory Accreditation Program). Results, if proven less than one percent asbestos, shall be provided to the County prior to the start of any work.

The Municipality will be required to meet all Federal, State, and Local regulations pertaining to the handling, removal, and disposal of confirmed or presumed asbestos-containing roofing materials. This includes, but is not limited to:

- (1) Meeting the requirements listed in Chapter 469.012(2) & (3) Florida Statutes regarding training of onsite roofing supervisors involved in the removal of asbestos containing bituminous resinous roofing materials, and;
- (2) Utilizing removal methods that will maintain the roofing material's Category I non-friable status and will not create dust, i.e. employ methods other than sanding, grinding, drilling, abrading, rotary blade or saw cutting. Suggested methods are slicing, shearing, or punch cutting while using wet methods where feasible.

In the event ACM is found, the Municipality will submit the following documentation to the County department coordinating this project.

- (1) Copies of training certificates of the onsite roofing supervisor in compliance with the current requirements of Chapter 469 Florida Statutes;
- (2) Resume of the onsite roofing supervisor documenting asbestos-containing roofing removal jobs performed with the last two (2) years;
- (3) Approval of a landfill to accept confirmed or presumed asbestos-containing roofing material and any conditions associated with its acceptance, and;
- (4) A plan of action, as specified by OSHA 29 CFR 1926.1101 which addresses:
 - a. Method of removal
 - b. Worker protection
 - c. Protection of building occupants and ventilation systems
 - d. Method and location of disposal

PART B - SPECIAL CONDITIONS - ASBESTOS - PROCEDURES FOR NEW CONSTRUCTION AND REHABILITATION AND DEMOLITION OF STRUCTURES: The provisions of this part apply to new construction work and to all rehabilitation and demolition work contemplated in this agreement and described in Exhibit A of this agreement:

1. HANDLING AND DISPOSAL OF ASBESTOS CEMENT PIPE

GENERAL

Federal regulations (40 CFR Part 61, Subpart M) classify asbestos-cement pipe (AC pipe) as Category II non-friable asbestos-containing material. AC pipe must be handled in a manner which will maintain this classification. Therefore, all cutting and disposal of AC pipe must be performed by a Florida Licensed Asbestos Contractor.

The Municipality will make every effort to identify and quantify the locating of known AC pipe and material prior to onset of work.

Town of Lake Park

If the Municipality during the course of work observes, uncovers, or otherwise becomes aware of the existence of any asbestos-cement pipe, pieces, or material at the site to which the Municipality or any subcontractor, supplier, or other person may be exposed, the Municipality shall immediately notify the County and confirm any verbal notice in writing. The County shall promptly consult with the Project Engineer concerning such condition and determine the necessity of the County retaining special consultants or qualified experts. The Municipality shall not perform any work near or in connection with the suspect material until receipt of special written instructions from the County.

The Municipality will ensure that all subcontractors follow these procedures.

PRE-WORK SUBMITTALS

The Municipality shall submit the name of the Asbestos Contractor and a copy of his/her Florida Asbestos Contractor license to the Palm Beach County department coordinating this project, prior to start of work.

WORKER PROTECTION

Licensed asbestos contractors will comply with the requirements of OSHA 29 CFR 1929.1101 concerning worker protection.

EXECUTION OF WORK

AC pipe will be kept wet during all phases of removal. No visible emissions are permitted. Wet the pipe using an airless sprayer or utilize available water.

Apply dropcloth of 6-mil poly to the area beneath and a minimum of 3 feet beyond the section of pipe to be cut.

Break, cut, or snap pipe into sections suitable in size to the disposal facility. Abrasive disc saws are prohibited.

Apply lockdown encapsulant to exposed edges of pipe. Pick up all pipe debris that may have fallen outside dropcloth.

Use of compressed air to clean AC pipes is prohibited.

At no time should AC pipe or pieces be mixed in with fill.

DISPOSAL

Wrap pipe in existing dropcloth. Transfer pipe to a clean dropcloth outside the trench, and wrap and secure in second layer of 6-mil poly.

Affix the following labels to the exterior of each separately wrapped section of pipe. Labels are to be waterproof, legible, and large enough in size to be readily visible:

First Label:

CAUTION
Contains Asbestos Fibers
Avoid Opening or Breaking Container
Breathing Asbestos is Hazardous to Your Health

Second Label:

DANGER
Contains Asbestos Fibers
Avoid Breathing Dust
Cancer and Lung Disease Hazard
Breathing Airborne Asbestos, Tremolite, Anthophyllite or
Actinolite Fibers is Hazardous to Your Health

Third Label:

RQ HAZARDOUS SUBSTANCE
Solid, NOS
ORM-E, NA9188
(Asbestos)

Fourth Label:

Label each container with the name of the generator (owner) and the location at which the waste was generated.

Properly dispose of all AC pipe generated each day. All wrapped sections may be stored in a secure, locked enclosure pending disposal, if authorized by owner.

At no time are section pieces of AC pipe to be left on the worksite uncapped and unsecured at the end of the workday.

Town of Lake Park

All vehicles and/or containers used to haul asbestos-containing waste material shall be lined with a minimum of 6-mil poly layer.
Label trucks used to transport asbestos-containing waste material during loading and unloading as follows (refer to 29 CFR 1910.145(d)(4) for sign format):

DANGER
Asbestos Dust Hazard
Cancer and Lung Disease Hazard
Authorized Personnel Only

POST WORK SUBMITTALS

The Municipality or Asbestos Contractor, as waste generator shall complete a Waste Shipment Record (WSR) for each shipment of asbestos-cement pipe disposed. Refer to 40 CFR Part 61, Revision Final Rule for an example of WSR or contact Palm Beach County Risk Management/Loss Control.

The Municipality or his designated subcontractor will submit the following documents to the Palm Beach County department coordinating this project prior to payment.

- A copy of the WSR prior to shipment.
- A copy of the WSR signed by the disposal facility within thirty-five (35) days of shipment.

PART C - SPECIAL CONDITIONS - REGULATIONS: The provisions of this part apply to all projects contemplated in this agreement and described in Exhibit A of this agreement:

Environmental Protection Agency: 40 CFR Part 61 National Emission Standards for Hazardous Air Pollutants; Asbestos NESHAP Revision Final Rule November 20, 1990.

Occupational Safety and Health Administration: 29 CFR 1926.1101 - Asbestos, Construction Industry Standard.

Department of Business and Professional Regulations, Chapter 469 Florida Statutes, Licensure of Consultants and Contractors.

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